



# Telecommunications Act 1997

No. 47, 1997

## Compilation No. 107

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This compilation is in 3 volumes

Volume 1:	sections 1–310
<b>Volume 2:</b>	<b>sections 311–594</b>
Volume 3:	Schedules Endnotes

Each volume has its own contents

**This compilation includes commenced amendments made by Act No. 89, 2022**

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Telecommunications Act 1997* that shows the text of the law as amended and in force on 1 July 2023 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Part 14—National interest matters**

### **Division 1—Simplified outline**

#### **311 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA, carriers and carriage service providers must do their best to prevent telecommunications networks and facilities from being used to commit offences.
- Carriers and carriage service providers have a duty to do their best to protect telecommunications networks and facilities from unauthorised interference, or unauthorised access, for the purposes of security. Carriers and certain carriage service providers must notify changes to telecommunications services or telecommunications systems that are likely to have a material adverse effect on their capacity to comply with this duty.
- The ACMA, carriers and carriage service providers must give the authorities such help as is reasonably necessary for the purposes of:
  - (a) enforcing the criminal law and laws imposing pecuniary penalties; and
  - (b) protecting the public revenue; and
  - (c) safeguarding national security.
- A carriage service provider may suspend the supply of a carriage service in an emergency if requested to do so by a senior police officer.

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**Division 1** Simplified outline

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- The Home Affairs Minister may give directions to a carrier or a carriage service provider in certain circumstances where certain activities may be prejudicial to security.
- The Home Affairs Secretary may obtain information from carriers, carriage service providers and carriage service intermediaries if the information is relevant to assessing compliance with the duty of those persons to protect telecommunications networks and facilities from unauthorised interference or unauthorised access.

## **Division 2—Obligations of ACMA and carriers and carriage service providers**

### **312 ACMA's obligations**

- (1) The ACMA must, in performing its telecommunications functions or exercising its telecommunications powers, do its best to prevent:
  - (a) telecommunications networks; and
  - (b) facilities;from being used in, or in relation to, the commission of offences against the laws of the Commonwealth and of the States and Territories.
- (2) The ACMA must, in performing its telecommunications functions or exercising its telecommunications powers, give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:
  - (a) enforcing the criminal law and laws imposing pecuniary penalties;
  - (b) protecting the public revenue;
  - (c) safeguarding national security.
- (3) The ACMA is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance of the duty imposed by subsection (1) or (2).
- (4) An officer, employee or agent of the ACMA is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the ACMA as mentioned in subsection (3).

### **313 Obligations of carriers and carriage service providers**

- (1) A carrier or carriage service provider must, in connection with:
  - (a) the operation by the carrier or provider of telecommunications networks or facilities; or

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(b) the supply by the carrier or provider of carriage services; do the carrier's best or the provider's best to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories.

(1A) For the purposes of security (within the meaning of the *Australian Security Intelligence Organisation Act 1979*), a carrier or carriage service provider must, in connection with:

(a) the operation by the carrier or provider of telecommunications networks or facilities; or

(b) the supply by the carrier or provider of carriage services; do the carrier's best or the provider's best to protect telecommunications networks and facilities owned, operated or used by the carrier or provider from unauthorised interference or unauthorised access to ensure:

(c) the confidentiality of communications carried on, and of information contained on, telecommunications networks or facilities; and

(d) the availability and integrity of telecommunications networks and facilities.

Note 1: **Security**, among other things, covers the protection of, and of the people of, the Commonwealth and the States and Territories from espionage, sabotage, attacks on Australia's defence system and acts of foreign interference.

Note 2: A person who uses a carriage service to supply various kinds of broadcasting services is not a carriage service provider merely because of that use (and therefore not subject to the duty imposed by this subsection): see subsections 87(1) and (2) and 93(1) and (2).

(1B) Without limiting subsection (1A), the duty imposed by that subsection includes the requirement for the carrier or carriage service provider to maintain competent supervision of, and effective control over, telecommunications networks and facilities owned or operated by the carrier or provider.

(2) A carriage service intermediary must do the intermediary's best to prevent telecommunications networks and facilities from being

used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories.

(2A) For the purposes of security (within the meaning of the *Australian Security Intelligence Organisation Act 1979*), a carriage service intermediary must do the intermediary's best to protect telecommunications networks and facilities used to supply the carriage service referred to in subsection 87(5) from unauthorised interference or unauthorised access to ensure:

- (a) the confidentiality of communications carried on, and of information contained on, telecommunications networks or facilities; and
- (b) the availability and integrity of telecommunications networks and facilities.

Note: **Security**, among other things, covers the protection of, and of the people of, the Commonwealth and the States and Territories from espionage, sabotage, attacks on Australia's defence system and acts of foreign interference.

(3) A carrier or carriage service provider must, in connection with:

- (a) the operation by the carrier or provider of telecommunications networks or facilities; or
- (b) the supply by the carrier or provider of carriage services; give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:
  - (c) enforcing the criminal law and laws imposing pecuniary penalties;
  - (ca) assisting the enforcement of the criminal laws in force in a foreign country;
  - (cb) assisting the investigation and prosecution of:
    - (i) crimes within the jurisdiction of the ICC (within the meaning of the *International Criminal Court Act 2002*); and
    - (ii) Tribunal offences (within the meaning of the *International War Crimes Tribunals Act 1995*);
  - (d) protecting the public revenue;

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- (e) safeguarding national security.

Note: Section 314 deals with the terms and conditions on which such help is to be provided.

- (4) A carriage service intermediary who arranges for the supply by a carriage service provider of carriage services must, in connection with:

- (a) the operation by the provider of telecommunications networks or facilities; or

- (b) the supply by the provider of carriage services;

give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:

- (c) enforcing the criminal law and laws imposing pecuniary penalties;

- (ca) assisting the enforcement of the criminal laws in force in a foreign country;

- (cb) assisting the investigation and prosecution of:

- (i) crimes within the jurisdiction of the ICC (within the meaning of the *International Criminal Court Act 2002*); and

- (ii) Tribunal offences (within the meaning of the *International War Crimes Tribunals Act 1995*);

- (d) protecting the public revenue;

- (e) safeguarding national security.

Note: Section 314 deals with the terms and conditions on which such help is to be provided.

- (4A) A carrier or carriage service provider must, in connection with:

- (a) the operation by the carrier or provider of telecommunications networks or facilities; or

- (b) the supply by the carrier or provider of carriage services;

give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:



- (c) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates;
- (d) preparing for, responding to or recovering from a disaster or emergency that has been declared to be a disaster or a state of emergency (as the case may be) by or with the approval of a Minister of a State or Territory under the law of the State or Territory;
- (e) if a declaration made for the purpose of subsection (4D) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates.

Note: Section 314 deals with the terms and conditions on which such help is to be provided.

(4B) A carriage service intermediary who arranges for the supply by a carriage service provider of carriage services must, in connection with:

- (a) the operation by the provider of telecommunications networks or facilities; or
- (b) the supply by the provider of carriage services;

give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:

- (c) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates;
- (d) preparing for, responding to or recovering from a disaster or emergency that has been declared to be a disaster or a state of emergency (as the case may be) by or with the approval of a Minister of a State or Territory under the law of the State or Territory;
- (e) if a declaration made for the purpose of subsection (4D) is in force—preparing for, responding to or recovering from an emergency to which the declaration relates.

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Note: Section 314 deals with the terms and conditions on which such help is to be provided.

- (4C) Subsections (4A) and (4B) do not limit subsection (3) or (4).
- (4D) The Minister may, in writing, declare that an emergency exists for the purposes of this subsection.
- (4E) The Minister must publish, by electronic or other means, a copy of the declaration made under subsection (4D) as soon as practicable after making the declaration.
- (4F) A declaration made under subsection (4D) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration.
- (4G) In requiring help for the purposes of subsection (4A) or (4B), the officer or authority of the Commonwealth, State or Territory making the requirement must have regard to any guidelines in force under subsection (4H).
- (4H) The Minister may, by legislative instrument, formulate guidelines for the purposes of subsection (4G).
- (5) A carrier or carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith:
  - (a) in performance of the duty imposed by subsection (1), (1A), (2), (2A), (3), (4), (4A) or (4B); or
  - (b) in compliance with a direction that the ACMA gives in good faith in performance of its duties under section 312; or
  - (c) in compliance with a direction given under subsection 315A(1) or 315B(2).
- (6) An officer, employee or agent of a carrier or of a carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the carrier or provider as mentioned in subsection (5).

- (7) A reference in this section to giving help includes a reference to giving help by way of:
- (a) the provision of interception services, including services in executing an interception warrant under the *Telecommunications (Interception and Access) Act 1979*; or
  - (b) giving effect to a stored communications warrant under that Act; or
  - (c) providing relevant information about:
    - (i) any communication that is lawfully intercepted under such an interception warrant; or
    - (ii) any communication that is lawfully accessed under such a stored communications warrant; or
  - (caa) giving effect to authorisations under section 31A of that Act; or
  - (ca) complying with a domestic preservation notice or a foreign preservation notice that is in force under Part 3-1A of that Act; or
  - (d) giving effect to authorisations under Division 3 or 4 of Part 4-1 of that Act; or
  - (e) disclosing information or a document in accordance with section 280 of this Act.

Note: Additional obligations concerning interception capability and delivery capability are, or may be, imposed on a carrier or carriage service provider under Chapter 5 of the *Telecommunications (Interception and Access) Act 1979*.

### **314 Terms and conditions on which help is to be given**

- (1) This section applies if a person is required to give help to an officer or authority of the Commonwealth, a State or a Territory as mentioned in subsection 313(3), (4), (4A) or (4B).
- (2) The person must comply with the requirement on the basis that the person neither profits from, nor bears the costs of, giving that help.
- (3) The person must comply with the requirement on such terms and conditions as are:

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- (a) agreed between the following parties:
  - (i) the person;
  - (ii) the Commonwealth, the State or the Territory, as the case may be; 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 ACMA is to appoint the arbitrator.

- (4) An arbitrator appointed by the ACMA under subsection (3) must be a person specified in a written determination made by the Minister.

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

- (5) Before making a determination under subsection (4), the Minister must consult the Attorney-General.
- (6) If an arbitration under this section is conducted by an arbitrator appointed by the ACMA, the cost of the arbitration must be apportioned equally between the parties.
- (7) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (8) This section does not apply in relation to the obligation of carriers or carriage service providers under Part 5-1A, 5-3 or 5-5 of the *Telecommunications (Interception and Access) Act 1979* (about data retention, interception capability and delivery capability).

Note: Part 5-6 of the *Telecommunications (Interception and Access) Act 1979* contains provisions about the allocation of costs in relation to interception capability and delivery capability.

**Division 3—Notification of changes to telecommunications  
services or telecommunications systems relating  
to obligation under subsection 313(1A) or (2A)**

**Subdivision A—Individual notifications**

**314A Individual notifications**

- (1) This section applies if, at any time, a carrier or a nominated carriage service provider becomes aware that the implementation by the carrier or provider of a change that is proposed to a telecommunications service or a telecommunications system is likely to have a material adverse effect on the capacity of the carrier or provider to comply with its obligations under subsection 313(1A) or (2A).

*Kinds of changes*

- (2) A change to a telecommunications service or a telecommunications system includes (but is not limited to) the following:
- (a) the carrier or carriage service provider providing one or more new telecommunication services;
  - (b) the carrier or carriage service provider changing the location of notifiable equipment (including moving equipment outside Australia);
  - (c) the carrier or carriage service provider procuring notifiable equipment (including procuring equipment that is located outside Australia);
  - (d) the carrier or carriage service provider entering into outsourcing arrangements:
    - (i) to have all or part of the telecommunication services provided for the carrier or provider; or
    - (ii) to have all or part of the provision of telecommunication services managed for the carrier or provider; or

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- (iii) to have all or some information to which section 276 applies in relation to the carrier or provider, managed for the carrier or provider;
  - (e) the carrier or carriage service provider entering into arrangements to have all or some information to which section 276 applies in relation to the carrier or provider accessed by persons outside Australia;
  - (f) the carrier or carriage service provider entering into arrangements to have all or some information or documents to which subsection 187A(1) of the *Telecommunications (Interception and Access) Act 1979* applies in relation to the carrier or provider kept outside Australia.
- (2A) Subsection (1) does not apply to changes to a telecommunications service or a telecommunications system that are changes determined in an instrument under subsection (2B).
- (2B) The Communications Access Co-ordinator may, by legislative instrument, make a determination for the purposes of subsection (2A).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

*Notification of change*

- (3) The carrier or provider must notify the Communications Access Co-ordinator, in writing, of its intention to implement the proposed change. The notification must include a description of the proposed change.

*Exemptions*

- (4) The Communications Access Co-ordinator may, by notice in writing given to a carrier or a nominated carriage service provider, exempt the carrier or provider from the operation of this section.

Note: For revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

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- (5) The Communications Access Co-ordinator may, by notice in writing given to a carrier or a nominated carriage service provider, exempt the carrier or provider from the operation of this section in relation to changes specified in the notice.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (5A) The Communications Access Co-ordinator may grant an exemption under subsection (4) or (5) on his or her own initiative or on written application by a carrier or a nominated carriage service provider.
- (5B) If a carrier or a nominated carriage service provider makes such an application, the Communications Access Co-ordinator must, within 60 days of receiving the application, either:
- (a) give the carrier or provider an exemption under subsection (4) or (5); or
  - (b) give the carrier or provider a notice in writing refusing the application, including setting out the reasons for the refusal.
- (5C) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Communications Access Co-ordinator under paragraph (5B)(b) to refuse an application.
- (6) An exemption under subsection (4) or (5) has effect accordingly.
- (6A) An exemption under subsection (4) or (5) may specify the period during which it is to remain in force. The exemption remains in force for that period unless it is revoked earlier or it ceases to be in force as mentioned in subsection (6B).
- (6B) An exemption under subsection (4) or (5) may be given subject to conditions specified in the exemption. The exemption ceases to be in force if the carrier or nominated carriage service provider breaches a condition.
- (7) An exemption under subsection (4) or (5) is not a legislative instrument.

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**314B Assessment of proposed change**

*Further information*

- (1) If:
- (a) under subsection 314A(3), a carrier or a nominated carriage service provider notifies the Communications Access Co-ordinator of a proposed change; and
  - (b) the Co-ordinator considers that further information, in relation to the proposed change, is required for the Co-ordinator to assess whether there is a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security;
- the Co-ordinator may, by notice in writing given to the carrier or provider, set out the further information the Co-ordinator requires.
- (2) A notice under subsection (1) must be given to the carrier or provider within 30 days of the notification of the proposed change to the Communications Access Co-ordinator.

*Assessment of proposed change*

- (3) If:
- (a) the Communications Access Co-ordinator considers a proposed change notified under subsection 314A(3) (including a proposed change where further information is provided as mentioned in this section); and
  - (b) in relation to the proposed change, the Co-ordinator is satisfied that there is a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security;
- the Co-ordinator must give a written notice to the carrier or provider:
- (c) advising the carrier or provider of that risk; and
  - (d) setting out the duty imposed by subsection 313(1A) or (2A); and



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- (e) setting out the consequences for the carrier or provider for not complying with that duty.
- (4) A notice under subsection (3) may also set out the measures the Communications Access Co-ordinator considers the carrier or provider could adopt to eliminate or reduce the risk referred to in subsection (3).
- (5) If:
- (a) the Communications Access Co-ordinator considers a proposed change notified under subsection 314A(3) (including a proposed change where further information is provided as mentioned in this section); and
  - (b) in relation to the proposed change, the Co-ordinator is satisfied that there is not a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security;
- the Co-ordinator must give a written notice to the carrier or provider to that effect.
- (6) In response to a proposed change notified to the Communications Access Co-ordinator under subsection 314A(3), a notice must be given to the carrier or provider:
- (a) within 30 days of the notification; or
  - (b) if under subsection (1) the Communications Access Co-ordinator sought further information from the carrier or provider—as soon as practicable and no later than 30 days after the carrier or provider gave that further information.
- The notice must be a notice under subsection (3) or (5).

*Definitions*

- (7) In this section:

**security** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

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**Subdivision B—Security capability plans**

**314C Security capability plans**

- (1) A carrier or a nominated carriage service provider may give the Communications Access Co-ordinator a written instrument (a *security capability plan*) under this section.
- (2) A security capability plan may set out one or more changes to a telecommunications service or a telecommunications system the carrier or provider proposes to implement in the future that are likely to have a material adverse effect on the capacity of the carrier or provider to comply with its obligations under subsection 313(1A) or (2A).
- (3) A security capability plan may set out the time each of the changes is proposed to be implemented.

*Kinds of changes*

- (4) For the purposes of subsection (2), a change to a telecommunications service or a telecommunications system includes (but is not limited to):
  - (a) changes referred to in subsection 314A(2); and
  - (b) changes determined in an instrument under subsection (5) of this section.
- (5) The Communications Access Co-ordinator may, by legislative instrument, determine changes for the purposes of paragraph (4)(b).

*Other matters plan may include*

- (6) A security capability plan may set out the carrier's or provider's practices, policies or strategies to comply with its obligations under subsection 313(1A) or (2A).
- (7) A security capability plan may set out the measures the carrier or provider is implementing, or proposing to implement, to mitigate

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the risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities.

*One instrument each 12-month period*

- (8) A carrier or a nominated carriage service provider cannot give more than one instrument under this section in any 12-month period.

### **314D Assessment of security capability plan**

*Further information*

- (1) If:
- (a) a carrier or a nominated carriage service provider gives the Communications Access Co-ordinator a security capability plan setting out one or more proposed changes mentioned in subsection 314C(2); and
  - (b) the Co-ordinator considers that further information, in relation to a particular proposed change, is required for the Co-ordinator to assess whether there is a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security;
- the Co-ordinator may, by notice in writing given to the carrier or provider, set out the further information the Co-ordinator requires.
- (2) A notice under subsection (1) must be given to the carrier or provider within 60 days of the plan being given to the Communications Access Co-ordinator.

*Assessment of proposed change*

- (3) If:
- (a) the Communications Access Co-ordinator considers a particular proposed change mentioned in subsection 314C(2) that is set out in a security capability plan (including a

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proposed change where further information is provided as mentioned in this section); and

- (b) in relation to the proposed change, the Co-ordinator is satisfied that there is a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security;

the Co-ordinator must give a written notice to the carrier or provider:

- (c) advising the carrier or provider of that risk; and
- (d) setting out the duty imposed by subsection 313(1A) or (2A); and
- (e) setting out the consequences for the carrier or provider for not complying with that duty.

- (4) A notice under subsection (3) may also set out the measures the Communications Access Co-ordinator considers the carrier or provider could adopt to eliminate or reduce the risk referred to in subsection (3).

- (5) If:

- (a) the Communications Access Co-ordinator considers a particular proposed change mentioned in subsection 314C(2) that is set out in a security capability plan (including a proposed change where further information is provided as mentioned in this section); and

- (b) in relation to the proposed change, the Co-ordinator is satisfied that there is not a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security;

the Co-ordinator must give a written notice to the carrier or provider to that effect.

- (6) In response to a proposed change mentioned in subsection 314C(2) that is set out in a security capability plan, a notice must be given to the carrier or provider:

- (a) within 60 days of the plan being given to the Communications Access Co-ordinator; or

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- (b) if under subsection (1) the Communications Access Co-ordinator sought further information from the carrier or provider—as soon as practicable and no later than 60 days after the carrier or provider gave that further information. The notice must be a notice under subsection (3) or (5) and may relate to one or more such changes.

*Definitions*

- (7) In this section:

*security* has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

### 314E Relationship with section 314A

*Dual notifications not required*

- (1) If, under section 314C, a carrier or a nominated carriage service provider has given a security capability plan setting out one or more proposed changes mentioned in subsection 314C(2), the carrier or provider is not required to notify those proposed changes under section 314A.

*Certain modifications to changes are changes in their own right*

- (2) If:
- (a) under section 314C, a carrier or a nominated carriage service provider has given a security capability plan setting out one or more proposed changes mentioned in subsection 314C(2); and
  - (b) the carrier or provider becomes aware that the implementation by the carrier or provider of any modification to such a proposed change is likely to have a material adverse effect on the capacity of the carrier or provider to comply with its obligations under subsection 313(1A) or (2A);
- then section 314A applies in relation to the modification as if the modification were a change in its own right.

**Division 4—Carriage service provider may suspend supply of carriage service in an emergency**

**315 Suspension of supply of carriage service in an emergency**

- (1) If a senior officer of a police force or service has reasonable grounds to believe that:
  - (a) an individual has access to a particular carriage service; and
  - (b) the individual has:
    - (i) done an act that has resulted, or is likely to result, in loss of life or in the infliction of serious personal injury; or
    - (ii) made an imminent threat to kill, or seriously injure, another person; or
    - (iii) made an imminent threat to cause serious damage to property; or
    - (iv) made an imminent threat to take the individual's own life; or
    - (v) made an imminent threat to do an act that will, or is likely to, endanger the individual's own life or create a serious threat to the individual's health or safety; and
  - (c) the suspension of the supply of the carriage service is reasonably necessary to:
    - (i) prevent a recurrence of the act mentioned in subparagraph (b)(i); or
    - (ii) prevent or reduce the likelihood of the carrying out of a threat mentioned in subparagraph (b)(ii), (iii), (iv) or (v);

the officer may request a carriage service provider to suspend the supply of the carriage service.
- (2) The carriage service provider may comply with the request.
- (3) This section does not, by implication, limit any other powers that the provider may have to suspend the supply of the carriage service.

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- (3A) The provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with the request.
- (3B) An officer, employee or agent of the provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the provider as mentioned in subsection (3A).

(4) In this section:

*senior officer*, in relation to a police force or service, means a commissioned officer of the force or service who holds a rank not lower than the rank of Assistant Commissioner.

## Division 5—Directions by Home Affairs Minister

### 315A Direction if use or supply of carriage services prejudicial to security

- (1) If:
  - (a) a person who is a carrier or carriage service provider proposes to use, or uses, for the person's own requirements or benefit, or proposes to supply, or supplies, to another person, one or more carriage services; and
  - (b) the Home Affairs Minister, after consulting the Prime Minister and the Minister administering this Act, considers that the proposed use or supply would be, or the use or supply is, as the case may be, prejudicial to security;the Home Affairs Minister may give the carrier or carriage service provider a written direction not to use or supply, or to cease using or supplying, the carriage service or the carriage services.
- (2) A direction under subsection (1) must relate to a carriage service generally and cannot be expressed to apply to the supply of a carriage service to a particular person, particular persons or a particular class of persons.

#### *Direction to be given after adverse security assessment*

- (3) The Home Affairs Minister must not give a carrier or carriage service provider a direction under subsection (1) unless an adverse security assessment in respect of the carrier or carriage service provider is given to the Home Affairs Minister in connection with this section.

#### *Copy of direction to be given to ACMA*

- (4) The Home Affairs Minister must give the ACMA a copy of any direction under subsection (1).



*Compliance with direction*

- (5) A person must comply with a direction given to the person under subsection (1).

*Definitions*

- (6) In this section:

**security** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

**315B Direction if risk of unauthorised interference or access involving telecommunications networks or facilities**

- (1) This section applies if, in connection with:
- (a) the operation by a carrier or carriage service provider of telecommunications networks or facilities; or
  - (b) the supply by a carrier or carriage service provider of a carriage service; or
  - (c) the supply by a carriage service provider of a carriage service, being a supply arranged by a carriage service intermediary;
- the Home Affairs Minister is satisfied that there is a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security.
- (2) The Home Affairs Minister may give a carrier, carriage service provider or carriage service intermediary a written direction requiring the carrier, provider or intermediary to do, or to refrain from doing, a specified act or thing within the period specified in the direction.
- (3) A direction under subsection (2) may be given only if the Home Affairs Minister is satisfied that requiring the carrier, carriage service provider or carriage service intermediary to do, or to refrain from doing, the specified act or thing is reasonably necessary for

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purposes relating to eliminating or reducing the risk referred to in subsection (1).

*Direction to be given after adverse security assessment*

- (4) The Home Affairs Minister must not give a carrier, carriage service provider or carriage service intermediary a direction under subsection (2) unless an adverse security assessment in respect of the carrier, provider or intermediary is given to the Home Affairs Minister in connection with this section.

*Direction to be given after negotiations in good faith*

- (5) The Home Affairs Minister must not give a carrier, carriage service provider or carriage service intermediary a direction under subsection (2) unless the Home Affairs Minister is satisfied that reasonable steps have been taken to negotiate in good faith with the carrier, provider or intermediary to achieve an outcome of eliminating or reducing the risk referred to in subsection (1).

*Matters to which regard must be had before giving direction*

- (6) Before giving a carrier, carriage service provider or carriage service intermediary a direction under subsection (2), the Home Affairs Minister must have regard to the following matters:
- (a) the adverse security assessment mentioned in subsection (4);
  - (b) the costs, in complying with any direction, that would be likely to be incurred by the carrier, provider or intermediary;
  - (c) the potential consequences that any direction may have on competition in the telecommunications industry;
  - (d) the potential consequences that any direction may have on customers of the carrier, provider or intermediary.

The Home Affairs Minister must give the greatest weight to the matter mentioned in paragraph (a).

- (7) Subsection (6) does not limit the matters to which regard may be had.

*Consultation*

- (8) Before giving a carrier, carriage service provider or carriage service intermediary a direction under subsection (2), the Home Affairs Minister must:
- (a) consult the Minister administering this Act; and
  - (b) do the following:
    - (i) by written notice, given to the carrier, provider or intermediary, set out the proposed direction;
    - (ii) in that notice, invite the carrier, provider or intermediary to make written representations to the Home Affairs Minister in relation to the proposed direction within the period specified in the notice;
    - (iii) have regard to any such representations made within that period.
- (9) For the purposes of subparagraph (8)(b)(ii), the period to be specified in the notice must be at least 28 days after the notice is given. However, the Home Affairs Minister may specify a shorter period if the Home Affairs Minister considers it necessary to do so because of urgent circumstances.
- (10) Subsection (8) does not limit the persons with whom the Home Affairs Minister may consult.

*Copy of direction to be given to ACMA*

- (11) The Home Affairs Minister must give the ACMA a copy of any direction under subsection (2).

*Compliance with direction*

- (12) A person must comply with a direction given to the person under subsection (2).

*Definitions*

- (13) In this section:

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***security*** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

## **Division 6—Home Affairs Secretary's information-gathering powers**

### **315C Home Affairs Secretary may obtain information and documents from carriers and carriage service providers**

- (1) This section applies to a carrier, carriage service provider or carriage service intermediary if the Home Affairs Secretary has reason to believe that the carrier, provider or intermediary has information or a document that is relevant to assessing compliance with the duty imposed by subsection 313(1A) or (2A).
- (2) The Home Affairs Secretary may, by written notice given to the carrier, provider or intermediary, require the carrier, provider or intermediary:
  - (a) to give to that Secretary, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to that Secretary, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to that Secretary, within the period and in the manner specified in the notice, those copies.
- (3) The carrier, provider or intermediary must comply with a requirement under subsection (2).

#### *Matters to which regard must be had before giving notice*

- (4) Before giving a carrier, carriage service provider or carriage service intermediary a notice under subsection (2), the Home Affairs Secretary must have regard to the costs, in complying with any requirement in the notice, that would be likely to be incurred by the carrier, provider or intermediary.
- (5) Subsection (4) does not limit the matters to which regard may be had.

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*Content of notice*

- (6) A notice given to a carrier under this section must set out the effect of the following provisions:
- (a) subsection (3);
  - (b) section 68;
  - (c) section 570;
  - (d) Part 1 of Schedule 1;
  - (e) sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).
- (7) A notice given to a carriage service provider or carriage service intermediary under this section must set out the effect of the following provisions:
- (a) subsection (3);
  - (b) section 101;
  - (c) section 570;
  - (d) Part 1 of Schedule 2;
  - (e) sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

*Copying documents—reasonable compensation*

- (8) A carrier, carriage service provider or carriage service intermediary is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph (2)(c).

**315D Self-incrimination**

- (1) A person is not excused from giving information or producing a document or a copy of a document under section 315C on the ground that the information or the production of the document or copy might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
- (a) the information given or the document or copy produced; or

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- (b) giving the information or producing the document or copy; or
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or copy;
- is not admissible in evidence against the individual:
- (d) in criminal proceedings other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Division; or
  - (e) in civil proceedings other than proceedings under section 570 for recovery of a penalty in relation to a contravention of subsection 315C(3).

**315E Copies of documents**

- (1) The Home Affairs Secretary may inspect a document or copy produced under section 315C and may make and retain copies of such a document.
- (2) The Home Affairs Secretary may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 315C(2)(c).

**315F Retention of documents**

- (1) The Home Affairs Secretary may take, and retain for as long as is necessary, possession of a document produced under section 315C.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Home Affairs Secretary to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Home Affairs Secretary must, at such times and places as he or she thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of the document.

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**315G Delegation by Home Affairs Secretary**

- (1) The Home Affairs Secretary may, in writing, delegate any or all of his or her powers and functions under sections 315C, 315E and 315F to the Director-General of Security.
- (2) In exercising a power or performing a function under a delegation under subsection (1), the Director-General of Security must comply with any directions of the Home Affairs Secretary.



## **Division 7—Information sharing and confidentiality**

### **315H Information sharing and confidentiality**

- (1) A person who obtains information or a document under section 314A, 314B, 314C, 314D, 315C or this subsection may disclose any of that information, or provide the document (or a copy of it), to another person for either or both of the following purposes:
- (a) the assessment of the risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities and, if there is such a risk, the assessment of the risk to security;
  - (b) the purposes of security.

Note: The *Privacy Act 1988* applies to the disclosure of personal information.

#### *Limitation*

- (2) However, if a person obtains information or a document under section 314A, 314B, 314C, 314D, 315C or subsection (1) of this section, the person must not disclose any of that information, or provide the document (or a copy of it), to a person who is not a Commonwealth officer, to the extent that the information is identifying information or that the document (or a copy of it) contains identifying information.

#### *Confidentiality*

- (3) Subject to this section, a person who obtains information or a document under section 314A, 314B, 314C, 314D, 315C or this section must treat the information or document as confidential.

#### *Definitions*

- (4) In this section:

***Commonwealth officer*** means:

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- (a) a person who is in the employment of the Commonwealth, other than a person who is engaged outside Australia to perform duties outside Australia as an employee; or
- (b) a person who holds or performs the duties of any office or position established by or under a law of the Commonwealth; or
- (c) a member of the Australian Defence Force; or
- (d) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee, a special member or a special protective service officer (all within the meaning of the *Australian Federal Police Act 1979*).

Note: Paragraph (a) of this definition covers, for example, persons employed by the Director-General of Security, on behalf of the Commonwealth, under subsection 84(1) of the *Australian Security Intelligence Organisation Act 1979*.

***identifying information*** means information that identifies the carrier, carriage service provider or carriage service intermediary concerned.

***security*** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

## Division 8—Annual report

### 315J Annual report

- (1) The Home Affairs Secretary must report each financial year to the Home Affairs Minister on the operation of this Part, to the extent that this Part was amended by the *Telecommunications and Other Legislation Amendment Act 2017*.
- (1A) Without limiting subsection (1), a report under that subsection for a financial year must include the following information for that year:
- (a) the number of directions the Home Affairs Minister gave under subsection 315A(1);
  - (b) the number of directions the Home Affairs Minister gave under subsection 315B(2);
  - (c) the following:
    - (i) the number of notifications the Communications Access Co-ordinator received under subsection 314A(3);
    - (ii) in response to such notifications, the average number of days taken by the Co-ordinator to give a notice under subsection 314B(3) or (5);
    - (iii) in response to such notifications, the percentage of notices given within the period under subsection 314B(6) by the Co-ordinator under subsection 314B(3) or (5);
  - (d) the following:
    - (i) the number of applications the Communications Access Co-ordinator received under subsection 314A(5A);
    - (ii) in response to such applications, the average number of days taken by the Co-ordinator to give a notice under subsection 314A(4) or (5) or paragraph 314A(5B)(b);
    - (iii) in response to such applications, the percentage of notices given within the period under subsection 314A(5B) by the Co-ordinator under subsection 314A(4) or (5) or paragraph 314A(5B)(b);

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- (e) the following:
    - (i) the number of security capability plans the Communications Access Co-ordinator received under subsection 314C(1);
    - (ii) in response to such plans, the average number of days taken by the Co-ordinator to give a notice under subsection 314D(3) or (5);
    - (iii) in response to such plans, the percentage of notices given within the period under subsection 314D(6) by the Co-ordinator under subsection 314D(3) or (5);
  - (f) the number of notices the Home Affairs Secretary gave under subsection 315C(2);
  - (g) details of the information sharing arrangements between the Commonwealth and carriers and carriage service providers in relation to this Part, to the extent that this Part was amended by the *Telecommunications and Other Legislation Amendment Act 2017*;
  - (h) a summary of any feedback or complaints made in relation to this Part, to the extent that this Part was amended by that Act;
  - (i) trends or issues in relation to the matters covered by paragraphs (a) to (h).
- (2) The Home Affairs Secretary must give a report under subsection (1) to the Home Affairs Minister as soon as practicable after the end of the financial year concerned.
- (3) The Home Affairs Minister must cause a copy of a report under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

## **Division 8A—Review by Parliamentary Joint Committee on Intelligence and Security**

### **315K Review by Parliamentary Joint Committee on Intelligence and Security**

- (1) The Parliamentary Joint Committee on Intelligence and Security must review the operation of this Part, to the extent that this Part was amended by the *Telecommunications and Other Legislation Amendment Act 2017*.
- (2) The review:
  - (a) must start on or before the second anniversary of the commencement of this section; and
  - (b) must be concluded on or before the third anniversary of the commencement of this section.
- (3) The Committee must give the Home Affairs Minister a written report of the review.

## **Division 9—Generality of Part not limited**

### **316 Generality of Part not limited**

Nothing in this Part limits the generality of anything else in it.

## **Part 15—Industry assistance**

### **Division 1—Introduction**

#### **317A Simplified outline of this Part**

- The Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer of an interception agency may give a technical assistance request to a designated communications provider.
- A technical assistance request may ask the provider to do acts or things on a voluntary basis that are directed towards ensuring that the provider is capable of giving certain types of help to ASIO, the Australian Secret Intelligence Service, the Australian Signals Directorate or an interception agency in relation to:
  - (a) in the case of ASIO—safeguarding national security; or
  - (b) in the case of the Australian Secret Intelligence Service—the interests of Australia’s national security, the interests of Australia’s foreign relations or the interests of Australia’s national economic well-being; or
  - (c) in the case of the Australian Signals Directorate—providing material, advice and other assistance on matters relating to the security and integrity of information that is processed, stored or communicated by electronic or similar means; or
  - (d) in the case of an interception agency—enforcing the criminal law, so far as it relates to serious Australian offences; or
  - (e) in the case of an interception agency—assisting the enforcement of the criminal laws in force in a foreign country, so far as those laws relate to serious foreign offences.

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- A technical assistance request may ask the provider to give help to ASIO, the Australian Secret Intelligence Service, the Australian Signals Directorate or an interception agency on a voluntary basis in relation to:
  - (a) in the case of ASIO—safeguarding national security; or
  - (b) in the case of the Australian Secret Intelligence Service—the interests of Australia’s national security, the interests of Australia’s foreign relations or the interests of Australia’s national economic well-being; or
  - (c) in the case of the Australian Signals Directorate—providing material, advice and other assistance on matters relating to the security and integrity of information that is processed, stored or communicated by electronic or similar means; or
  - (d) in the case of an interception agency—enforcing the criminal law, so far as it relates to serious Australian offences; or
  - (e) in the case of an interception agency—assisting the enforcement of the criminal laws in force in a foreign country, so far as those laws relate to serious foreign offences.
- The Director-General of Security or the chief officer of an interception agency may give a designated communications provider a notice, to be known as a technical assistance notice, that requires the provider to do acts or things by way of giving certain types of help to ASIO or the agency in relation to:
  - (a) enforcing the criminal law, so far as it relates to serious Australian offences; or
  - (b) assisting the enforcement of the criminal laws in force in a foreign country, so far as those laws relate to serious foreign offences; or
  - (c) safeguarding national security.
- The Attorney-General may give a designated communications provider a notice, to be known as a technical capability notice.



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- A technical capability notice may require the provider to do acts or things directed towards ensuring that the provider is capable of giving certain types of help to ASIO or an interception agency in relation to:
  - (a) enforcing the criminal law, so far as it relates to serious Australian offences; or
  - (b) assisting the enforcement of the criminal laws in force in a foreign country, so far as those laws relate to serious foreign offences; or
  - (c) safeguarding national security.
- A technical capability notice may require the provider to do acts or things by way of giving certain types of help to ASIO or an interception agency in relation to:
  - (a) enforcing the criminal law, so far as it relates to serious Australian offences; or
  - (b) assisting the enforcement of the criminal laws in force in a foreign country, so far as those laws relate to serious foreign offences; or
  - (c) safeguarding national security.

**317B Definitions**

In this Part:

***access***, when used in relation to material, includes:

- (a) access that is subject to a pre-condition (for example, the use of a password); and
- (b) access by way of push technology; and
- (c) access by way of a standing request.

***ASIO affiliate*** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

***ASIO employee*** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

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**chief officer** of an interception agency has the meaning given by section 317ZM.

**contracted service provider**, in relation to a designated communications provider, means a person who performs services for or on behalf of the provider, but does not include a person who performs such services in the capacity of an employee of the provider.

**designated communications provider** has the meaning given by section 317C.

**electronic protection** includes:

- (a) authentication; and
- (b) encryption.

**electronic service** has the meaning given by section 317D.

**eligible activities** of a designated communications provider has the meaning given by section 317C.

**entrusted ASD person** means a person who:

- (a) is a staff member of the Australian Signals Directorate; or
- (b) has entered into a contract, agreement or arrangement with the Australian Signals Directorate; or
- (c) is an employee or agent of a person who has entered into a contract, agreement or arrangement with the Australian Signals Directorate.

**entrusted ASIO person** means an entrusted person (within the meaning of the *Australian Security Intelligence Organisation Act 1979*).

**entrusted ASIS person** means a person who:

- (a) is a staff member or agent of the Australian Secret Intelligence Service; or
- (b) has entered into a contract, agreement or arrangement with the Australian Secret Intelligence Service; or

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- (c) is an employee or agent of a person who has entered into a contract, agreement or arrangement with the Australian Secret Intelligence Service.

***giving help:***

- (a) when used in relation to ASIO—includes giving help to an ASIO employee or an ASIO affiliate; or
- (b) when used in relation to the Australian Secret Intelligence Service—includes giving help to a staff member of the Australian Secret Intelligence Service; or
- (c) when used in relation to the Australian Signals Directorate—includes giving help to a staff member of the Australian Signals Directorate; or
- (d) when used in relation to an interception agency—includes giving help to an officer of the agency.

***Home Affairs Minister*** means the Minister administering the *Telecommunications (Interception and Access) Act 1979*.

***IGIS official*** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

***interception agency*** means:

- (a) the Australian Federal Police; or
- (b) the Australian Crime Commission; or
- (ba) the National Anti-Corruption Commission; or
- (c) the Police Force of a State or the Northern Territory; or
- (d) the Independent Commission Against Corruption of New South Wales; or
- (e) the New South Wales Crime Commission; or
- (f) the Law Enforcement Conduct Commission of New South Wales; or
- (g) the Independent Broad-based Anti-corruption Commission of Victoria; or
- (h) the Crime and Corruption Commission of Queensland; or
- (i) the Independent Commission Against Corruption of South Australia; or

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(j) the Corruption and Crime Commission of Western Australia.

**listed act or thing** has the meaning given by section 317E.

**material** means material:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (moving or otherwise);  
or
- (e) whether in any other form; or
- (f) whether in any combination of forms.

**member of the staff of the Independent Commission Against Corruption of South Australia** means a person who is engaged under subsection 12(1) of the *Independent Commission Against Corruption Act 2012* (SA).

**officer** of an interception agency has the meaning given by section 317ZM.

**Ombudsman official** means:

- (a) the Commonwealth Ombudsman; or
- (b) a Deputy Commonwealth Ombudsman; or
- (c) a person who is a member of the staff referred to in subsection 31(1) of the *Ombudsman Act 1976*.

**serious Australian offence** means an offence against a law of the Commonwealth, a State or a Territory that is punishable by a maximum term of imprisonment of 3 years or more or for life.

**serious foreign offence** means an offence against a law in force in a foreign country that is punishable by a maximum term of imprisonment of 3 years or more or for life.

**staff member**, when used in relation to the Australian Secret Intelligence Service or the Australian Signals Directorate, has the same meaning as in the *Intelligence Services Act 2001*.

***State or Territory inspecting authority***, in relation to an interception agency of a State or Territory, means the authority that, under the law of the State or Territory concerned, has the function of making inspections of a similar kind to those provided for in section 55 of the *Surveillance Devices Act 2004* when the interception agency is exercising powers under the law of that State or Territory that is of a similar nature to that Act.

***supply***:

- (a) when used in relation to:
  - (i) a facility; or
  - (ii) customer equipment; or
  - (iii) a component;includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) when used in relation to software—includes provide, grant or confer rights, privileges or benefits.

***systemic vulnerability*** means a vulnerability that affects a whole class of technology, but does not include a vulnerability that is selectively introduced to one or more target technologies that are connected with a particular person. For this purpose, it is immaterial whether the person can be identified.

***systemic weakness*** means a weakness that affects a whole class of technology, but does not include a weakness that is selectively introduced to one or more target technologies that are connected with a particular person. For this purpose, it is immaterial whether the person can be identified.

***target technology***:

- (a) for the purposes of this Part, a particular carriage service, so far as the service is used, or is likely to be used, (whether directly or indirectly) by a particular person, is a ***target technology*** that is connected with that person; and
- (b) for the purposes of this Part, a particular electronic service, so far as the service is used, or is likely to be used, (whether

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directly or indirectly) by a particular person, is a **target technology** that is connected with that person; and

(c) for the purposes of this Part, particular software installed, or to be installed, on:

- (i) a particular computer; or
- (ii) a particular item of equipment;

used, or likely to be used, (whether directly or indirectly) by a particular person is a **target technology** that is connected with that person; and

(d) for the purposes of this Part, a particular update of software that has been installed on:

- (i) a particular computer; or
- (ii) a particular item of equipment;

used, or likely to be used, (whether directly or indirectly) by a particular person is a **target technology** that is connected with that person; and

(e) for the purposes of this Part, a particular item of customer equipment used, or likely to be used, (whether directly or indirectly) by a particular person is a **target technology** that is connected with that person; and

(f) for the purposes of this Part, a particular data processing device used, or likely to be used, (whether directly or indirectly) by a particular person is a **target technology** that is connected with that person.

For the purposes of paragraphs (a), (b), (c), (d), (e) and (f), it is immaterial whether the person can be identified.

**technical assistance notice** means a notice given under section 317L.

**technical assistance notice information** means:

- (a) information about any of the following:
  - (i) the giving of a technical assistance notice;
  - (ia) consultation relating to the giving of a technical assistance notice;

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- (ii) the existence or non-existence of a technical assistance notice;
  - (iii) the variation of a technical assistance notice;
  - (iv) the revocation of a technical assistance notice;
  - (v) the requirements imposed by a technical assistance notice;
  - (vi) any act or thing done in compliance with a technical assistance notice; or
- (b) any other information about a technical assistance notice.

***technical assistance request*** means a request under paragraph 317G(1)(a).

***technical assistance request information*** means:

- (a) information about any of the following:
  - (i) the giving of a technical assistance request;
  - (ii) the existence or non-existence of a technical assistance request;
  - (iii) the acts or things covered by a technical assistance request;
  - (iv) any act or thing done in accordance with a technical assistance request; or
- (b) any other information about a technical assistance request.

***technical capability notice*** means a notice given under section 317T.

***technical capability notice information*** means:

- (a) information about any of the following:
  - (i) the giving of a technical capability notice;
  - (ii) consultation relating to the giving of a technical capability notice;
  - (iii) the existence or non-existence of a technical capability notice;
  - (iv) the variation of a technical capability notice;

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- (iva) consultation relating to the variation of a technical capability notice;
  - (v) the revocation of a technical capability notice;
  - (vi) the requirements imposed by a technical capability notice;
  - (vii) any act or thing done in compliance with a technical capability notice; or
- (b) any other information about a technical capability notice.

**317C Designated communications provider etc.**

For the purposes of this Part, the following table defines:

- (a) *designated communications provider*; and
- (b) the *eligible activities* of a designated communications provider.

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<b>Designated communications provider and eligible activities</b>		
<b>Item</b>	<b>A person is a designated communications provider if ...</b>	<b>... and the eligible activities of the person are ...</b>
1	the person is a carrier or carriage service provider	(a) the operation by the person of telecommunications networks, or facilities, in Australia; or (b) the supply by the person of listed carriage services
2	the person is a carriage service intermediary who arranges for the supply by a carriage service provider of listed carriage services	(a) the arranging by the person for the supply by the carriage service provider of listed carriage services; or (b) the operation by the carriage service provider of telecommunications networks, or facilities, in Australia; or (c) the supply by the carriage service provider of listed carriage services
3	the person provides a service that	the provision by the person of a

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## Section 317C

**Designated communications provider and eligible activities**

<b>Item</b>	<b>A person is a designated communications provider if ...</b>	<b>... and the eligible activities of the person are ...</b>
	facilitates, or is ancillary or incidental to, the supply of a listed carriage service	service that facilitates, or is ancillary or incidental to, the supply of a listed carriage service
4	the person provides an electronic service that has one or more end-users in Australia	the provision by the person of an electronic service that has one or more end-users in Australia
5	the person provides a service that facilitates, or is ancillary or incidental to, the provision of an electronic service that has one or more end-users in Australia	the provision by the person of a service that facilitates, or is ancillary or incidental to, the provision of an electronic service that has one or more end-users in Australia
6	the person develops, supplies or updates software used, for use, or likely to be used, in connection with: (a) a listed carriage service; or (b) an electronic service that has one or more end-users in Australia	(a) the development by the person of any such software; or (b) the supply by the person of any such software; or (c) the updating by the person of any such software
7	the person manufactures, supplies, installs, maintains or operates a facility	(a) the manufacture by the person of a facility for use, or likely to be used, in Australia; or (b) the supply by the person of a facility for use, or likely to be used, in Australia; or (c) the installation by the person of a facility in Australia; or (d) the maintenance by the person of a facility in Australia; or (e) the operation by the person of a facility in Australia
8	the person manufactures or supplies components for use, or likely to be used, in the manufacture of a facility for use, or likely to be used, in Australia	(a) the manufacture by the person of any such components; or (b) the supply by the person of any such components

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<b>Designated communications provider and eligible activities</b>		
<b>Item</b>	<b>A person is a designated communications provider if ...</b>	<b>... and the eligible activities of the person are ...</b>
9	the person connects a facility to a telecommunications network in Australia	the connection by the person of a facility to a telecommunications network in Australia
10	the person manufactures or supplies customer equipment for use, or likely to be used, in Australia	(a) the manufacture by the person of any such customer equipment; or (b) the supply by the person of any such customer equipment
11	the person manufactures or supplies components for use, or likely to be used, in the manufacture of customer equipment for use, or likely to be used, in Australia	(a) the manufacture by the person of any such components; or (b) the supply by the person of any such components
12	the person: (a) installs or maintains customer equipment in Australia; and (b) does so otherwise than in the capacity of end-user of the equipment	(a) any such installation by the person of customer equipment; or (b) any such maintenance by the person of customer equipment
13	the person: (a) connects customer equipment to a telecommunications network in Australia; and (b) does so otherwise than in the capacity of end-user of the equipment	any such connection by the person of customer equipment to a telecommunications network in Australia
14	the person is a constitutional corporation who: (a) manufactures; or (b) supplies; or (c) installs; or (d) maintains; data processing devices	(a) the manufacture by the person of data processing devices for use, or likely to be used, in Australia; or (b) the supply by the person of data processing devices for use, or likely to be used, in Australia; or (c) the installation by the person of data processing devices in

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**Designated communications provider and eligible activities**

<b>Item</b>	<b>A person is a designated communications provider if ...</b>	<b>... and the eligible activities of the person are ...</b>
		Australia; or (d) the maintenance by the person of data processing devices in Australia
15	the person is a constitutional corporation who: (a) develops; or (b) supplies; or (c) updates; software that is capable of being installed on a computer, or other equipment, that is, or is likely to be, connected to a telecommunications network in Australia	(a) the development by the person of any such software; or (b) the supply by the person of any such software; or (c) the updating by the person of any such software

Note 1: See also sections 317HAA, 317MAA and 317TAA (provision of advice to designated communications providers).

Note 2: See also section 317ZT (alternative constitutional basis).

**317D Electronic service**

- (1) For the purposes of this Part, **electronic service** means:
- (a) a service that allows end-users to access material using a carriage service; or
  - (b) a service that delivers material to persons having equipment appropriate for receiving that material, where the delivery of the service is by means of a carriage service;
- but does not include:
- (c) a broadcasting service; or
  - (d) a datacasting service (within the meaning of the *Broadcasting Services Act 1992*).
- (2) For the purposes of subsection (1), **service** includes a website.

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- (3) For the purposes of this Part, a person does not provide an electronic service merely because the person supplies a carriage service that enables material to be accessed or delivered.
- (4) For the purposes of this Part, a person does not provide an electronic service merely because the person provides a billing service, or a fee collection service, in relation to an electronic service.
- (5) A reference in this section to the *use* of a thing is a reference to the use of the thing either:
  - (a) in isolation; or
  - (b) in conjunction with one or more other things.

**317E Listed acts or things**

- (1) For the purposes of the application of this Part to a designated communications provider, *listed act or thing* means:
  - (a) removing one or more forms of electronic protection that are or were applied by, or on behalf of, the provider; or
  - (b) providing technical information; or
  - (c) installing, maintaining, testing or using software or equipment; or
  - (d) ensuring that information obtained in connection with the execution of a warrant or authorisation is given in a particular format; or
  - (da) an act or thing done to assist in, or facilitate:
    - (i) giving effect to a warrant or authorisation under a law of the Commonwealth, a State or a Territory; or
    - (ii) the effective receipt of information in connection with a warrant or authorisation under a law of the Commonwealth, a State or a Territory; or
  - (e) facilitating or assisting access to whichever of the following are the subject of eligible activities of the provider:
    - (i) a facility;
    - (ii) customer equipment;
    - (iii) a data processing device;

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- (iv) a listed carriage service;
- (v) a service that facilitates, or is ancillary or incidental to, the supply of a listed carriage service;
- (vi) an electronic service;
- (vii) a service that facilitates, or is ancillary or incidental to, the provision of an electronic service;
- (viii) software used, for use, or likely to be used, in connection with a listed carriage service;
- (ix) software used, for use, or likely to be used, in connection with an electronic service;
- (x) software that is capable of being installed on a computer, or other equipment, that is, or is likely to be, connected to a telecommunications network; or
- (f) assisting with the testing, modification, development or maintenance of a technology or capability; or
- (g) notifying particular kinds of changes to, or developments affecting, eligible activities of the designated communications provider, if the changes are relevant to the execution of a warrant or authorisation; or
- (h) modifying, or facilitating the modification of, any of the characteristics of a service provided by the designated communications provider; or
- (i) substituting, or facilitating the substitution of, a service provided by the designated communications provider for:
  - (i) another service provided by the provider; or
  - (ii) a service provided by another designated communications provider; or
- (j) an act or thing done to conceal the fact that any thing has been done covertly in the performance of a function, or the exercise of a power, conferred by a law of the Commonwealth, a State or a Territory, so far as the function or power relates to:
  - (i) enforcing the criminal law, so far as it relates to serious Australian offences; or

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- (ii) assisting the enforcement of the criminal laws in force in a foreign country, so far as those laws relate to serious foreign offences; or
  - (iii) the interests of Australia's national security, the interests of Australia's foreign relations or the interests of Australia's national economic well-being.
- (2) Paragraph (1)(j) does not apply to:
- (a) making a false or misleading statement; or
  - (b) engaging in dishonest conduct.

**317F Extension to external Territories**

This Part extends to every external Territory.

## **Division 2—Voluntary technical assistance**

### **317G Voluntary technical assistance provided to ASIO, the Australian Secret Intelligence Service, the Australian Signals Directorate or an interception agency**

- (1) If:
- (a) any of the following persons:
    - (i) the Director-General of Security;
    - (ii) the Director-General of the Australian Secret Intelligence Service;
    - (iii) the Director-General of the Australian Signals Directorate;
    - (iv) the chief officer of an interception agency;requests a designated communications provider to do one or more specified acts or things that:
    - (v) are in connection with any or all of the eligible activities of the provider; and
    - (vi) are covered by subsection (2); and
  - (b) the provider does an act or thing:
    - (i) in accordance with the request; or
    - (ii) in good faith purportedly in accordance with the request;
- then:
- (c) the provider is not subject to any civil liability for, or in relation to, the act or thing mentioned in paragraph (b); and
  - (d) an officer, employee or agent of the provider is not subject to any civil liability for, or in relation to, an act or thing done by the officer, employee or agent in connection with the act or thing mentioned in paragraph (b).
- (2) The specified acts or things must:
- (a) be directed towards ensuring that the designated communications provider is capable of giving help to:

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- (i) in a case where the request is made by the Director-General of Security—ASIO; or
  - (ii) in a case where the request is made by the Director-General of the Australian Secret Intelligence Service—the Australian Secret Intelligence Service; or
  - (iii) in a case where the request is made by the Director-General of the Australian Signals Directorate—the Australian Signals Directorate; or
  - (iv) in a case where the request is made by the chief officer of an interception agency—the agency;
- in relation to:
- (v) the performance of a function, or the exercise of a power, conferred by or under a law of the Commonwealth, a State or a Territory, so far as the function or power relates to a relevant objective; or
  - (vi) a matter that facilitates, or is ancillary or incidental to, a matter covered by subparagraph (v); or
- (b) be by way of giving help to:
- (i) in a case where the request is made by the Director-General of Security—ASIO; or
  - (ii) in a case where the request is made by the Director-General of the Australian Secret Intelligence Service—the Australian Secret Intelligence Service; or
  - (iii) in a case where the request is made by the Director-General of the Australian Signals Directorate—the Australian Signals Directorate; or
  - (iv) in a case where the request is made by the chief officer of an interception agency—the agency;
- in relation to:
- (v) the performance of a function, or the exercise of a power, conferred by or under a law of the Commonwealth, a State or a Territory, so far as the function or power relates to a relevant objective; or
  - (vi) a matter that facilitates, or is ancillary or incidental to, a matter covered by subparagraph (v).



- (3) A request under paragraph (1)(a) is to be known as a ***technical assistance request***.
- (4) Subparagraph (1)(b)(ii) does not apply to an act or thing done by a designated communications provider unless the act or thing is in connection with any or all of the eligible activities of the provider.

*Relevant objective*

- (5) For the purposes of this section, ***relevant objective*** means:
  - (a) in relation to a technical assistance request given by the Director-General of Security—safeguarding national security; or
  - (b) in relation to a technical assistance request given by the Director-General of the Australian Secret Intelligence Service—the interests of Australia’s national security, the interests of Australia’s foreign relations or the interests of Australia’s national economic well-being; or
  - (c) in relation to a technical assistance request given by the Director-General of the Australian Signals Directorate—providing material, advice and other assistance to a person or body mentioned in subsection 7(2) of the *Intelligence Services Act 2001* on matters relating to the security and integrity of information that is processed, stored or communicated by electronic or similar means; or
  - (d) in relation to a technical assistance request given by the chief officer of an interception agency:
    - (i) enforcing the criminal law, so far as it relates to serious Australian offences; or
    - (ii) assisting the enforcement of the criminal laws in force in a foreign country, so far as those laws relate to serious foreign offences.

*Listed acts or things*

- (6) The acts or things that may be specified in a technical assistance request given to a designated communications provider include

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(but are not limited to) listed acts or things, so long as those acts or things:

- (a) are in connection with any or all of the eligible activities of the provider; and
- (b) are covered by subsection (2).

Note: For *listed acts or things*, see section 317E.

### **317H Form of technical assistance request**

- (1) A technical assistance request may be given:
  - (a) orally; or
  - (b) in writing.
- (2) A technical assistance request must not be given orally unless:
  - (a) an imminent risk of serious harm to a person or substantial damage to property exists; and
  - (b) the technical assistance request is necessary for the purpose of dealing with that risk; and
  - (c) it is not practicable in the circumstances to give the technical assistance request in writing.
- (3) If a technical assistance request is given orally by:
  - (a) the Director-General of Security; or
  - (b) the Director-General of the Australian Secret Intelligence Service; or
  - (c) the Director-General of the Australian Signals Directorate; or
  - (d) the chief officer of an interception agency;the Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer, as the case requires, must:
  - (e) make a written record of the request; and
  - (f) do so within 48 hours after the request was given.
- (4) If, under subsection (3):
  - (a) the Director-General of Security; or

- (b) the Director-General of the Australian Secret Intelligence Service; or
  - (c) the Director-General of the Australian Signals Directorate; or
  - (d) the chief officer of an interception agency;
- makes a written record of a technical assistance request, the Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer, as the case requires, must:
- (e) give a copy of the record to the designated communications provider concerned; and
  - (f) do so as soon as practicable after the record was made.
- (5) If, under subsection (3):
- (a) the Director-General of Security; or
  - (b) the Director-General of the Australian Secret Intelligence Service; or
  - (c) the Director-General of the Australian Signals Directorate; or
  - (d) the chief officer of an interception agency;
- makes a written record of a technical assistance request, the Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer, as the case requires, must retain the record while the request is in force.

### **317HAA Provision of advice to designated communications providers**

- (1) If the Director-General of Security gives a technical assistance request to a designated communications provider, the Director-General of Security must advise the provider that compliance with the request is voluntary.
- (2) If the Director-General of the Australian Secret Intelligence Service gives a technical assistance request to a designated communications provider, the Director-General of the Australian

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Secret Intelligence Service must advise the provider that compliance with the request is voluntary.

- (3) If the Director-General of the Australian Signals Directorate gives a technical assistance request to a designated communications provider, the Director-General of the Australian Signals Directorate must advise the provider that compliance with the request is voluntary.
- (4) If the chief officer of an interception agency gives a technical assistance request to a designated communications provider, the chief officer must advise the provider that compliance with the request is voluntary.

*Form of advice*

- (5) Advice under subsection (1), (2), (3) or (4) may be given:
  - (a) orally; or
  - (b) in writing.
- (6) If advice under subsection (1), (2), (3) or (4) is given orally by:
  - (a) the Director-General of Security; or
  - (b) the Director-General of the Australian Secret Intelligence Service; or
  - (c) the Director-General of the Australian Signals Directorate; or
  - (d) the chief officer of an interception agency;the Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer, as the case requires, must:
  - (e) make a written record of the advice; and
  - (f) do so within 48 hours after the advice was given.

**317HAB Notification obligations**

- (1) If the Director-General of Security gives a technical assistance request, the Director-General of Security must, within 7 days after

the request is given, notify the Inspector-General of Intelligence and Security that the request has been given.

- (2) If the Director-General of the Australian Secret Intelligence Service gives a technical assistance request, the Director-General of the Australian Secret Intelligence Service must, within 7 days after the request is given, notify the Inspector-General of Intelligence and Security that the request has been given.
- (3) If the Director-General of the Australian Signals Directorate gives a technical assistance request, the Director-General of the Australian Signals Directorate must, within 7 days after the request is given, notify the Inspector-General of Intelligence and Security that the request has been given.
- (4) If the chief officer of an interception agency gives a technical assistance request, the chief officer must, within 7 days after the request is given, notify the Commonwealth Ombudsman that the request has been given.
- (5) A failure to comply with subsection (1), (2), (3) or (4) does not affect the validity of a technical assistance request.

### **317HA Duration of technical assistance request**

- (1) A technical assistance request:
  - (a) comes in force:
    - (i) when it is given; or
    - (ii) if a later time is specified in the request—at that later time; and
  - (b) unless sooner revoked, remains in force:
    - (i) if an expiry date is specified in the request—until the start of the expiry date; or
    - (ii) otherwise—at end of the 90-day period beginning when the request was given.
- (2) If a technical assistance request expires, this Part does not prevent the giving of a fresh technical assistance request in the same terms as the expired technical assistance request.

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**317J Specified period etc.**

- (1) A technical assistance request may include a request that a specified act or thing be done within a specified period.
- (2) A technical assistance request may include a request that a specified act or thing be done:
  - (a) in a specified manner; or
  - (b) in a way that meets one or more specified conditions.
- (3) Subsections (1) and (2) of this section do not limit subsections 317G(1) and (2).

**317JAA Decision-making criteria**

- (1) The Director-General of Security must not give a technical assistance request to a designated communications provider unless the Director-General of Security is satisfied that:
  - (a) the request is reasonable and proportionate; and
  - (b) compliance with the request is:
    - (i) practicable; and
    - (ii) technically feasible.

Note: See also section 317JC.

- (2) The Director-General of the Australian Secret Intelligence Service must not give a technical assistance request to a designated communications provider unless the Director-General of the Australian Secret Intelligence Service is satisfied that:
  - (a) the request is reasonable and proportionate; and
  - (b) compliance with the request is:
    - (i) practicable; and
    - (ii) technically feasible.

Note: See also section 317JC.

- (3) The Director-General of the Australian Signals Directorate must not give a technical assistance request to a designated

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communications provider unless the Director-General of the Australian Signals Directorate is satisfied that:

- (a) the request is reasonable and proportionate; and
- (b) compliance with the request is:
  - (i) practicable; and
  - (ii) technically feasible.

Note: See also section 317JC.

- (4) The chief officer of an interception agency must not give a technical assistance request to a designated communications provider unless the chief officer is satisfied that:
  - (a) the request is reasonable and proportionate; and
  - (b) compliance with the request is:
    - (i) practicable; and
    - (ii) technically feasible.

Note: See also section 317JC.

**317JA Variation of technical assistance requests**

- (1) If a technical assistance request has been given to a designated communications provider by the Director-General of Security, the Director-General of Security may vary the request.
- (2) If a technical assistance request has been given to a designated communications provider by the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Secret Intelligence Service may vary the request.
- (3) If a technical assistance request has been given to a designated communications provider by the Director-General of the Australian Signals Directorate, the Director-General of the Australian Signals Directorate may vary the request.
- (4) If a technical assistance request has been given to a designated communications provider by the chief officer of an interception agency, the chief officer may vary the request.

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*Form of variation*

- (5) A variation may be made:
- (a) orally; or
  - (b) in writing.
- (6) A variation must not be made orally unless:
- (a) an imminent risk of serious harm to a person or substantial damage to property exists; and
  - (b) the variation is necessary for the purpose of dealing with that risk; and
  - (c) it is not practicable in the circumstances to make the variation in writing.
- (7) If a variation is made orally by:
- (a) the Director-General of Security; or
  - (b) the Director-General of the Australian Secret Intelligence Service; or
  - (c) the Director-General of the Australian Signals Directorate; or
  - (d) the chief officer of an interception agency;
- the Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer, as the case requires, must:
- (e) make a written record of the variation; and
  - (f) do so within 48 hours after the variation was made.
- (8) If, under subsection (7):
- (a) the Director-General of Security; or
  - (b) the Director-General of the Australian Secret Intelligence Service; or
  - (c) the Director-General of the Australian Signals Directorate; or
  - (d) the chief officer of an interception agency;
- makes a written record of a variation, the Director-General of Security, the Director-General of the Australian Secret Intelligence



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Service, the Director-General of the Australian Signals Directorate or the chief officer, as the case requires, must:

- (e) give a copy of the record to the designated communications provider concerned; and
- (f) do so as soon as practicable after the record was made.

*Acts or things specified in a varied technical assistance request*

- (9) The acts or things specified in a varied technical assistance request must be:
  - (a) in connection with any or all of the eligible activities of the designated communications provider concerned; and
  - (b) covered by subsection 317G(2).
- (10) The acts or things that may be specified in a varied technical assistance request include (but are not limited to) listed acts or things, so long as those acts or things:
  - (a) are in connection with any or all of the eligible activities of the designated communications provider concerned; and
  - (b) are covered by subsection 317G(2).

Note: For *listed acts or things*, see section 317E.

*Decision-making criteria*

- (11) The Director-General of Security must not vary a technical assistance request unless the Director-General of Security is satisfied that:
  - (a) the varied request is reasonable and proportionate; and
  - (b) compliance with the varied request is:
    - (i) practicable; and
    - (ii) technically feasible.

Note: See also section 317JC.

- (12) The Director-General of the Australian Secret Intelligence Service must not vary a technical assistance request unless the Director-General of the Australian Secret Intelligence Service is satisfied that:

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- (a) the varied request is reasonable and proportionate; and
- (b) compliance with the varied request is:
  - (i) practicable; and
  - (ii) technically feasible.

Note: See also section 317JC.

- (13) The Director-General of the Australian Signals Directorate must not vary a technical assistance request unless the Director-General of the Australian Signals Directorate is satisfied that:
- (a) the varied request is reasonable and proportionate; and
  - (b) compliance with the varied request is:
    - (i) practicable; and
    - (ii) technically feasible.

Note: See also section 317JC.

- (14) The chief officer of an interception agency must not vary a technical assistance request unless the chief officer is satisfied that:
- (a) the varied request is reasonable and proportionate; and
  - (b) compliance with the varied request is:
    - (i) practicable; and
    - (ii) technically feasible.

Note: See also section 317JC.

*Notification obligations*

- (15) If the Director-General of Security varies a technical assistance request, the Director-General of Security must, within 7 days after varying the request, notify the Inspector-General of Intelligence and Security that the request has been varied.
- (16) If the Director-General of the Australian Secret Intelligence Service varies a technical assistance request, the Director-General of the Australian Secret Intelligence Service must, within 7 days after varying the request, notify the Inspector-General of Intelligence and Security that the request has been varied.

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- (17) If the Director-General of the Australian Signals Directorate varies a technical assistance request, the Director-General of the Australian Signals Directorate must, within 7 days after varying the request, notify the Inspector-General of Intelligence and Security that the request has been varied.
- (18) If the chief officer of an interception agency varies a technical assistance request, the chief officer must, within 7 days after varying the request, notify the Commonwealth Ombudsman that the request has been varied.
- (19) A failure to comply with subsection (15), (16), (17) or (18) does not affect the validity of a variation of a technical assistance request.

**317JB Revocation of technical assistance requests**

- (1) If a technical assistance request has been given to a person by the Director-General of Security, the Director-General of Security may, by written notice given to the person, revoke the request.
- (1A) If a technical assistance request has been given to a person by the Director-General of Security, and the Director-General of Security is satisfied that:
  - (a) the request is not reasonable and proportionate; or
  - (b) compliance with the request is not:
    - (i) practicable; and
    - (ii) technically feasible;the Director-General of Security must, by written notice given to the person, revoke the request.
- (2) If a technical assistance request has been given to a person by the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Secret Intelligence Service may, by written notice given to the person, revoke the request.
- (2A) If a technical assistance request has been given to a person by the Director-General of the Australian Secret Intelligence Service, and

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the Director-General of the Australian Secret Intelligence Service is satisfied that:

- (a) the request is not reasonable and proportionate; or
- (b) compliance with the request is not:
  - (i) practicable; and
  - (ii) technically feasible;

the Director-General of the Australian Secret Intelligence Service must, by written notice given to the person, revoke the request.

- (3) If a technical assistance request has been given to a person by the Director-General of the Australian Signals Directorate, the Director-General of the Australian Signals Directorate may, by written notice given to the person, revoke the request.

- (3A) If a technical assistance request has been given to a person by the Director-General of the Australian Signals Directorate, and the Director-General of the Australian Signals Directorate is satisfied that:

- (a) the request is not reasonable and proportionate; or
- (b) compliance with the request is not:
  - (i) practicable; and
  - (ii) technically feasible;

the Director-General of the Australian Signals Directorate must, by written notice given to the person, revoke the request.

- (4) If a technical assistance request has been given to a person by the chief officer of an interception agency, the chief officer may, by written notice given to the person, revoke the request.

- (5) If a technical assistance request has been given to a person by the chief officer of an interception agency, and the chief officer is satisfied that:

- (a) the request is not reasonable and proportionate; or
- (b) compliance with the request is not:
  - (i) practicable; and
  - (ii) technically feasible;

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the chief officer must, by written notice given to the person, revoke the request.

*Notification obligations*

- (6) If the Director-General of Security revokes a technical assistance request, the Director-General of Security must, within 7 days after revoking the request, notify the Inspector-General of Intelligence and Security that the request has been revoked.
- (7) If the Director-General of the Australian Secret Intelligence Service revokes a technical assistance request, the Director-General of the Australian Secret Intelligence Service must, within 7 days after revoking the request, notify the Inspector-General of Intelligence and Security that the request has been revoked.
- (8) If the Director-General of the Australian Signals Directorate revokes a technical assistance request, the Director-General of the Australian Signals Directorate must, within 7 days after revoking the request, notify the Inspector-General of Intelligence and Security that the request has been revoked.
- (9) If the chief officer of an interception agency revokes a technical assistance request, the chief officer must, within 7 days after revoking the request, notify the Commonwealth Ombudsman that the request has been revoked.
- (10) A failure to comply with subsection (6), (7), (8) or (9) does not affect the validity of a revocation of a technical assistance request.

**317JC Whether a technical assistance request is reasonable and proportionate**

In considering whether a technical assistance request or a varied technical assistance request is reasonable and proportionate, the Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer of an

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interception agency, as the case requires, must have regard to the following matters:

- (a) the interests of national security;
- (b) the interests of law enforcement;
- (c) the legitimate interests of the designated communications provider to whom the request relates;
- (d) the objectives of the request;
- (e) the availability of other means to achieve the objectives of the request;
- (f) whether the request, when compared to other forms of industry assistance known to the Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer, as the case requires, is the least intrusive form of industry assistance so far as the following persons are concerned:
  - (i) persons whose activities are not of interest to ASIO;
  - (ii) persons whose activities are not of interest to the Australian Secret Intelligence Service;
  - (iii) persons whose activities are not of interest to the Australian Signals Directorate;
  - (iv) persons whose activities are not of interest to interception agencies;
- (g) whether the request is necessary;
- (h) the legitimate expectations of the Australian community relating to privacy and cybersecurity;
- (i) such other matters (if any) as the Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer, as the case requires, considers relevant.

**317K Contract etc.**

Any of the following persons:

- (a) the Director-General of Security;

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- (b) the Director-General of the Australian Secret Intelligence Service;
  - (c) the Director-General of the Australian Signals Directorate;
  - (d) the chief officer of an interception agency;
- may enter into a contract, agreement or arrangement with a designated communications provider in relation to acts or things done by the provider in accordance with a technical assistance request.

## Division 3—Technical assistance notices

### 317L Technical assistance notices

- (1) The Director-General of Security or the chief officer of an interception agency may give a designated communications provider a notice, to be known as a technical assistance notice, that requires the provider to do one or more specified acts or things that:
- (a) are in connection with any or all of the eligible activities of the provider; and
  - (b) are covered by subsection (2).

Note: Section 317ZK deals with the terms and conditions on which such a requirement is to be complied with.

- (2) The specified acts or things must be by way of giving help to:
- (a) in a case where the technical assistance notice is given by the Director-General of Security—ASIO; or
  - (b) in a case where the technical assistance notice is given by the chief officer of an interception agency—the agency;
- in relation to:
- (c) the performance of a function, or the exercise of a power, conferred by or under a law of the Commonwealth, a State or a Territory, so far as the function or power relates to:
    - (i) enforcing the criminal law, so far as it relates to serious Australian offences; or
    - (ii) assisting the enforcement of the criminal laws in force in a foreign country, so far as those laws relate to serious foreign offences; or
    - (iii) safeguarding national security; or
  - (d) a matter that facilitates, or is ancillary or incidental to, a matter covered by paragraph (c).

- (2A) The specified acts or things must not be directed towards ensuring that a designated communications provider is capable of giving help to ASIO or an interception agency.



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*Listed acts or things*

- (3) The acts or things specified in a technical assistance notice given to a designated communications provider must be listed acts or things, so long as those acts or things:
- (a) are in connection with any or all of the eligible activities of the provider; and
  - (b) are covered by subsection (2).

Note: For *listed acts or things*, see section 317E.

**317LA Approval of technical assistance notices given by the chief officer of an interception agency of a State or Territory**

- (1) The chief officer of an interception agency of a State or Territory must not give a technical assistance notice to a designated communications provider unless:
- (a) the chief officer has given the AFP Commissioner a written notice setting out a proposal to give the technical assistance notice; and
  - (b) the AFP Commissioner has approved the giving of the technical assistance notice.
- (2) An approval under paragraph (1)(b) may be given:
- (a) orally; or
  - (b) in writing.
- (3) If an approval under paragraph (1)(b) is given orally, the AFP Commissioner must:
- (a) make a written record of the approval; and
  - (b) do so within 48 hours after the approval was given.
- (4) For the purposes of this section, **AFP Commissioner** means the Commissioner (within the meaning of the *Australian Federal Police Act 1979*).

**317M Form of technical assistance notice**

- (1) A technical assistance notice may be given:
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- (a) orally; or
  - (b) in writing.
- (2) A technical assistance notice must not be given orally unless:
- (a) an imminent risk of serious harm to a person or substantial damage to property exists; and
  - (b) the technical assistance notice is necessary for the purpose of dealing with that risk; and
  - (c) it is not practicable in the circumstances to give the technical assistance notice in writing.
- (3) If a technical assistance notice is given orally by the Director-General of Security or the chief officer of an interception agency, the Director-General of Security or the chief officer, as the case requires, must:
- (a) make a written record of the notice; and
  - (b) do so within 48 hours after the notice was given.
- (4) If, under subsection (3), the Director-General of Security or the chief officer of an interception agency makes a written record of a technical assistance notice, the Director-General of Security or the chief officer, as the case requires, must:
- (a) give a copy of the record to the designated communications provider concerned; and
  - (b) do so as soon as practicable after the record was made.
- (5) If, under subsection (3), the Director-General of Security or the chief officer of an interception agency makes a written record of a technical assistance notice, the Director-General of Security or the chief officer, as the case requires, must retain the record while the notice is in force.

**317MAA Provision of advice to designated communications providers**

- (1) If the Director-General of Security gives a technical assistance notice to a designated communications provider, the Director-General of Security must give the provider advice relating

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to the provider's obligations under whichever of sections 317ZA and 317ZB is applicable, so far as those obligations relate to the notice.

- (2) If the chief officer of an interception agency gives a technical assistance notice to a designated communications provider, the chief officer must give the provider advice relating to the provider's obligations under whichever of sections 317ZA and 317ZB is applicable, so far as those obligations relate to the notice.
- (3) If the Director-General of Security gives a technical assistance notice to a designated communications provider, the Director-General of Security must notify the provider of the provider's right to make a complaint about the notice to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*.
- (4) If:
  - (a) the chief officer of an interception agency gives a technical assistance notice to a designated communications provider; and
  - (b) the provider has a right to make a complaint about the conduct of the chief officer, or the interception agency, in relation to the notice to:
    - (i) the Commonwealth Ombudsman; or
    - (ii) an authority that is the State or Territory inspecting agency in relation to the interception agency;the chief officer must notify the provider of the provider's right to make such a complaint.

*Form of advice or notification*

- (5) Advice under subsection (1) or (2), or notification under subsection (3) or (4), may be given:
  - (a) orally; or
  - (b) in writing.

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- (6) If advice under subsection (1) or (2), or notification under subsection (3) or (4), is given orally by the Director-General of Security or the chief officer of an interception agency, the Director-General of Security or the chief officer, as the case requires, must:
- (a) make a written record of the advice or notification; and
  - (b) do so within 48 hours after the advice or notification was given.

**317MAB Notification obligations**

- (1) If the Director-General of Security gives a technical assistance notice, the Director-General of Security must, within 7 days after the notice is given, notify the Inspector-General of Intelligence and Security that the notice has been given.
- (2) If the chief officer of an interception agency gives a technical assistance notice, the chief officer must, within 7 days after the notice is given, notify the Commonwealth Ombudsman that the notice has been given.
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of a technical assistance notice.

**317MA Duration of technical assistance notice**

- (1) A technical assistance notice:
  - (a) comes in force:
    - (i) when it is given; or
    - (ii) if a later time is specified in the notice—at that later time; and
  - (b) unless sooner revoked, remains in force:
    - (i) if an expiry date is specified in the notice—until the start of the expiry date; or
    - (ii) otherwise—at end of the 90-day period beginning when the notice was given.

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- (1A) An expiry date specified in a technical assistance notice must not be later than 12 months after the notice was given.
  - (1B) Paragraph (1)(b) has effect subject to subsections (1C) and (1D).
  - (1C) If the Director-General of Security has given a technical assistance notice to a designated communications provider, the Director-General of Security may, with the agreement of the provider, extend for a further period (not exceeding 12 months) or further periods (not exceeding 12 months in each case) the period for which the technical assistance notice is in force.
  - (1D) If the chief officer of an interception agency has given a technical assistance notice to a designated communications provider, the chief officer may, with the agreement of the provider, extend for a further period (not exceeding 12 months) or further periods (not exceeding 12 months in each case) the period for which the technical assistance notice is in force.
  - (1E) If the Director-General of Security extends the period for which a technical assistance notice is in force, the Director-General of Security must, within 7 days after extending the period, notify the Inspector-General of Intelligence and Security of the extension.
  - (1F) If the chief officer of an interception agency extends the period for which a technical assistance notice is in force, the chief officer must, within 7 days after extending the period, notify the Commonwealth Ombudsman of the extension.
  - (1G) A failure to comply with subsection (1E) or (1F) does not affect the validity of an extension of a technical assistance notice.
- (2) If a technical assistance notice expires, this Part does not prevent the giving of a fresh technical assistance notice in the same terms as the expired technical assistance notice.

**317N Compliance period etc.**

- (1) A technical assistance notice may require a specified act or thing to be done within a specified period.

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- (2) A technical assistance notice may require a specified act or thing to be done:
  - (a) in a specified manner; or
  - (b) in a way that meets one or more specified conditions.
- (3) Subsections (1) and (2) of this section do not limit subsections 317L(1) and (2).

### **317P Decision-making criteria**

The Director-General of Security or the chief officer of an interception agency must not give a technical assistance notice to a designated communications provider unless the Director-General of Security or the chief officer, as the case requires, is satisfied that:

- (a) the requirements imposed by the notice are reasonable and proportionate; and
- (b) compliance with the notice is:
  - (i) practicable; and
  - (ii) technically feasible.

Note: See also section 317RA.

### **317PA Consultation about a proposal to give a technical assistance notice**

- (1) Before giving a technical assistance notice to a designated communications provider, the Director-General of Security or the chief officer of an interception agency, as the case requires, must consult the provider.
- (2) The rule in subsection (1) does not apply to a technical assistance notice given to a designated communications provider by the Director-General of Security if:
  - (a) the Director-General of Security is satisfied that the technical assistance notice should be given as a matter of urgency; or
  - (b) the provider waives compliance with subsection (1).

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- (3) The rule in subsection (1) does not apply to a technical assistance notice given to a designated communications provider by the chief officer of an interception agency if:
- (a) the chief officer is satisfied that the technical assistance notice should be given as a matter of urgency; or
  - (b) the provider waives compliance with subsection (1).

**317Q Variation of technical assistance notices**

- (1) If a technical assistance notice has been given to a designated communications provider by the Director-General of Security, the Director-General of Security may vary the notice.
- (2) If a technical assistance notice has been given to a designated communications provider by the chief officer of an interception agency, the chief officer may vary the notice.

*Form of variation*

- (3) A variation may be made:
- (a) orally; or
  - (b) in writing.
- (4) A variation must not be made orally unless:
- (a) an imminent risk of serious harm to a person or substantial damage to property exists; and
  - (b) the variation is necessary for the purpose of dealing with that risk; and
  - (c) it is not practicable in the circumstances to make the variation in writing.
- (5) If a variation is made orally by the Director-General of Security or the chief officer of an interception agency, the Director-General of Security or the chief officer, as the case requires, must:
- (a) make a written record of the variation; and
  - (b) do so within 48 hours after the variation was made.

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- (6) If, under subsection (5), the Director-General of Security or the chief officer of an interception agency makes a written record of a variation, the Director-General of Security or the chief officer, as the case requires, must:
- (a) give a copy of the record to the designated communications provider concerned; and
  - (b) do so as soon as practicable after the record was made.
- (7) If a variation is made in writing by the Director-General of Security or the chief officer of an interception agency, the Director-General of Security or the chief officer, as the case requires, must:
- (a) give a copy of the variation to the designated communications provider concerned; and
  - (b) do so as soon as practicable after the variation was made.

*Acts or things specified in a varied technical assistance notice*

- (8) The acts or things specified in a varied technical assistance notice must be:
- (a) in connection with any or all of the eligible activities of the designated communications provider concerned; and
  - (b) covered by subsection 317L(2).
- (9) The acts or things specified in a varied technical assistance notice must be listed acts or things, so long as those acts or things:
- (a) are in connection with any or all of the eligible activities of the designated communications provider concerned; and
  - (b) are covered by subsection 317L(2).

Note: For *listed acts or things*, see section 317E.

*Decision-making criteria*

- (10) The Director-General of Security or the chief officer of an interception agency must not vary a technical assistance notice unless the Director-General of Security or the chief officer, as the case requires, is satisfied that:



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- (a) the requirements imposed by the varied notice are reasonable and proportionate; and
- (b) compliance with the varied notice is:
  - (i) practicable; and
  - (ii) technically feasible.

Note: See also section 317RA.

*Variation must not extend duration of technical assistance notice*

- (11) A variation of a technical assistance notice must not extend the period for which the notice is in force.

*Notification obligations*

- (12) If the Director-General of Security varies a technical assistance notice, the Director-General of Security must, within 7 days after varying the notice, notify the Inspector-General of Intelligence and Security that the notice has been varied.
- (13) If the chief officer of an interception agency varies a technical assistance notice, the chief officer must, within 7 days after varying the notice, notify the Commonwealth Ombudsman that the notice has been varied.
- (14) A failure to comply with subsection (12) or (13) does not affect the validity of a variation of a technical assistance notice.

**317R Revocation of technical assistance notices**

- (1) If a technical assistance notice has been given to a person by the Director-General of Security, the Director-General of Security may, by written notice given to the person, revoke the notice.
- (2) If a technical assistance notice has been given to a person by the Director-General of Security, and the Director-General of Security is satisfied that:
  - (a) the requirements imposed by the notice are not reasonable and proportionate; or
  - (b) compliance with the notice is not:

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- (i) practicable; and
  - (ii) technically feasible;
- the Director-General of Security must, by written notice given to the person, revoke the notice.
- (3) If a technical assistance notice has been given to a person by the chief officer of an interception agency, the chief officer may, by written notice given to the person, revoke the notice.
- (4) If a technical assistance notice has been given to a person by the chief officer of an interception agency, and the chief officer is satisfied that:
  - (a) the requirements imposed by the notice are not reasonable and proportionate; or
  - (b) compliance with the notice is not:
    - (i) practicable; and
    - (ii) technically feasible;
- the chief officer must, by written notice given to the person, revoke the notice.

*Notification obligations*

- (5) If the Director-General of Security revokes a technical assistance notice, the Director-General of Security must, within 7 days after revoking the notice, notify the Inspector-General of Intelligence and Security that the notice has been revoked.
- (6) If the chief officer of an interception agency revokes a technical assistance notice, the chief officer must, within 7 days after revoking the notice, notify the Commonwealth Ombudsman that the notice has been revoked.
- (7) A failure to comply with subsection (5) or (6) does not affect the validity of a revocation of a technical assistance notice.

**317RA Whether requirements imposed by a technical assistance notice are reasonable and proportionate**

In considering whether the requirements imposed by a technical assistance notice or a varied technical assistance notice are reasonable and proportionate, the Director-General of Security or the chief officer of an interception agency, as the case requires, must have regard to the following matters:

- (a) the interests of national security;
- (b) the interests of law enforcement;
- (c) the legitimate interests of the designated communications provider to whom the notice relates;
- (d) the objectives of the notice;
- (e) the availability of other means to achieve the objectives of the notice;
- (ea) whether the requirements, when compared to other forms of industry assistance known to the Director-General of Security or the chief officer, as the case requires, are the least intrusive form of industry assistance so far as the following persons are concerned:
  - (i) persons whose activities are not of interest to ASIO;
  - (ii) persons whose activities are not of interest to interception agencies;
- (eb) whether the requirements are necessary;
- (f) the legitimate expectations of the Australian community relating to privacy and cybersecurity;
- (g) such other matters (if any) as the Director-General of Security or the chief officer, as the case requires, considers relevant.

## Division 4—Technical capability notices

### 317S Attorney-General may determine procedures and arrangements relating to requests for technical capability notices

- (1) The Attorney-General may, by writing, determine procedures and arrangements to be followed in relation to the making of requests for technical capability notices.
- (2) A procedure or arrangement determined under subsection (1) may require that the agreement of a person or body must be obtained before a request is made for a technical capability notice.
- (3) A failure to comply with a determination under subsection (1) does not affect the validity of a technical capability notice.
- (4) A determination under subsection (1) is not a legislative instrument.

### 317T Technical capability notices

- (1) The Attorney-General may, in accordance with a request made by the Director-General of Security or the chief officer of an interception agency, give a designated communications provider a written notice, to be known as a technical capability notice, that requires the provider to do one or more specified acts or things that:
  - (a) are in connection with any or all of the eligible activities of the provider; and
  - (b) are covered by subsection (2).

Note: Section 317ZK deals with the terms and conditions on which such a requirement is to be complied with.

- (2) The specified acts or things must:

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- (a) be directed towards ensuring that the designated communications provider is capable of giving listed help to ASIO, or an interception agency, in relation to:
  - (i) the performance of a function, or the exercise of a power, conferred by or under a law of the Commonwealth, a State or a Territory, so far as the function or power relates to a relevant objective; or
  - (ii) a matter that facilitates, or is ancillary or incidental to, a matter covered by subparagraph (i); or
- (b) be by way of giving help to ASIO, or an interception agency, in relation to:
  - (i) the performance of a function, or the exercise of a power, conferred by or under a law of the Commonwealth, a State or a Territory, so far as the function or power relates to a relevant objective; or
  - (ii) a matter that facilitates, or is ancillary or incidental to, a matter covered by subparagraph (i).

*Relevant objective*

- (3) For the purposes of this section, **relevant objective** means:
  - (a) enforcing the criminal law, so far as it relates to serious Australian offences; or
  - (b) assisting the enforcement of the criminal laws in force in a foreign country, so far as those laws relate to serious foreign offences; or
  - (c) safeguarding national security.

*Listed help*

- (4) For the purposes of the application of this section to a designated communications provider, if one or more acts or things done by the provider:
  - (a) are by way of giving help to ASIO or an interception agency; and
  - (b) are in connection with any or all of the eligible activities of the provider; and

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- (c) consist of either or both of the following:
  - (i) one or more listed acts or things (other than an act or thing covered by paragraph 317E(1)(a));
  - (ii) one or more acts or things of a kind determined under subsection (5);

that help is *listed help*.

Note: For *listed acts or things*, see section 317E.

- (5) The Home Affairs Minister may, by legislative instrument, determine one or more kinds of acts or things for the purposes of subparagraph (4)(c)(ii).
- (6) In making a determination under subsection (5), the Home Affairs Minister must have regard to the following matters:
  - (a) the interests of law enforcement;
  - (b) the interests of national security;
  - (c) the objects of this Act;
  - (d) the likely impact of the determination on designated communications providers;
  - (e) such other matters (if any) as the Home Affairs Minister considers relevant.

*Listed acts or things*

- (7) The acts or things specified in a technical capability notice given to a designated communications provider in accordance with paragraph (2)(b) must be listed acts or things, so long as those acts or things:
  - (a) are in connection with any or all of the eligible activities of the provider; and
  - (b) are covered by subsection (2), so far as that subsection relates to paragraph (2)(b).

*Applicable costs negotiator*

- (12) A technical capability notice must specify a person as the applicable costs negotiator for the notice.

Note: See section 317ZK.

- (13) A person may be specified under subsection (12):
- (a) by name; or
  - (b) as any person from time to time holding, occupying, or performing the duties of, a specified office or position.

### **317TAAA Approval of technical capability notice**

- (1) The Attorney-General must not give a technical capability notice to a designated communications provider unless:
- (a) the Attorney-General has given the Minister a written notice setting out a proposal to give the technical capability notice; and
  - (b) the Minister has approved the giving of the technical capability notice.
- (2) An approval under paragraph (1)(b) may be given:
- (a) orally; or
  - (b) in writing.
- (3) If an approval under paragraph (1)(b) is given orally, the Minister must:
- (a) make a written record of the approval; and
  - (b) do so within 48 hours after the approval was given.
- (4) The Attorney-General may make a representation to the Minister about the proposal to give the technical capability notice.
- (5) A representation may deal with:
- (a) any of the matters set out in section 317ZAA; and
  - (b) such other matters (if any) as the Attorney-General considers relevant.
- (6) In considering whether to approve the giving of the technical capability notice, the Minister must have regard to the following matters:
- (a) the objectives of the notice;

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- (b) the legitimate interests of the designated communications provider to whom the notice relates;
- (c) the impact of the notice on the efficiency and international competitiveness of the Australian telecommunications industry;
- (d) the representation (if any) that was made under subsection (4);
- (e) such other matters (if any) as the Minister considers relevant.

**317TAA Provision of advice to designated communications providers**

- (1) If the Attorney-General gives a technical capability notice to a designated communications provider, the Attorney-General must give the provider advice relating to the provider's obligations under whichever of sections 317ZA and 317ZB is applicable, so far as those obligations relate to the notice.

*Form of advice*

- (2) Advice under subsection (1) may be given:
  - (a) orally; or
  - (b) in writing.
- (3) If advice under subsection (1) is given orally, the Attorney-General must:
  - (a) make a written record of the advice; and
  - (b) do so within 48 hours after the advice was given.

**317TAB Notification obligations**

- (1) If:
  - (a) the Attorney-General gives a technical capability notice; and
  - (b) the acts or things specified in the notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed



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- help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
- (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);
- the Attorney-General must, within 7 days after the notice is given, notify the Inspector-General of Intelligence and Security that the notice has been given.
- (2) If:
- (a) the Attorney-General gives a technical capability notice; and
- (b) the acts or things specified in the notice:
- (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or
- (ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b);
- the Attorney-General must, within 7 days after the notice is given, notify the Commonwealth Ombudsman that the notice has been given.
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of a technical capability notice.

**317TA Duration of technical capability notice**

- (1) A technical capability notice:
- (a) comes in force:
- (i) when it is given; or
- (ii) if a later time is specified in the notice—at that later time; and
- (b) unless sooner revoked, remains in force:
- (i) if an expiry date is specified in the notice—until the start of the expiry date; or
- (ii) otherwise—at end of the 180-day period beginning when the notice was given.

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- (1A) An expiry date specified in a technical capability notice must not be later than 12 months after the notice was given.
- (1B) Paragraph (1)(b) has effect subject to subsection (1C).
- (1C) If the Attorney-General has given a technical capability notice to a designated communications provider, the Attorney-General may, with the agreement of the provider, extend for a further period (not exceeding 12 months) or further periods (not exceeding 12 months in each case) the period for which the technical capability notice is in force.
- (1D) If:
- (a) the Attorney-General extends the period for which a technical capability notice is in force; and
  - (b) the acts or things specified in the notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);
- the Attorney-General must, within 7 days after extending the period, notify the Inspector-General of Intelligence and Security of the extension.
- (1E) If:
- (a) the Attorney-General extends the period for which a technical capability notice is in force; and
  - (b) the acts or things specified in the notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b);

the Attorney-General must, within 7 days after extending the period, notify the Commonwealth Ombudsman of the extension.

- (1F) A failure to comply with subsection (1D) or (1E) does not affect the validity of an extension of a technical capability notice.
- (2) If a technical capability notice expires, this Part does not prevent the giving of a fresh technical capability notice in the same terms as the expired technical capability notice.

### **317U Compliance period etc.**

- (1) A technical capability notice may require a specified act or thing to be done within a specified period.
- (2) A technical capability notice may require a specified act or thing to be done:
  - (a) in a specified manner; or
  - (b) in a way that meets one or more specified conditions.
- (3) Subsections (1) and (2) of this section do not limit subsections 317T(1) and (2).

### **317V Decision-making criteria**

The Attorney-General must not give a technical capability notice to a designated communications provider unless:

- (a) the Attorney-General is satisfied that the requirements imposed by the notice are reasonable and proportionate; and
- (b) the Attorney-General is satisfied that compliance with the notice is:
  - (i) practicable; and
  - (ii) technically feasible.

Note: See also section 317ZAA.

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**317W Consultation about a proposal to give a technical capability notice**

- (1) The Attorney-General must not give a technical capability notice to a designated communications provider unless the Attorney-General has first:
    - (a) given the provider a written notice (the *consultation notice*):
      - (i) setting out a proposal to give the technical capability notice; and
      - (ii) inviting the provider to make a submission to the Attorney-General on the proposed technical capability notice; and
    - (b) considered any submission that was received within the time limit specified in the consultation notice.
  - (2) A time limit specified in a consultation notice must run for at least 28 days.
  - (3) The rule in subsection (2) does not apply to a technical capability notice given to a designated communications provider if:
    - (a) the Attorney-General is satisfied that the technical capability notice should be given as a matter of urgency; or
    - (b) compliance with subsection (2) is impracticable; or
    - (c) the provider waives compliance with subsection (2).
  - (4) For the purposes of paragraph (3)(c), a designated communications provider may waive compliance:
    - (a) orally; or
    - (b) in writing.
  - (5) If compliance is waived orally by a designated communications provider, the provider must:
    - (a) make a written record of the waiver; and
    - (b) do so within 48 hours after the waiver was made.
  - (6) If, under subsection (5), a designated communications provider makes a written record of the waiver, the provider must:
    - (a) give a copy of the record to the Attorney-General; and
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- (b) do so as soon as practicable after the record was made.
- (7) Subsection (1) does not apply to a technical capability notice proposed to be given to a designated communications provider if:
- (a) the requirements imposed by the proposed technical capability notice are the same, or substantially the same, as the requirements imposed by another technical capability notice that has previously been given to the provider; and
  - (b) the proposed technical capability notice is to come into force immediately after the expiry of the other technical capability notice.

*Special consultation requirements for replacement technical capability notices*

- (8) Before giving a designated communications provider a technical capability notice that satisfies the following conditions:
- (a) the requirements imposed by the technical capability notice are the same, or substantially the same, as the requirements imposed by another technical capability notice that has previously been given to the provider;
  - (b) the first-mentioned technical capability notice is to come into force immediately after the expiry of the other technical capability notice;
- the Attorney-General must consult the provider.
- (9) The rule in subsection (8) does not apply to a technical capability notice given to a designated communications provider if the provider waives compliance with subsection (8).

### **317WA Assessment and report**

*Designated communications provider may request carrying out of assessment*

- (1) If a consultation notice is given to a designated communications provider under subsection 317W(1) in relation to a proposed technical capability notice, the provider may, within the time limit

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specified in the consultation notice, give the Attorney-General a written notice requesting the carrying out of an assessment of whether the proposed technical capability notice should be given.

*Attorney-General must appoint assessors*

- (2) If a designated communications provider gives the Attorney-General a notice under subsection (1) in relation to a proposed technical capability notice, the Attorney-General must appoint 2 persons to carry out an assessment of whether the proposed technical capability notice should be given.
- (3) For the purposes of this section, the persons appointed under subsection (2) are to be known as the *assessors*.
- (4) One of the assessors must be a person who:
  - (a) has knowledge that would enable the person to assess whether proposed technical capability notices would contravene section 317ZG; and
  - (b) is cleared for security purposes to:
    - (i) the highest level required by staff members of ASIO; or
    - (ii) such lower level as the Attorney-General approves.
- (5) One of the assessors must be a person who:
  - (a) has served as a judge in one or more prescribed courts for a period of 5 years; and
  - (b) no longer holds a commission as a judge of a prescribed court.

*Assessment and report by assessors*

- (6) As soon as practicable after being appointed under subsection (2), the assessors must:
  - (a) carry out an assessment of whether the proposed technical capability notice should be given; and
  - (b) prepare a report of the assessment; and
  - (c) give a copy of the report to:
    - (i) the Attorney-General; and

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- (ii) the designated communications provider concerned; and
  - (d) if the acts or things specified in the proposed technical capability notice:
    - (i) are directed towards ensuring that the designated communications provider is capable of giving listed help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);give a copy of the report to the Inspector-General of Intelligence and Security; and
  - (e) if the acts or things specified in the proposed technical capability notice:
    - (i) are directed towards ensuring that the designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b);give a copy of the report to the Commonwealth Ombudsman.
- (7) In carrying out an assessment under paragraph (6)(a) in relation to a technical capability notice proposed to be given to a designated communications provider, the assessors must:
- (a) consider:
    - (i) whether the proposed technical capability notice would contravene section 317ZG; and
    - (ii) whether the requirements imposed by the proposed technical capability notice are reasonable and proportionate; and
    - (iii) whether compliance with the proposed technical capability notice is practicable; and
    - (iv) whether compliance with the proposed technical capability notice is technically feasible; and

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- (v) whether the proposed technical capability notice is the least intrusive measure that would be effective in achieving the legitimate objective of the proposed technical capability notice; and
  - (b) give the greatest weight to the matter mentioned in subparagraph (a)(i).
- (8) In carrying out an assessment under paragraph (6)(a) in relation to a technical capability notice proposed to be given to a designated communications provider, the assessors must consult:
  - (a) the provider; and
  - (b) if the acts or things specified in the proposed technical capability notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);the Director-General of Security; and
  - (c) if the acts or things specified in the proposed technical capability notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b);the chief officer of the interception agency.
- (9) If:
  - (a) the assessors have begun to carry out an assessment under paragraph (6)(a) in relation to a technical capability notice proposed to be given to a designated communications provider; and



- (b) the provider informs the Attorney-General that the provider no longer wants the assessment to be carried out;
- then:
- (c) the Attorney-General must direct the assessors to cease carrying out the assessment; and
- (d) the assessors must comply with the direction.
- (10) If:
- (a) the assessors have begun to carry out an assessment under paragraph (6)(a); and
- (b) the Attorney-General withdraws the proposed technical capability notice to which the assessment relates;
- then:
- (c) the Attorney-General must direct the assessors to cease carrying out the assessment; and
- (d) the assessors must comply with the direction.

*Attorney-General must have regard to the report of the assessment*

- (11) If:
- (a) a notice is given under subsection (1) in relation to a technical capability notice proposed to be given to a designated communications provider; and
- (b) a copy of the report relating to the proposed technical capability notice is given to the Attorney-General under subsection (6);
- the Attorney-General, in considering whether to proceed to give the technical capability notice, must have regard to the copy of the report.

*Technical capability notice information*

- (12) For the purposes of this Part:
- (a) information about the carrying out of an assessment under subsection (6); or
- (b) information contained in a report prepared under subsection (6);

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is taken to be information about consultation relating to the giving of a technical capability notice.

*Prescribed court*

- (13) For the purposes of this section, ***prescribed court*** means:
- (a) the High Court; or
  - (b) the Federal Court of Australia; or
  - (c) the Supreme Court of a State or Territory; or
  - (d) the District Court (or equivalent) of a State or Territory.

**317X Variation of technical capability notices**

- (1) If a technical capability notice has been given to a designated communications provider, the Attorney-General may, by written notice given to the provider, vary the notice.

*Acts or things specified in a varied technical capability notice*

- (2) The acts or things specified in a varied technical capability notice must be:
- (a) in connection with any or all of the eligible activities of the designated communications provider concerned; and
  - (b) covered by subsection 317T(2).
- (3) The acts or things specified in a varied technical capability notice in accordance with paragraph 317T(2)(b) must be listed acts or things, so long as those acts or things:
- (a) are in connection with any or all of the eligible activities of the designated communications provider concerned; and
  - (b) are covered by subsection 317T(2), so far as that subsection relates to paragraph 317T(2)(b).

Note: For ***listed acts or things***, see section 317E.

*Decision-making criteria*

- (4) The Attorney-General must not vary a technical capability notice unless the Attorney-General is satisfied that:

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- (a) the requirements imposed by the varied notice are reasonable and proportionate; and
- (b) compliance with the varied notice is:
  - (i) practicable; and
  - (ii) technically feasible.

Note: See also section 317ZAA.

*Variation must not extend duration of technical capability notice*

- (5) A variation of a technical capability notice must not extend the period for which the notice is in force.

*Notification obligations*

- (6) If:
  - (a) the Attorney-General varies a technical capability notice; and
  - (b) the acts or things specified in the varied notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);

the Attorney-General must, within 7 days after varying the notice, notify the Inspector-General of Intelligence and Security that the notice has been varied.

- (7) If:
  - (a) the Attorney-General varies a technical capability notice; and
  - (b) the acts or things specified in the varied notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b);

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the Attorney-General must, within 7 days after varying the notice, notify the Commonwealth Ombudsman that the notice has been varied.

- (8) A failure to comply with subsection (6) or (7) does not affect the validity of a variation of a technical capability notice.

**317XA Approval of variation of technical capability notice**

- (1) If a technical capability notice has been given to a designated communications provider, the Attorney-General must not vary the notice unless:
- (a) both:
    - (i) the Attorney-General has given the Minister a written notice setting out a proposal to vary the technical capability notice; and
    - (ii) the Minister has approved the variation of the technical capability notice; or
  - (b) the provider has waived compliance with subsection 317Y(2) in relation to the variation of the technical capability notice.
- (2) An approval under subparagraph (1)(a)(ii) may be given:
- (a) orally; or
  - (b) in writing.
- (3) If an approval under subparagraph (1)(a)(ii) is given orally, the Minister must:
- (a) make a written record of the approval; and
  - (b) do so within 48 hours after the approval was given.
- (4) The Attorney-General may make a representation to the Minister about the proposal to vary the technical capability notice.
- (5) A representation may deal with:
- (a) any of the matters set out in section 317ZAA; and
  - (b) such other matters (if any) as the Attorney-General considers relevant.

- (6) In considering whether to approve the variation of the technical capability notice, the Minister must have regard to the following matters:
- (a) the objectives of the notice as proposed to be varied;
  - (b) the legitimate interests of the designated communications provider to whom the notice relates;
  - (c) the impact of the notice as proposed to be varied on the efficiency and international competitiveness of the Australian telecommunications industry;
  - (d) the representation (if any) that was made under subsection (4);
  - (e) such other matters (if any) as the Minister considers relevant.

### **317Y Consultation about a proposal to vary a technical capability notice**

- (1) If a technical capability notice has been given to a designated communications provider, the Attorney-General must not vary the notice unless the Attorney-General has first:
- (a) given the provider a written notice (the *consultation notice*):
    - (i) setting out a proposal to vary the technical capability notice; and
    - (ii) inviting the provider to make a submission to the Attorney-General on the proposed variation; and
  - (b) considered any submission that was received within the time limit specified in the consultation notice.
- (2) A time limit specified in a consultation notice must run for at least 28 days.
- (3) If a technical capability notice has been given to a designated communications provider, the rule in subsection (2) does not apply to a variation of the notice if:
- (a) the Attorney-General is satisfied that the technical capability notice should be varied as a matter of urgency; or
  - (b) compliance with subsection (2) is impracticable; or
  - (c) the provider waives compliance with subsection (2).

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- (4) For the purposes of paragraph (3)(c), a designated communications provider may waive compliance:
  - (a) orally; or
  - (b) in writing.
- (5) If compliance is waived orally by a designated communications provider, the provider must:
  - (a) make a written record of the waiver; and
  - (b) do so within 48 hours after the waiver was made.
- (6) If, under subsection (5), a designated communications provider makes a written record of the waiver, the provider must:
  - (a) give a copy of the record to the Attorney-General; and
  - (b) do so as soon as practicable after the record was made.

**317YA Assessment and report**

*Designated communications provider may request carrying out of assessment*

- (1) If:
  - (a) a consultation notice is given to a designated communications provider under subsection 317Y(1) in relation to a proposed variation of a technical capability notice; and
  - (b) the variation is not of a minor nature;the provider may, within the time limit specified in the consultation notice, give the Attorney-General a written notice requesting the carrying out of an assessment of whether the technical capability notice as proposed to be varied would contravene section 317ZG.

*Attorney-General must appoint assessors*

- (2) If a designated communications provider gives the Attorney-General a notice under subsection (1) in relation to a technical capability notice as proposed to be varied, the Attorney-General must appoint 2 persons to carry out an

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assessment of whether the technical capability notice as proposed to be varied would contravene section 317ZG.

- (3) For the purposes of this section, the persons appointed under subsection (2) are to be known as the *assessors*.
- (4) One of the assessors must be a person who:
  - (a) has knowledge that would enable the person to assess whether proposed technical capability notices would contravene section 317ZG; and
  - (b) is cleared for security purposes to:
    - (i) the highest level required by staff members of ASIO; or
    - (ii) such lower level as the Attorney-General approves.
- (5) One of the assessors must be a person who:
  - (a) has served as a judge in one or more prescribed courts for a period of 5 years; and
  - (b) no longer holds a commission as a judge of a prescribed court.

*Assessment and report by assessors*

- (6) As soon as practicable after being appointed under subsection (2), the assessors must:
  - (a) carry out an assessment of whether the technical capability notice as proposed to be varied would contravene section 317ZG; and
  - (b) prepare a report of the assessment; and
  - (c) give a copy of the report to:
    - (i) the Attorney-General; and
    - (ii) the designated communications provider concerned; and
  - (d) if the acts or things specified in the technical capability notice as proposed to be varied:
    - (i) are directed towards ensuring that the designated communications provider is capable of giving listed help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or

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- (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);  
give a copy of the report to the Inspector-General of Intelligence and Security; and
  - (e) if the acts or things specified in the technical capability notice as proposed to be varied:
    - (i) are directed towards ensuring that the designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b);  
give a copy of the report to the Commonwealth Ombudsman.
- (7) In carrying out an assessment under paragraph (6)(a) in relation to a technical capability notice as proposed to be varied, the assessors must consult:
  - (a) the designated communications provider concerned; and
  - (b) if the acts or things specified in the technical capability notice as proposed to be varied:
    - (i) are directed towards ensuring that the designated communications provider is capable of giving listed help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);  
the Director-General of Security; and
  - (c) if the acts or things specified in the technical capability notice as proposed to be varied:
    - (i) are directed towards ensuring that the designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or



(ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b); the chief officer of the interception agency.

(8) If:

- (a) the assessors have begun to carry out an assessment under paragraph (6)(a) in relation to the technical capability notice as proposed to be varied; and
- (b) the designated communications provider concerned informs the Attorney-General that the provider no longer wants the assessment to be carried out;

then:

- (c) the Attorney-General must direct the assessors to cease carrying out the assessment; and
- (d) the assessors must comply with the direction.

(9) If:

- (a) the assessors have begun to carry out an assessment under paragraph (6)(a); and
- (b) the Attorney-General withdraws the proposed variation of the technical capability notice concerned;

then:

- (c) the Attorney-General must direct the assessors to cease carrying out the assessment; and
- (d) the assessors must comply with the direction.

*Attorney-General must have regard to the report of the assessment*

(10) If:

- (a) a notice is given under subsection (1) in relation to a proposed variation of a technical capability notice; and
- (b) a copy of the report relating to the technical capability notice as proposed to be varied is given to the Attorney-General under subsection (6);

the Attorney-General, in considering whether to proceed to vary the technical capability notice, must have regard to the copy of the report.

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*Technical capability notice information*

- (11) For the purposes of this Part:
- (a) information about the carrying out of an assessment under subsection (6); or
  - (b) information contained in a report prepared under subsection (6);
- is taken to be information about consultation relating to the variation of a technical capability notice.

*Prescribed court*

- (12) For the purposes of this section, *prescribed court* means:
- (a) the High Court; or
  - (b) the Federal Court of Australia; or
  - (c) the Supreme Court of a State or Territory; or
  - (d) the District Court (or equivalent) of a State or Territory.

**317Z Revocation of technical capability notices**

- (1) If a technical capability notice has been given to a person, the Attorney-General may, by written notice given to the person, revoke the notice.
- (2) If a technical capability notice has been given to a person, and the Attorney-General is satisfied that:
- (a) the requirements imposed by the notice are not reasonable and proportionate; or
  - (b) compliance with the notice is not:
    - (i) practicable; and
    - (ii) technically feasible;
- the Attorney-General must, by written notice given to the person, revoke the notice.

*Notification obligations*

- (3) If:

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- (a) the Attorney-General revokes a technical capability notice;  
and
  - (b) the acts or things specified in the revoked notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);
- the Attorney-General must, within 7 days after revoking the notice, notify the Inspector-General of Intelligence and Security that the notice has been revoked.
- (4) If:
- (a) the Attorney-General revokes a technical capability notice;  
and
  - (b) the acts or things specified in the revoked notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b);
- the Attorney-General must, within 7 days after revoking the notice, notify the Commonwealth Ombudsman that the notice has been revoked.
- (5) A failure to comply with subsection (3) or (4) does not affect the validity of a revocation of a technical capability notice.

**317ZAA Whether requirements imposed by a technical capability notice are reasonable and proportionate**

In considering whether the requirements imposed by a technical capability notice or a varied technical capability notice are

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reasonable and proportionate, the Attorney-General must have regard to the following matters:

- (a) the interests of national security;
- (b) the interests of law enforcement;
- (c) the legitimate interests of the designated communications provider to whom the notice relates;
- (d) the objectives of the notice;
- (e) the availability of other means to achieve the objectives of the notice;
- (ea) whether the requirements, when compared to other forms of industry assistance known to the Attorney-General, are the least intrusive form of industry assistance so far as the following persons are concerned:
  - (i) persons whose activities are not of interest to ASIO;
  - (ii) persons whose activities are not of interest to interception agencies;
- (eb) whether the requirements are necessary;
- (f) the legitimate expectations of the Australian community relating to privacy and cybersecurity;
- (g) such other matters (if any) as the Attorney-General considers relevant.

## **Division 5—Compliance and enforcement**

### **317ZA Compliance with notices—carriers and carriage service providers**

- (1) A carrier or carriage service provider must comply with a requirement under:
  - (a) a technical assistance notice; or
  - (b) a technical capability notice;to the extent that the carrier or provider is capable of doing so.
- (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 provides for pecuniary penalties for breaches of civil penalty provisions.

### **317ZB Compliance with notices—designated communications provider (other than a carrier or carriage service provider)**

- (1) A designated communications provider (other than a carrier or carriage service provider) must comply with a requirement under:
  - (a) a technical assistance notice; or
  - (b) a technical capability notice;to the extent that the provider is capable of doing so.

Civil penalty:

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- (a) if the provider is a body corporate—47,619 penalty units; or
  - (b) if the provider is not a body corporate—238 penalty units.
- (2) The pecuniary penalty for a contravention by a designated communications provider of subsection (1) must not be more than:
  - (a) if the provider is a body corporate—47,619 penalty units; or
  - (b) if the provider is not a body corporate—238 penalty units.
- (3) Subsection 82(5) of the *Regulatory Powers (Standard Provisions) Act 2014* does not apply to a contravention of subsection (1) of this section.
- (4) Sections 564 and 572B do not apply to a contravention of subsection (1) of this section.
- (5) In proceedings for a civil penalty order against a designated communications provider for a contravention of subsection (1) in relation to:
  - (a) a requirement under a technical assistance notice to do an act or thing in a foreign country; or
  - (b) a requirement under a technical capability notice to do an act or thing in a foreign country;it is a defence if the provider proves that compliance with the requirement in the foreign country would contravene a law of the foreign country.

**317ZC Civil penalty provision**

*Enforceable civil penalty provision*

- (1) Section 317ZB of this Act is enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Note: Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

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*Authorised applicant*

- (2) For the purposes of Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Communications Access Co-ordinator is an authorised applicant in relation to section 317ZB of this Act.

*Relevant courts*

- (3) For the purposes of Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Federal Court and the Federal Circuit and Family Court of Australia (Division 2) are relevant courts in relation to section 317ZB of this Act.

*Extension to external Territories etc.*

- (4) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to section 317ZB of this Act, extends to:
- (a) every external Territory; and
  - (b) acts, omissions, matters and things outside Australia.

**317ZD Enforceable undertakings**

*Enforceable provision*

- (1) Section 317ZB of this Act is enforceable under Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Authorised person*

- (2) The Communications Access Co-ordinator is an authorised person in relation to section 317ZB of this Act for the purposes of Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Relevant courts*

- (3) The Federal Court and the Federal Circuit and Family Court of Australia (Division 2) are relevant courts in relation to section 317ZB of this Act for the purposes of Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*.

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*Extension to external Territories etc.*

- (4) Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to section 317ZB of this Act, extends to:
- (a) every external Territory; and
  - (b) acts, omissions, matters and things outside Australia.

**317ZE Injunctions**

*Enforceable provision*

- (1) Section 317ZB of this Act is enforceable under Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Authorised person*

- (2) The Communications Access Co-ordinator is an authorised person in relation to section 317ZB of this Act for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Relevant courts*

- (3) The Federal Court and the Federal Circuit and Family Court of Australia (Division 2) are relevant courts in relation to section 317ZB of this Act for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Extension to external Territories etc.*

- (4) Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to section 317ZB of this Act, extends to:
- (a) every external Territory; and
  - (b) acts, omissions, matters and things outside Australia.



## **Division 6—Unauthorised disclosure of information etc.**

### **317ZF Unauthorised disclosure of information**

- (1) A person commits an offence if:
- (a) the person discloses information; and
  - (b) the person is or was:
    - (i) a designated communications provider; or
    - (ii) an employee of a designated communications provider; or
    - (iii) a contracted service provider of a designated communications provider; or
    - (iv) an employee of a contracted service provider of a designated communications provider; or
    - (v) an entrusted ASIO person; or
    - (vi) an entrusted ASIS person; or
    - (vii) an entrusted ASD person; or
    - (viii) an officer of an interception agency; or
    - (ix) an officer or employee of the Commonwealth, a State or a Territory; or
    - (x) a person appointed under subsection 317WA(2); or
    - (xa) a person appointed under subsection 317YA(2); or
    - (xi) an arbitrator appointed under section 317ZK; and
  - (c) the information:
    - (i) is technical assistance notice information; or
    - (ii) is technical capability notice information; or
    - (iii) is technical assistance request information; or
    - (iv) was obtained in accordance with a technical assistance notice; or
    - (v) was obtained in accordance with a technical capability notice; or
    - (vi) was obtained in accordance with a technical assistance request; and

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- (d) if the information is covered by subparagraph (c)(i), (ii) or (iii)—the information has come to the person’s knowledge, or into the person’s possession:
  - (i) if the person is or was a designated communications provider—in connection with the person’s capacity as such a provider; or
  - (ii) if the person is or was an employee of a designated communications provider—because the person is or was employed by the provider in connection with its business as such a provider; or
  - (iii) if the person is or was a contracted service provider of a designated communications provider—in connection with the person’s business as such a contracted service provider; or
  - (iv) if the person is or was an employee of a contracted service provider of a designated communications provider—because the person is or was employed by the contractor in connection with its business as such a contracted service provider; or
  - (v) if the person is or was an entrusted ASIO person—in the person’s capacity as such an entrusted ASIO person; or
  - (vi) if the person is or was an entrusted ASIS person—in the person’s capacity as such an entrusted ASIS person; or
  - (vii) if the person is or was an entrusted ASD person—in the person’s capacity as such an entrusted ASD person; or
  - (viii) if the person is or was an officer of an interception agency—in the person’s capacity as such an officer; or
  - (ix) if the person is or was an officer or employee of the Commonwealth, a State or a Territory—in the person’s capacity as such an officer or employee; or
  - (ixa) if the person is or was a person appointed under subsection 317WA(2)—in the person’s capacity as such an appointee; or
  - (ixb) if the person is or was a person appointed under subsection 317YA(2)—in the person’s capacity as such an appointee; or

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- (x) if the person is or was an arbitrator appointed under section 317ZK—in the person’s capacity as such an arbitrator; and
- (e) if the information is covered by subparagraph (c)(iv), (v) or (vi)—the information has come to the person’s knowledge, or into the person’s possession:
  - (i) if the person is or was an entrusted ASIO person—in the person’s capacity as such an entrusted ASIO person; or
  - (ii) if the person is or was an entrusted ASIS person—in the person’s capacity as such an entrusted ASIS person; or
  - (iii) if the person is or was an entrusted ASD person—in the person’s capacity as such an entrusted ASD person; or
  - (iv) if the person is or was an officer of an interception agency—in the person’s capacity as such an officer; or
  - (v) if the person is or was an officer or employee of the Commonwealth, a State or a Territory—in the person’s capacity as such an officer or employee; or
  - (vi) if the person is or was an arbitrator appointed under section 317ZK—in the person’s capacity as such an arbitrator.

Penalty: Imprisonment for 5 years.

*Exceptions*

- (2) Subsection (1) does not apply if the disclosure was authorised under subsection (3), (5), (5A), (5B), (5C), (6), (7), (8), (9), (10), (11), (12A), (12B), (12C), (12D), (13), (14), (15) or (16).

Note: Except as provided by subsection (2A) or (2B), a defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the *Criminal Code*.

- (2A) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against subsection (1) of this section, an IGIS official does not bear an evidential burden in relation to the matters in subsection (2) of this section, to the extent to which that subsection relates to subsection (5) of this section.

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- (2B) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against subsection (1) of this section, an Ombudsman official does not bear an evidential burden in relation to the matters in subsection (2) of this section, to the extent to which that subsection relates to subsection (5A), (5B) or (5C) of this section.

*Authorised disclosures—general*

- (3) A person covered by paragraph (1)(b) may disclose technical assistance notice information, technical capability notice information or technical assistance request information:
- (a) in connection with the administration or execution of this Part; or
  - (b) for the purposes of any legal proceedings arising out of or otherwise related to this Part or of any report of any such proceedings; or
  - (c) in accordance with any requirement imposed by a law of the Commonwealth, a State or a Territory; or
  - (d) in connection with the performance of functions, or the exercise of powers, by:
    - (i) ASIO; or
    - (ii) the Australian Secret Intelligence Service; or
    - (iii) the Australian Signals Directorate; or
    - (iv) an interception agency; or
  - (e) for the purpose of obtaining legal advice in relation to this Part; or
  - (f) to an IGIS official for the purpose of exercising powers, or performing functions or duties, as an IGIS official; or
  - (g) to an Ombudsman official for the purpose of exercising powers, or performing functions or duties, as an Ombudsman official.
- (4) For the purposes of subsection (3), **this Part** includes:
- (a) any other provision of this Act, so far as that other provision relates to this Part; and

- (b) the *Regulatory Powers (Standard Provisions) Act 2014*, so far as that Act relates to this Part.

*Authorised disclosures—IGIS official*

- (5) An IGIS official may disclose:
- (a) technical assistance notice information; or
  - (b) technical capability notice information; or
  - (c) technical assistance request information;
- in connection with the IGIS official exercising powers, or performing functions or duties, as an IGIS official.

*Authorised disclosures—Ombudsman official*

- (5A) An Ombudsman official may disclose:
- (a) technical assistance notice information; or
  - (b) technical capability notice information; or
  - (c) technical assistance request information;
- in connection with the Ombudsman official exercising powers, or performing functions or duties, as an Ombudsman official.
- (5B) If a technical assistance notice is given by the chief officer of an interception agency of a State or Territory, an Ombudsman official may disclose technical assistance notice information that relates to the notice to an officer or employee of an authority that is the State or Territory inspecting authority in relation to the interception agency, so long as the disclosure is in connection with the officer or employee exercising powers, or performing functions or duties, as an officer or employee of the State or Territory inspecting authority.
- (5C) If a technical assistance request is given by the chief officer of an interception agency of a State or Territory, an Ombudsman official may disclose technical assistance request information that relates to the request to an officer or employee of an authority that is the State or Territory inspecting authority in relation to the interception agency, so long as the disclosure is in connection with the officer or employee exercising powers, or performing functions or duties,

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as an officer or employee of the State or Territory inspecting authority.

*Authorised disclosures—information sharing*

- (6) The Director-General of Security or the Communications Access Co-ordinator may disclose information that is:
- (a) technical assistance notice information; or
  - (b) technical capability notice information; or
  - (c) technical assistance request information;
- to the chief officer of an interception agency for purposes relating to the performance of functions, or the exercise of powers, by the interception agency.
- (7) The chief officer of an interception agency may disclose information that is:
- (a) technical assistance notice information; or
  - (b) technical capability notice information; or
  - (c) technical assistance request information;
- to the chief officer of another interception agency for purposes relating to the performance of functions, or the exercise of powers, by the other interception agency.
- (8) The Director-General of Security, the Director-General of the Australian Signals Directorate or the chief officer of an interception agency may disclose information that is:
- (a) technical assistance notice information; or
  - (b) technical capability notice information; or
  - (c) technical assistance request information;
- to the Director-General of the Australian Secret Intelligence Service for purposes relating to the performance of functions, or the exercise of powers, by the Australian Secret Intelligence Service.
- (9) The Director-General of Security, the Director-General of the Australian Secret Intelligence Service or the chief officer of an interception agency may disclose information that is:

- (a) technical assistance notice information; or
  - (b) technical capability notice information; or
  - (c) technical assistance request information;
- to the Director-General of the Australian Signals Directorate for purposes relating to the performance of functions, or the exercise of powers, by the Australian Signals Directorate.
- (10) The Communications Access Co-ordinator, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer of an interception agency may disclose information that is:
- (a) technical assistance notice information; or
  - (b) technical capability notice information; or
  - (c) technical assistance request information;
- to the Director-General of Security for purposes relating to the performance of functions, or the exercise of powers, by ASIO.
- (11) The Director-General of Security or the chief officer of an interception agency may disclose information that is:
- (a) technical assistance notice information; or
  - (b) technical capability notice information; or
  - (c) technical assistance request information;
- to the Communications Access Co-ordinator for purposes relating to the performance of functions, or the exercise of powers, by the Communications Access Co-ordinator.
- (12) Before disclosing information under subsection (6), (7), (8), (9) or (10), the Director-General of Security, the Director-General of the Australian Secret Intelligence Service, the Director-General of the Australian Signals Directorate or the chief officer of an interception agency, as the case requires, must notify the Communications Access Co-ordinator of the proposed disclosure.

*Authorised disclosures—Communications Access Co-ordinator*

- (12A) If:

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- (a) the Attorney-General has given a technical capability notice; and
- (b) the acts or things specified in the notice:
  - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency of a State or Territory in relation to a matter covered by paragraph 317T(2)(a); or
  - (ii) are by way of giving help to an interception agency of a State or Territory in relation to a matter covered by paragraph 317T(2)(b);

the Communications Access Co-ordinator may disclose technical capability notice information that relates to the notice to an officer or employee of an authority that is the State or Territory inspecting authority in relation to the interception agency, so long as the disclosure is in connection with the officer or employee exercising powers, or performing functions or duties, as an officer or employee of the State or Territory inspecting authority.

*Authorised disclosures—State or Territory inspecting authority*

- (12B) If a technical assistance notice has been given to a designated communications provider by the chief officer of an interception agency of a State or Territory:
- (a) the designated communications provider; or
  - (b) an employee of the designated communications provider; or
  - (c) a contracted service provider of the designated communications provider; or
  - (d) an employee of a contracted service provider of the designated communications provider;

may disclose technical assistance notice information that relates to the notice to an officer or employee of an authority that is the State or Territory inspecting authority in relation to the interception agency, so long as the disclosure is in connection with the officer or employee exercising powers, or performing functions or duties, as an officer or employee of the State or Territory inspecting authority.



- (12C) If a technical assistance request has been given to a designated communications provider by the chief officer of an interception agency of a State or Territory:
- (a) the designated communications provider; or
  - (b) an employee of the designated communications provider; or
  - (c) a contracted service provider of the designated communications provider; or
  - (d) an employee of a contracted service provider of the designated communications provider;
- may disclose technical assistance request information that relates to the request to an officer or employee of an authority that is the State or Territory inspecting authority in relation to the interception agency, so long as the disclosure is in connection with the officer or employee exercising powers, or performing functions or duties, as an officer or employee of the State or Territory inspecting authority.
- (12D) If:
- (a) technical assistance notice information is disclosed under subsection (12B); or
  - (b) technical assistance request information is disclosed under subsection (12C);
- to an officer or employee of an authority that is the State or Territory inspecting authority in relation to an interception agency, the officer or employee may disclose the information in connection with the officer or employee exercising powers, or performing functions or duties, as an officer or employee of the State or Territory inspecting authority.

*Authorised disclosures—statistics*

- (13) A person who is:
- (a) a designated communications provider; or
  - (b) an employee of a designated communications provider; or
  - (c) a contracted service provider of a designated communications provider; or

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(d) an employee of a contracted service provider of a designated communications provider;

may, in the person's capacity as such a provider or employee, disclose:

(e) the total number of technical assistance notices given to the provider during a period of at least 6 months; or

(f) the total number of technical capability notices given to the provider during a period of at least 6 months; or

(g) the total number of technical assistance requests given to the provider during a period of at least 6 months.

Note: This subsection authorises the disclosure of aggregate statistical information. That information cannot be broken down:

(a) by agency; or

(b) in any other way.

*Other authorised disclosures*

(14) If a technical assistance notice has been given to a designated communications provider by the Director-General of Security, the Director-General of Security may, if requested to do so by the designated communications provider, authorise:

(a) the designated communications provider; or

(b) a specified employee of the designated communications provider; or

(c) a specified contracted service provider of the designated communications provider; or

(d) a specified employee of a contracted service provider of the designated communications provider;

to disclose, in accordance with the conditions specified in the authorisation, specified technical assistance notice information that relates to the notice.

(15) If a technical assistance notice has been given to a designated communications provider by the chief officer of an interception agency, the chief officer may, if requested to do so by the designated communications provider, authorise:

(a) the designated communications provider; or

- (b) a specified employee of the designated communications provider; or
  - (c) a specified contracted service provider of the designated communications provider; or
  - (d) a specified employee of a contracted service provider of the designated communications provider;
- to disclose, in accordance with the conditions specified in the authorisation, specified technical assistance notice information that relates to the notice.
- (16) If a technical capability notice has been given to a designated communications provider, the Attorney-General may, if requested to do so by the designated communications provider, authorise:
- (a) the designated communications provider; or
  - (b) a specified employee of the designated communications provider; or
  - (c) a specified contracted service provider of the designated communications provider; or
  - (d) a specified employee of a contracted service provider of the designated communications provider;
- to disclose, in accordance with the conditions specified in the authorisation, specified technical capability notice information that relates to the notice.
- (17) An authorisation under subsection (14), (15) or (16) must be in writing.

### **317ZFA Powers of a court**

- (1) In a proceeding under, or arising out of:
- (a) this Part; or
  - (b) any other provision of this Act, so far as that other provision relates to this Part; or
  - (c) the *Regulatory Powers (Standard Provisions) Act 2014*, so far as that Act relates to this Part;

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a court may make such orders as the court considers appropriate in relation to the disclosure, protection, storage, handling or destruction, in the proceeding, of:

(d) technical assistance notice information; or

(e) technical capability notice information; or

(f) technical assistance request information;

if the court is satisfied that it is in the public interest to make such orders.

- (2) The powers conferred on a court by subsection (1) are in addition to any other powers of the court.

**Division 7—Limitations****317ZG Designated communications provider must not be requested or required to implement or build a systemic weakness or systemic vulnerability etc.**

- (1) A technical assistance request, technical assistance notice or technical capability notice must not have the effect of:
  - (a) requesting or requiring a designated communications provider to implement or build a systemic weakness, or a systemic vulnerability, into a form of electronic protection; or
  - (b) preventing a designated communications provider from rectifying a systemic weakness, or a systemic vulnerability, in a form of electronic protection.
- (2) The reference in paragraph (1)(a) to implement or build a systemic weakness, or a systemic vulnerability, into a form of electronic protection includes a reference to implement or build a new decryption capability in relation to a form of electronic protection.
- (3) The reference in paragraph (1)(a) to implement or build a systemic weakness, or a systemic vulnerability, into a form of electronic protection includes a reference to one or more actions that would render systemic methods of authentication or encryption less effective.
- (4) Subsections (2) and (3) are enacted for the avoidance of doubt.
- (4A) In a case where a weakness is selectively introduced to one or more target technologies that are connected with a particular person, the reference in paragraph (1)(a) to implement or build a systemic weakness into a form of electronic protection includes a reference to any act or thing that will, or is likely to, jeopardise the security of any information held by any other person.
- (4B) In a case where a vulnerability is selectively introduced to one or more target technologies that are connected with a particular

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person, the reference in paragraph (1)(a) to implement or build a systemic vulnerability into a form of electronic protection includes a reference to any act or thing that will, or is likely to, jeopardise the security of any information held by any other person.

- (4C) For the purposes of subsections (4A) and (4B), an act or thing will, or is likely to, jeopardise the security of information if the act or thing creates a material risk that otherwise secure information can be accessed by an unauthorised third party.
- (5) A technical assistance request, technical assistance notice or technical capability notice has no effect to the extent (if any) to which it would have an effect covered by paragraph (1)(a) or (b).

**317ZGA Limits on technical capability notices**

(1) If:

- (a) a designated communications provider supplies a particular kind of telecommunications service; and
- (b) the service involves, or will involve, the use of a telecommunications system;

a technical capability notice has no effect to the extent (if any) to which it requires the provider to ensure that the kind of service, or the system:

- (c) has the capability to enable a communication passing over the system to be intercepted in accordance with an interception warrant; or
- (d) has the capability to transmit lawfully intercepted information to the delivery points applicable in respect of that kind of service; or
- (e) has a delivery capability.

Note 1: Part 5-3 of the *Telecommunications (Interception and Access) Act 1979* deals with interception capability.

Note 2: Part 5-5 of the *Telecommunications (Interception and Access) Act 1979* deals with delivery capability.

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- (2) For the purposes of subsection (1), ensuring that a kind of service or a system has a particular capability includes ensuring that the capability is developed, installed and maintained.
- (3) A technical capability notice has no effect to the extent (if any) to which it requires a designated communications provider to keep, or cause to be kept:
- (a) information of a kind specified in or under section 187AA of the *Telecommunications (Interception and Access) Act 1979*;
  - or
  - (b) documents containing information of that kind;
- relating to any communication carried by means of a service to which Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* applies.
- Note: Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* deals with data retention.
- (4) A technical capability notice has no effect to the extent (if any) to which it requires a designated communications provider to keep, or cause to be kept, information that:
- (a) states an address to which a communication was sent on the internet, from a telecommunications device, using an internet access service provided by the provider; and
  - (b) was obtained by the provider only as a result of providing the service.
- Note: This subsection ensures that a technical capability notice cannot require a designated communications provider to keep information about subscribers' web browsing history.
- (5) An expression used in this section and in Chapter 5 of the *Telecommunications (Interception and Access) Act 1979* has the same meaning in this section as it has in that Chapter.

**317ZH General limits on technical assistance requests, technical assistance notices and technical capability notices**

- (1) A technical assistance request that relates to an agency, or a technical assistance notice that relates to an agency, or a technical

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capability notice that relates to an agency, has no effect to the extent (if any) to which it would request or require a designated communications provider to do an act or thing for which the agency, or an officer of the agency, would be required to have or obtain a warrant or authorisation under any of the following laws:

- (a) the *Telecommunications (Interception and Access) Act 1979*;
  - (b) the *Surveillance Devices Act 2004*;
  - (c) the *Crimes Act 1914*;
  - (d) the *Australian Security Intelligence Organisation Act 1979*;
  - (f) a law of the Commonwealth (other than this Part) that is not covered by paragraph (a), (b), (c) or (d);
  - (g) a law of a State or Territory.
- (2) For the purposes of subsection (1):
- (a) assume that each law mentioned in that subsection applied both within and outside Australia; and
  - (b) assume that each reference in Part 13 to a carriage service provider included a reference to a designated communications provider.
- (3) A technical assistance request, technical assistance notice or technical capability notice has no effect to the extent (if any) to which it would request or require a designated communications provider to:
- (a) use a surveillance device (within the meaning of the *Surveillance Devices Act 2004*); or
  - (b) access data held in a computer (within the meaning of the *Surveillance Devices Act 2004*);
- if a law of a State or Territory requires a warrant or authorisation for that use or access.
- (4) To avoid doubt, subsection (1) or (3) does not prevent a technical assistance request, technical assistance notice or technical capability notice from requesting or requiring a designated communications provider to do an act or thing by way of giving help to:
- (a) ASIO; or



- (b) an interception agency;  
in relation to:
  - (ca) in the case of a technical assistance request—a matter covered by subparagraph 317G(2)(b)(v) or (vi); or
  - (c) in the case of a technical assistance notice—a matter covered by paragraph 317L(2)(c) or (d); or
  - (d) in the case of a technical capability notice—a matter covered by subparagraph 317T(2)(b)(i) or (ii);if the doing of the act or thing would:
  - (e) assist in, or facilitate, giving effect to a warrant or authorisation under a law of the Commonwealth, a State or a Territory; or
  - (f) give effect to a warrant or authorisation under a law of the Commonwealth.
- (5) To avoid doubt, subsection (1) or (3) does not prevent a technical capability notice from requiring a designated communications provider to do an act or thing directed towards ensuring that the provider is capable of giving listed help (within the meaning of section 317T) to:
  - (a) ASIO; or
  - (b) an interception agency;in relation to a matter covered by subparagraph 317T(2)(a)(i) or (ii), if the doing of the act or thing would:
  - (c) assist in, or facilitate, giving effect to a warrant or authorisation under a law of the Commonwealth, a State or a Territory; or
  - (d) give effect to a warrant or authorisation under a law of the Commonwealth.

*Interpretation*

- (6) For the purposes of this section, a technical assistance request **relates to** an agency if:
  - (a) if the agency is ASIO—the request was given by the Director-General of Security; or

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- (b) if the agency is the Australian Secret Intelligence Service—the request was given by the Director-General of the Australian Secret Intelligence Service; or
  - (c) if the agency is the Australian Signals Directorate—the request was given by the Director-General of the Australian Signals Directorate; or
  - (d) if the agency is an interception agency—the request was given by the chief officer of the interception agency.
- (7) For the purposes of this section, a technical assistance notice *relates to* an agency if:
- (a) if the agency is ASIO—the notice was given by the Director-General of Security; or
  - (b) if the agency is an interception agency—the notice was given by the chief officer of the interception agency.
- (8) For the purposes of this section, a technical capability notice *relates to* an agency if:
- (a) if the agency is ASIO—the acts or things specified in the notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b); or
  - (b) if the agency is an interception agency—the acts or things specified in the notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to the interception agency in relation to a matter covered by paragraph 317T(2)(a); or
    - (ii) are by way of giving help to the interception agency in relation to a matter covered by paragraph 317T(2)(b).
- (9) For the purposes of this section, *agency* means:
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- (a) ASIO; or
  - (b) the Australian Secret Intelligence Service; or
  - (c) the Australian Signals Directorate; or
  - (d) an interception agency.
- (10) For the purposes of this section, *officer* of an agency means:
- (a) if the agency is ASIO:
    - (i) the Director-General of Security; or
    - (ii) an ASIO employee; or
  - (b) if the agency is the Australian Secret Intelligence Service:
    - (i) the Director-General of the Australian Secret Intelligence Service; or
    - (ii) a staff member of the Australian Secret Intelligence Service; or
  - (c) if the agency is the Australian Signals Directorate:
    - (i) the Director-General of the Australian Signals Directorate; or
    - (ii) a staff member of the Australian Signals Directorate; or
  - (d) if the agency is an interception agency:
    - (i) the chief officer of the interception agency; or
    - (ii) an officer of the interception agency.

## Division 8—General provisions

### 317ZJ Immunity

- (1) A designated communications provider is not subject to any civil liability for, or in relation to, an act or thing done by the provider:
  - (a) in compliance; or
  - (b) in good faith in purported compliance;with:
  - (c) a technical assistance notice; or
  - (d) a technical capability notice.
- (2) Paragraph (1)(b) does not apply to an act or thing done by a designated communications provider unless the act or thing is in connection with any or all of the eligible activities of the provider.
- (3) An officer, employee or agent of a designated communications provider is not subject to any civil liability for, or in relation to, an act or thing done by the officer, employee or agent in connection with an act or thing done by the provider:
  - (a) in compliance; or
  - (b) in good faith in purported compliance;with:
  - (c) a technical assistance notice; or
  - (d) a technical capability notice.
- (4) Paragraph (3)(b) does not apply to an act or thing done by a designated communications provider unless the act or thing is in connection with any or all of the eligible activities of the provider.

### 317ZK Terms and conditions on which help is to be given etc.

#### *Scope*

- (1) This section applies if a designated communications provider is subject to a requirement under:

- (a) a technical assistance notice; or
  - (b) a technical capability notice;
- unless:
- (c) in the case of a requirement under a technical assistance notice given by the Director-General of Security—the Director-General of Security declares in writing that the Director-General of Security is satisfied that it would be contrary to the public interest for this section to apply to the requirement; or
  - (d) in the case of a requirement under a technical assistance notice given by the chief officer of an interception agency—the chief officer declares in writing that the chief officer is satisfied that it would be contrary to the public interest for this section to apply to the requirement; or
  - (e) in the case of a requirement under a technical capability notice—the Attorney-General declares in writing that the Attorney-General is satisfied that it would be contrary to the public interest for this section to apply to the requirement.
- (2) In deciding whether it would be contrary to the public interest for this section to apply to a requirement, the Director-General of Security, the chief officer or the Attorney-General, as the case may be, must have regard to the following matters:
- (a) in the case of a requirement under a technical assistance notice given by the chief officer of an interception agency or a requirement under a technical capability notice that relates to an interception agency—the interests of law enforcement;
  - (b) in the case of a requirement under a technical assistance notice given by the Director-General of Security or a requirement under a technical capability notice that relates to ASIO—the interests of national security;
  - (c) the objects of this Act;
  - (d) the extent to which compliance with the requirement will impose a regulatory burden on the provider;
  - (e) the reasons for the giving of the technical assistance notice or technical capability notice, as the case requires;

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- (f) such other matters (if any) as the Director-General of Security, the chief officer or the Attorney-General, as the case may be, considers relevant.

*Basis of compliance*

- (3) The designated communications provider must comply with the requirement on the basis that the provider neither:
  - (a) profits from complying with the requirement; nor
  - (b) bears the reasonable costs of complying with the requirement;unless:
  - (c) the provider and the applicable costs negotiator otherwise agree; or
  - (d) in the case of a requirement under a technical assistance notice given by the Director-General of Security—the Director-General of Security declares in writing that the Director-General of Security is satisfied that it would be contrary to the public interest for this subsection to apply to the requirement; or
  - (e) in the case of a requirement under a technical assistance notice given by the chief officer of an interception agency—the chief officer declares in writing that the chief officer is satisfied that it would be contrary to the public interest for this subsection to apply to the requirement; or
  - (f) in the case of a requirement under a technical capability notice—the Attorney-General declares in writing that the Attorney-General is satisfied that it would be contrary to the public interest for this subsection to apply to the requirement.

Note: For *applicable costs negotiator*, see subsection (16).

- (3A) In deciding whether it would be contrary to the public interest for subsection (3) to apply to the requirement, the Director-General of Security, the chief officer or the Attorney-General, as the case may be, must have regard to the following matters:
  - (a) in the case of a requirement under a technical assistance notice given by the chief officer of an interception agency or

- a requirement under a technical capability notice that relates to an interception agency—the interests of law enforcement;
- (b) in the case of a requirement under a technical assistance notice given by the Director-General of Security or a requirement under a technical capability notice that relates to ASIO—the interests of national security;
  - (c) the objects of this Act;
  - (d) the extent to which compliance with the requirement will impose a regulatory burden on the provider;
  - (e) the reasons for the giving of the technical assistance notice or technical capability notice, as the case requires;
  - (f) such other matters (if any) as the Director-General of Security, the chief officer or the Attorney-General, as the case may be, considers relevant.

*Terms and conditions*

- (4) The designated communications provider must comply with the requirement on such terms and conditions as are:
    - (a) agreed between the following parties:
      - (i) the provider;
      - (ii) the applicable costs negotiator; or
    - (b) failing agreement, determined by an arbitrator appointed by the parties.
- Note: For *applicable costs negotiator*, see subsection (16).
- (5) If:
    - (a) the parties fail to agree on the appointment of an arbitrator; and
    - (b) one of the parties is a carrier or carriage service provider; the ACMA is to appoint the arbitrator.
  - (6) If:
    - (a) the parties fail to agree on the appointment of an arbitrator; and
    - (b) none of the parties is a carrier or carriage service provider;

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the Attorney-General is to appoint the arbitrator.

- (6A) Subsection (4) does not apply to the requirement if:
- (a) in the case of a requirement under a technical assistance notice given by the Director-General of Security—the Director-General of Security declares in writing that the Director-General of Security is satisfied that it would be contrary to the public interest for subsection (4) to apply to the requirement; or
  - (b) in the case of a requirement under a technical assistance notice given by the chief officer of an interception agency—the chief officer declares in writing that the chief officer is satisfied that it would be contrary to the public interest for subsection (4) to apply to the requirement; or
  - (c) in the case of a requirement under a technical capability notice—the Attorney-General declares in writing that the Attorney-General is satisfied that it would be contrary to the public interest for subsection (4) to apply to the requirement.
- (6B) In deciding whether it would be contrary to the public interest for subsection (4) to apply to the requirement, the Director-General of Security, the chief officer or the Attorney-General, as the case may be, must have regard to the following matters:
- (a) in the case of a requirement under a technical assistance notice given by the chief officer of an interception agency or a requirement under a technical capability notice that relates to an interception agency—the interests of law enforcement;
  - (b) in the case of a requirement under a technical assistance notice given by the Director-General of Security or a requirement under a technical capability notice that relates to ASIO—the interests of national security;
  - (c) the objects of this Act;
  - (d) the extent to which compliance with the requirement will impose a regulatory burden on the provider;
  - (e) the reasons for the giving of the technical assistance notice or technical capability notice, as the case requires;



- (f) such other matters (if any) as the Director-General of Security, the chief officer or the Attorney-General, as the case may be, considers relevant.

*Arbitration*

- (7) An arbitrator appointed under subsection (5) or (6) must be:
- (a) a person specified under subsection (8); or
  - (b) a person who belongs to a class of persons specified under subsection (11).
- (8) The Home Affairs Minister may, by writing, specify one or more persons for the purposes of paragraph (7)(a).
- (9) An instrument made under subsection (8) is not a legislative instrument.
- (10) Subsection 33(3AB) of the *Acts Interpretation Act 1901* does not apply to the power conferred by subsection (8).
- (11) The Home Affairs Minister may, by legislative instrument, specify a class of persons for the purposes of paragraph (7)(b).
- (12) Before making an instrument under subsection (8) or (11), the Home Affairs Minister must consult the Attorney-General.
- (13) If an arbitration under this section is conducted by an arbitrator appointed by the ACMA, the cost of the arbitration must be apportioned equally between the parties.
- (14) The Home Affairs Minister may, by legislative instrument, make provision for and in relation to the conduct of an arbitration under this section.

*Acquisition of property*

- (15) This section has no effect to the extent (if any) to which its operation would result in an acquisition of property (within the meaning of paragraph 51(xxix) of the Constitution) otherwise than on just terms (within the meaning of that paragraph).

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*Applicable costs negotiator*

- (16) For the purposes of this section, the ***applicable costs negotiator*** is:
- (a) in the case of a requirement under a technical assistance notice given by the Director-General of Security—the Director-General of Security; or
  - (b) in the case of a requirement under a technical assistance notice given by the chief officer of an interception agency—the chief officer; or
  - (c) in the case of a requirement under a technical capability notice—the person specified in the notice, in accordance with subsection 317T(12), as the applicable costs negotiator for the notice.

*Technical capability notice that relates to ASIO*

- (17) For the purposes of this section, a technical capability notice relates to ASIO if the acts or things specified in the notice:
- (a) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
  - (b) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b).

*Technical capability notice that relates to an interception agency*

- (18) For the purposes of this section, a technical capability notice relates to an interception agency if the acts or things specified in the notice:
- (a) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to the interception agency in relation to a matter covered by paragraph 317T(2)(a); or
  - (b) are by way of giving help to the interception agency in relation to a matter covered by paragraph 317T(2)(b).

*Technical assistance notice information*

- (19) For the purposes of this Part, information about a declaration under:
- (a) paragraph (1)(c); or
  - (b) paragraph (1)(d); or
  - (c) paragraph (3)(d); or
  - (d) paragraph (3)(e); or
  - (e) paragraph (6A)(a); or
  - (f) paragraph (6A)(b);
- is taken to be information about a technical assistance notice.

*Technical capability notice information*

- (20) For the purposes of this Part, information about a declaration under paragraph (1)(e), (3)(f) or (6A)(c) is taken to be information about a technical capability notice.

**317ZKA Notification obligations**

- (1) If the Director-General of Security makes a declaration under paragraph 317ZK(1)(c), (3)(d) or (6A)(a), the Director-General of Security must, within 7 days after making the declaration, notify the Inspector-General of Intelligence and Security of the making of the declaration.
- (2) If the chief officer of an interception agency makes a declaration under paragraph 317ZK(1)(d), (3)(e) or (6A)(b), the chief officer must, within 7 days after making the declaration, notify the Commonwealth Ombudsman of the making of the declaration.
- (3) If:
- (a) the Attorney-General makes a declaration under paragraph 317ZK(1)(e), (3)(f) or (6A)(c) in relation to a technical capability notice; and
  - (b) the acts or things specified in the notice:
    - (i) are directed towards ensuring that a designated communications provider is capable of giving listed

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- help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or
- (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);
- the Attorney-General must, within 7 days after making the declaration, notify the Inspector-General of Intelligence and Security of the making of the declaration.
- (4) If:
- (a) the Attorney-General makes a declaration under paragraph 317K(1)(e), (3)(f) or (6A)(c) in relation to a technical capability notice; and
- (b) the acts or things specified in the notice:
- (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or
- (ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b);
- the Attorney-General must, within 7 days after making the declaration, notify the Commonwealth Ombudsman of the making of the declaration.
- (5) A failure to comply with subsection (1), (2), (3) or (4) does not affect the validity of a declaration under:
- (a) paragraph 317ZK(1)(c); or
- (b) paragraph 317ZK(1)(d); or
- (c) paragraph 317ZK(1)(e); or
- (d) paragraph 317ZK(3)(d); or
- (e) paragraph 317ZK(3)(e); or
- (f) paragraph 317ZK(3)(f); or
- (g) paragraph 317ZK(6A)(a); or
- (h) paragraph 317ZK(6A)(b); or
- (i) paragraph 317ZK(6A)(c).

**317ZL Service of notices etc.**

*Scope*

- (1) This section applies to:
- (a) a summons or process in any proceedings under, or connected with, this Part; or
  - (b) a summons or process in any proceedings under, or connected with, the *Regulatory Powers (Standard Provisions) Act 2014*, so far as that Act relates to this Part; or
  - (c) a technical assistance notice or any other notice under this Part; or
  - (d) a notice under the *Regulatory Powers (Standard Provisions) Act 2014*, so far as that Act relates to this Part; or
  - (e) a technical capability notice.

*Address for service of summons, process or notice*

- (2) If:
- (a) the summons, process or notice, as the case may be, is required to be served on, or given to, a designated communications provider; and
  - (b) the designated communications provider has nominated an address for service in a document given by the provider to:
    - (i) the Attorney-General; or
    - (ii) the Communications Access Co-ordinator; or
    - (iii) the Director-General of Security; or
    - (iv) the chief officer of an interception agency;
- the summons, process, or notice, as the case may be, is taken to have been served on, or given to, the provider if it is left at, or sent by pre-paid post to, the nominated address for service.
- (3) If:
- (a) the summons, process or notice, as the case may be, is required to be served on, or given to, a designated communications provider; and

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(b) the designated communications provider has nominated an electronic address for service in a document given by the provider to:

- (i) the Attorney-General; or
- (ii) the Communications Access Co-ordinator; or
- (iii) the Director-General of Security; or
- (iv) the chief officer of an interception agency;

the summons, process or notice, as the case may be, is taken to have been served on, or given to, the provider if it is sent to the nominated electronic address for service.

*Service of summons, process or notice on agent etc.*

(4) If:

- (a) the summons, process or notice, as the case may be, is required to be served on, or given to, a body corporate incorporated outside Australia; and
- (b) the body corporate does not have a registered office or a principal office in Australia; and
- (c) the body corporate has an agent in Australia;

the summons, process or notice, as the case may be, is taken to have been served on, or given to, the body corporate if it is served on, or given to, the agent.

(5) If:

- (a) the summons, process or notice, as the case may be, is required to be served on, or given to, a body corporate incorporated outside Australia; and
- (b) the body corporate does not have a registered office or a principal office in Australia; and
- (c) the body corporate carries on business, or conducts activities, at an address in Australia;

the summons, process or notice, as the case may be, is taken to have been served on, or given to, the body corporate if it is left at, or sent by pre-paid post to, that address.

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*Other matters*

- (6) Subsections (2), (3), (4) and (5) have effect in addition to:
- (a) section 28A of the *Acts Interpretation Act 1901*; and
  - (b) sections 587 and 588 of this Act.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

**317ZM Interception agency—chief officer and officer**

For the purposes of this Part, the following table defines:

- (a) **chief officer** of an interception agency; and
- (b) **officer** of an interception agency.

<b>Chief officer and officers of interception agencies</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Interception agency</b>	<b>Chief officer</b>	<b>Officer</b>
1	Australian Federal Police	the Commissioner (within the meaning of the <i>Australian Federal Police Act 1979</i> )	a member or special member of the Australian Federal Police
3	Australian Crime Commission	Chief Executive Officer of the Australian Crime Commission	(a) the Chief Executive Officer of the Australian Crime Commission; or (b) an examiner (within the meaning of the <i>Australian Crime Commission Act 2002</i> ); or (c) a member of the staff of the ACC (within the meaning of the <i>Australian Crime Commission Act 2002</i> )
3A	National	the National	a staff member of the

**Part 15** Industry assistance  
**Division 8** General provisions

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<b>Chief officer and officers of interception agencies</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Interception agency</b>	<b>Chief officer</b>	<b>Officer</b>
	Anti-Corruption Commission	Anti-Corruption Commissioner (within the meaning of the <i>National Anti-Corruption Commission Act 2022</i> )	NACC (within the meaning of the <i>National Anti-Corruption Commission Act 2022</i> )
4	Police Force of a State or the Northern Territory	the Commissioner of Police (however designated) of that State or Territory	an officer of that Police Force
5	Independent Commission Against Corruption of New South Wales	the Chief Commissioner (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i> (NSW))	an officer of the Commission (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i> (NSW)) (other than a person engaged under section 104B of that Act)
6	New South Wales Crime Commission	the Commissioner (within the meaning of the <i>Crime Commission Act 2012</i> (NSW))	an officer of the Commission (within the meaning of the <i>Crime Commission Act 2012</i> (NSW)) other than a person engaged under subsection 74(2) of that Act
7	Law Enforcement Conduct Commission of New South Wales	the Chief Commissioner (within the meaning of the <i>Law Enforcement Conduct Commission Act 2016</i> (NSW))	(a) a Commissioner (within the meaning of the <i>Law Enforcement Conduct Commission Act 2016</i> (NSW)); or



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<b>Chief officer and officers of interception agencies</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Interception agency</b>	<b>Chief officer</b>	<b>Officer</b>
			(b) a member of staff of the Commission (within the meaning of the <i>Law Enforcement Conduct Commission Act 2016</i> (NSW))
8	Independent Broad-based Anti-corruption Commission of Victoria	the Commissioner (within the meaning of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic.))	a sworn IBAC Officer (within the meaning of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic.))
9	Crime and Corruption Commission of Queensland	the chairperson (within the meaning of the <i>Crime and Corruption Act 2001</i> (Qld))	a commission officer (as defined by paragraph (a) of the definition of <b>commission officer</b> in Schedule 2 to the <i>Crime and Corruption Act 2001</i> (Qld)) other than a person engaged under section 256 of that Act
10	Independent Commission Against Corruption of South Australia	the Commissioner (within the meaning of the <i>Independent Commission Against Corruption Act 2012</i> (SA))	(a) the Commissioner (within the meaning of the <i>Independent Commission Against Corruption Act 2012</i> (SA)); or (b) the Deputy Commissioner (within the meaning

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<b>Chief officer and officers of interception agencies</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Interception agency</b>	<b>Chief officer</b>	<b>Officer</b>
			of the <i>Independent Commission Against Corruption Act 2012</i> (SA)); or (c) a member of the staff of the Independent Commission Against Corruption of South Australia
11	Corruption and Crime Commission of Western Australia	the Commissioner (within the meaning of the <i>Corruption, Crime and Misconduct Act 2003</i> (WA))	an officer of the Commission (within the meaning of the <i>Corruption, Crime and Misconduct Act 2003</i> (WA)) other than a person engaged under section 182 of that Act

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**317ZN Delegation by Director-General of Security**

- (1) The Director-General of Security may, by writing, delegate any or all of the functions or powers of the Director-General of Security under Division 2, 3 or 6 to a senior position-holder (within the meaning of the *Australian Security Intelligence Organisation Act 1979*).
- (2) A delegate must comply with any written directions of the Director-General of Security.

**317ZP Delegation by Director-General of the Australian Secret Intelligence Service**

- (1) The Director-General of the Australian Secret Intelligence Service may, by writing, delegate any or all of the functions or powers of

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the Director-General of the Australian Secret Intelligence Service under Division 2 or 6 to a person who:

- (a) is a staff member of the Australian Secret Intelligence Service; and
  - (b) holds, or is acting in, a position in the Australian Secret Intelligence Service that is equivalent to, or higher than, a position occupied by an SES employee.
- (2) A delegate must comply with any written directions of the Director-General of the Australian Secret Intelligence Service.

**317ZQ Delegation by Director-General of the Australian Signals Directorate**

- (1) The Director-General of the Australian Signals Directorate may, by writing, delegate any or all of the functions or powers of the Director-General of the Australian Signals Directorate under Division 2 or 6 to a person:
- (a) who is a staff member of the Australian Signals Directorate; and
  - (b) who:
    - (i) is an SES employee, or acting SES employee, in the Australian Signals Directorate; or
    - (ii) holds, or is acting in, a position in the Australian Signals Directorate that is equivalent to, or higher than, a position occupied by an SES employee.
- (2) A delegate must comply with any written directions of the Director-General of the Australian Signals Directorate.

**317ZR Delegation by the chief officer of an interception agency**

- (1) The chief officer of an interception agency mentioned in an item of column 1 of the following table may, by writing, delegate any or all of the functions or powers of the chief officer under Division 2, 3 or 6 to a person mentioned in column 2 of the item.

**Part 15** Industry assistance  
**Division 8** General provisions

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<b>Potential delegates</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Interception agency</b>	<b>Potential delegates</b>
1	Australian Federal Police	(a) a Deputy Commissioner (within the meaning of the <i>Australian Federal Police Act 1979</i> ); or (b) a senior executive AFP employee (within the meaning of the <i>Australian Federal Police Act 1979</i> )
3	Australian Crime Commission	a member of the staff of the ACC (within the meaning of the <i>Australian Crime Commission Act 2002</i> ) who is an SES employee or acting SES employee
3A	National Anti-Corruption Commission	a staff member of the NACC (within the meaning of the <i>National Anti-Corruption Commission Act 2022</i> ) who is a Deputy Commissioner, SES employee or acting SES employee
4	Police Force of a State or the Northern Territory	(a) an Assistant Commissioner of the Police Force or a person holding equivalent rank; or (b) a Superintendent of the Police Force or a person holding equivalent rank
5	Independent Commission Against Corruption of New South Wales	(a) a Commissioner (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i> (NSW)); or (b) an Assistant Commissioner (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i> (NSW)); or (c) an officer of the Commission (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i> (NSW)) (other than a person engaged under section 104B of that Act) who is at executive level
6	New South Wales Crime Commission	an officer of the Commission (within the meaning of the <i>Crime Commission Act 2012</i> (NSW)) (other than a person engaged under subsection 74(2) of that Act) who is at executive level
7	Law Enforcement Conduct Commission of	(a) a Commissioner (within the meaning of the <i>Law Enforcement Conduct Commission Act 2016</i> (NSW)); or (b) a member of staff of the Commission (within the

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<b>Potential delegates</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Interception agency</b>	<b>Potential delegates</b>
	New South Wales	meaning of the <i>Law Enforcement Conduct Commission Act 2016</i> (NSW)) who is at executive level
8	Independent Broad-based Anti-corruption Commission of Victoria	(a) a Deputy Commissioner of the Commission (within the meaning of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic.)); or (b) the Chief Executive Officer (within the meaning of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic.)); or (c) a sworn IBAC Officer (within the meaning of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic.)) who is at executive level
9	Crime and Corruption Commission of Queensland	a senior executive officer (within the meaning of the <i>Crime and Corruption Act 2001</i> (Qld))
10	Independent Commission Against Corruption of South Australia	(a) the Deputy Commissioner (within the meaning of the <i>Independent Commission Against Corruption Act 2012</i> (SA)); or (b) a member of the staff of the Independent Commission Against Corruption of South Australia who is at executive level
11	Corruption and Crime Commission of Western Australia	an officer of the Commission (within the meaning of the <i>Corruption, Crime and Misconduct Act 2003</i> (WA)) (other than a person engaged under section 182 of that Act) who is at executive level

(2) A delegate must comply with any written directions of the chief officer.

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*Executive level*

- (3) For the purposes of this section, a person is at ***executive level***, in relation to an interception agency of New South Wales, if the person occupies an office or position at an equivalent level to that of a Public Service senior executive (within the meaning of the *Government Sector Employment Act 2013* (NSW)).
- (4) For the purposes of this section, a person is at ***executive level***, in relation to an interception agency of Victoria, if the person occupies an office or position at an equivalent level to that of an executive (within the meaning of the *Public Administration Act 2004* (Vic.)).
- (5) For the purposes of this section, a person is at ***executive level***, in relation to an interception agency of South Australia, if the person occupies an office or position at an equivalent level to that of an executive employee (within the meaning of the *Public Sector Act 2009* (SA)).
- (6) For the purposes of this section, a person is at ***executive level***, in relation to an interception agency of Western Australia, if the person occupies an office or position at an equivalent level to that of a senior executive officer (within the meaning of the *Public Sector Management Act 1994* (WA)).

**317ZRA Relationship of this Part to parliamentary privileges and immunities**

To avoid doubt, this Part does not affect the law relating to the powers, privileges and immunities of any of the following:

- (a) each House of the Parliament;
- (b) the members of each House of the Parliament;
- (c) the committees of each House of the Parliament and joint committees of both Houses of the Parliament.

### **317ZRB Inspection of records**

- (1) An Ombudsman official may inspect the records of an interception agency to determine the extent of compliance with this Part by:
  - (a) the agency; and
  - (b) the chief officer of the agency; and
  - (c) officers of the agency.
- (2) The chief officer of an interception agency must ensure that officers of the agency give an Ombudsman official any assistance the Ombudsman official reasonably requires to enable the Ombudsman official to exercise the power conferred by subsection (1).

#### *Report*

- (3) The Commonwealth Ombudsman may make a written report to the Home Affairs Minister on the results of one or more inspections under subsection (1).
- (4) A report under subsection (3) must not include information which, if made public, could reasonably be expected to:
  - (a) prejudice an investigation or prosecution; or
  - (b) compromise any interception agency's operational activities or methodologies.
- (5) If:
  - (a) the Commonwealth Ombudsman makes a report under subsection (3); and
  - (b) the report relates to an inspection under subsection (1) of the records of an interception agency of a State or Territory;the Commonwealth Ombudsman must give a copy of the report to the chief officer of the interception agency.
- (6) If the Home Affairs Minister receives a report under subsection (3), the Home Affairs Minister must cause a copy of the report to be tabled in each House of the Parliament within 15

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sitting days of that House after the Home Affairs Minister receives the report.

- (7) Before tabling the copy of the report, the Home Affairs Minister may delete from the copy information that, if made public, could reasonably be expected to:
- (a) prejudice an investigation or prosecution; or
  - (b) compromise any interception agency's operational activities or methodologies.

**317ZS Annual reports**

- (1) The Home Affairs Minister must, as soon as practicable after each 30 June, cause to be prepared a written report that sets out:
- (a) the number of technical assistance requests that were given during the year ending on that 30 June by the chief officers of interception agencies; and
  - (b) the number of technical assistance notices that were given during the year ending on that 30 June by the chief officers of interception agencies; and
  - (c) the number of technical capability notices that were:
    - (i) given during the year ending on that 30 June; and
    - (ii) directed towards ensuring that designated communications providers are capable of giving help to interception agencies; and
  - (d) if any technical assistance requests, technical assistance notices or technical capability notices given during the year ending on that 30 June related to the enforcement of the criminal law so far as it relates to one or more kinds of serious Australian offences—those kinds of serious Australian offences.
- (2) A report under subsection (1) must be included in the report prepared under subsection 186(2) of the *Telecommunications (Interception and Access) Act 1979* relating to the year ending on that 30 June.



**317ZT Alternative constitutional basis**

- (1) Without limiting its effect apart from this section, this Part also has effect as provided by this section.
- (2) This Part also has the effect it would have if each reference in this Part to a designated communications provider were, by express provision, confined to a designated communications provider that is a constitutional corporation.

## Part 16—Defence requirements and disaster plans

### Division 1—Introduction

#### 333 Simplified outline

The following is a simplified outline of this Part:

- A carriage service provider may be required to supply a carriage service for defence purposes or for the management of natural disasters.
- A carrier or carriage service provider may be required to enter into an agreement with the Commonwealth about:
  - (a) planning for network survivability; or
  - (b) operational requirements in times of crisis.
- A carrier licence condition or a service provider rule may deal with compliance with a disaster plan.

#### 334 Defence authority

For the purposes of this Part, a *defence authority* is:

- (a) the Secretary of the Defence Department; or
- (b) the Chief of the Defence Force.

## **Division 2—Supply of carriage services**

### **335 Requirement to supply carriage services for defence purposes or for the management of natural disasters**

- (1) A defence authority may give a carriage service provider a written notice requiring the provider to supply a specified carriage service for the use of:
  - (a) the Defence Department; or
  - (b) the Defence Force.
- (2) A defence authority must not issue a notice about a carriage service unless the service is required for:
  - (a) defence purposes; or
  - (b) for the purposes of the management of natural disasters;or both.
- (3) A notice issued by a defence authority requiring a carriage service provider to supply a carriage service in particular circumstances is of no effect if there is in force a written certificate issued by the ACMA stating that, in the ACMA's opinion, it would be unreasonable for the provider to be required to supply the service in those circumstances.
- (4) If a requirement is in force, the provider must supply the carriage service in accordance with the requirement and on such terms and conditions as are:
  - (a) agreed between the provider and the defence authority; or
  - (b) failing agreement, determined by an arbitrator appointed by the parties.If the parties cannot agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (5) The regulations may make provision for and in relation to the conduct of an arbitration under this section.

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- (6) 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.
- (7) Subsection (6) does not, by implication, limit subsection (5).

## **Division 3—Defence planning**

### **336 Definitions**

In this Division:

***certified agreement*** has the meaning given by section 338.

***crisis*** means:

- (a) war, war-like conflict or war-like operations; or
- (b) civil disturbance; or
- (c) terrorism; or
- (d) earthquakes, floods, fire, cyclones, storms or other disasters (whether natural or resulting from the acts or omissions of humans).

***draft agreement*** means a draft agreement prepared under section 337.

***network survivability*** means the ability of a telecommunications network, or of a facility, to continue to function in times of crisis.

### **337 Preparation of draft agreement**

- (1) A defence authority may prepare a draft agreement to be entered into by the defence authority (on behalf of the Commonwealth) and:
  - (a) a carrier; or
  - (b) a carriage service provider.
- (2) The agreement must be about:
  - (a) planning for network survivability; or
  - (b) operational requirements in times of crisis;or both.
- (3) In preparing the draft agreement, the defence authority must consult the carrier or provider concerned.

### 338 ACMA's certification of draft agreement

- (1) The ACMA may certify a draft agreement if the ACMA is of the opinion that the draft agreement is reasonable.
- (2) On being certified, the draft agreement becomes a *certified agreement*.
- (3) In deciding whether to certify a draft agreement, the ACMA must have regard to whether the draft agreement deals with the following matters in a reasonable way:
  - (a) consultation with a defence authority about maintenance, installation, modification and removal of telecommunications networks or facilities;
  - (b) consultation with a defence authority about operational arrangements in times of crisis;
  - (c) the protection of confidential information, including restrictions on the uses to which such information may be put;
  - (d) grants of financial assistance (including conditional grants) by the Commonwealth for purposes relating to:
    - (i) network survivability; or
    - (ii) operational requirements in times of crisis;or both.
- (4) For the purposes of this section, in determining whether a particular matter is reasonable, the ACMA must have regard to:
  - (a) the needs of the Defence Department and of the Defence Force; and
  - (b) the interests of the carrier or carriage service provider concerned.

This subsection does not, by implication, limit the meaning of the expression "reasonable".
- (5) In deciding whether to certify a draft agreement, the ACMA must consult the parties to the agreement.

- (6) As soon as practicable after deciding whether to certify a draft agreement, the ACMA must give each of the parties to the agreement a written notice setting out its decision.

### **339 Requirement to enter into certified agreement**

- (1) This section applies if the ACMA has certified a draft agreement relating to a carrier or carriage service provider.
- (2) A defence authority may give:
- (a) the carrier; or
  - (b) the carriage service provider;
- as the case requires, a written notice requiring the carrier or provider to enter into the agreement within 30 days after receiving the notice.
- (3) The carrier or provider must comply with the notice.

### **340 Compliance with agreement**

If:

- (a) a carrier; or
- (b) a carriage service provider;

has entered into a certified agreement, the carrier or provider, as the case requires, must comply with the agreement, so long as the agreement remains in force.

### **341 Withdrawal of certification of agreement**

- (1) This section applies if:
- (a) a certified agreement is in force at a particular time; and
  - (b) the ACMA is of the opinion that, if the agreement were a draft agreement at that time, the ACMA would have refused to certify it.
- (2) The ACMA must withdraw its certification of the agreement.

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- (3) As soon as practicable after withdrawing its certification of the agreement, the ACMA must give each of the parties to the agreement a written notice stating that it has withdrawn its certification of the agreement.

**342 Duration of agreement**

- (1) If a certified agreement has been entered into, it remains in force until it is revoked under this section.
- (2) A certified agreement is revoked if the parties enter into a fresh certified agreement that is expressed to replace the original agreement.
- (3) If the ACMA withdraws its certification of a certified agreement, the agreement is revoked 60 days after the withdrawal.

**343 Variation of agreement**

- (1) This section applies if a certified agreement is in force.
  - (2) A defence authority may prepare a draft variation of the agreement.
  - (3) In preparing the draft variation, the defence authority must consult the carrier or carriage service provider concerned.
  - (4) If:
    - (a) a defence authority has prepared a draft variation of a certified agreement; and
    - (b) the ACMA is of the opinion that, if the agreement, as proposed to be varied, were a draft agreement, the ACMA would certify the agreement;the ACMA must certify the variation.
  - (5) Before forming an opinion referred to in paragraph (4)(b) about an agreement, the ACMA must consult the parties to the agreement.
  - (6) After deciding whether to certify a draft variation of a certified agreement, the ACMA must give each of the parties to the agreement a written notice setting out its decision.
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- (7) If the ACMA certifies a draft variation of a certified agreement, the agreement is varied accordingly.

## Division 4—Disaster plans

### 344 Designated disaster plans

For the purposes of this Division, a *designated disaster plan* is a plan that:

- (a) is for coping with disasters and/or civil emergencies; and
- (b) is prepared by the Commonwealth, a State or a Territory.

### 345 Carrier licence conditions about designated disaster plans

- (1) An instrument under section 63 imposing conditions on a carrier licence held by a carrier may make provision for and in relation to compliance by the carrier with one or more specified designated disaster plans.
- (2) Subsection (1) does not, by implication, limit section 63.

### 346 Service provider determinations about designated disaster plans

- (1) Service provider determinations under section 99 may make provision for and in relation to compliance by one or more specified carriage service providers with one or more specified designated disaster plans.
- (2) Subsection (1) does not, by implication, limit section 99.

### 346A Carrier and carriage service provider immunity

- (1) A carrier or carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with a designated disaster plan covered by subsection 345(1) or 346(1), as the case may be.
- (2) An officer, employee or agent of a carrier or of a carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in

connection with an act done or omitted by the carrier or provider as mentioned in subsection (1).

## Division 5—Delegation

### 347 Delegation

- (1) The Secretary of the Defence Department may, by writing, delegate to an SES employee or acting SES employee in that Department any or all of the Secretary's powers under this Part.
- (2) The Chief of the Defence Force may, by writing, delegate to a member of the Defence Force holding a senior rank any or all of the powers conferred on the Chief of the Defence Force by this Part.
- (3) In this section:  
*senior rank* means a rank not lower than:
  - (a) in the case of the Royal Australian Navy—the rank of Commodore; or
  - (b) in the case of the Australian Army—the rank of Brigadier; or
  - (c) in the case of the Royal Australian Air Force—the rank of Air Commodore.

## **Part 17—Pre-selection in favour of carriage service providers**

### **348 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA may require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a standard telephone service.
- The ACMA must require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a declared carriage service.
- Pre-selection must include over-ride dial codes for selecting alternative carriage service providers on a call-by-call basis.

### **349 Requirement to provide pre-selection**

- (1) The ACMA may make a written determination requiring each carrier or carriage service provider who supplies an eligible standard telephone service to:
  - (a) provide pre-selection in favour of a specified carriage service provider, in relation to calls made using an eligible standard telephone service, in the manner specified in the determination; and
  - (b) comply with such ancillary or incidental rules (if any) as are set out in the determination.
- (2) The ACMA must make a written determination requiring each carrier or carriage service provider who supplies a specified declared carriage service to:

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- (a) provide pre-selection in favour of a specified carriage service provider, in relation to calls made using the carriage service, in the manner specified in the determination; and
- (b) comply with such ancillary or incidental rules (if any) as are set out in the determination.

Note: *Declared carriage service* is defined by section 350A.

- (3) In making a determination under subsection (1) or (2), the ACMA must have regard to:
  - (a) the technical feasibility of complying with the requirement concerned; and
  - (b) the costs and benefits of complying with the requirement concerned.
- (4) Subsection (3) does not, by implication, limit the matters to which regard may be had.
- (5) A reference in this section to a *standard telephone service* does not include a reference to a service that is supplied by means of a public mobile telecommunications service.
- (5A) A reference in this section to a *standard telephone service* does not include a reference to a service that:
  - (a) is supplied using:
    - (i) a designated radiocommunications facility owned or operated by a carrier or carriage service provider; and
    - (ii) a line that runs directly between the facility and the premises occupied or used by an end-user; and
  - (b) if an instrument is in force under subsection (5B)—satisfies the conditions set out in the instrument.
- (5B) The Minister may, by legislative instrument, set out conditions for the purposes of paragraph (5A)(b).
- (6) Before making a determination under this section, the ACMA must consult the ACCC.
- (7) In making a determination under this section, the ACMA 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.

- (8) A determination under this section is a legislative instrument.
- (9) The ACMA must take all reasonable steps to ensure that a determination is in force under subsection (1) at all times before the start of the designated day (within the meaning of section 577A).

*Eligible standard telephone service*

- (10) For the purposes of this section, ***eligible standard telephone service*** means a standard telephone service that is supplied using a local access line (other than an exempt line) to premises occupied or used by an end-user, where:
  - (a) the local access line forms part of the infrastructure of:
    - (i) a public switched telephone network (other than a designated network) that was in existence immediately before the commencement of this subsection (even if it is subsequently extended); or
    - (ii) an integrated services digital network (other than a designated network) that was in existence immediately before the commencement of this subsection (even if it is subsequently extended); or
    - (iii) a telecommunications network specified in an instrument in force under subsection (11); or
  - (b) the following conditions are satisfied:
    - (i) the service is a public switched telephone service supplied by a carriage service provider;
    - (ii) the local access line is part of the infrastructure of a designated network (other than a hybrid fibre-coaxial network);

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- (iii) the carriage service provider is in a position to exercise control over the designated network;
    - (iv) such other conditions (if any) as are set out in an instrument in force under subsection (11A); or
  - (c) the following conditions are satisfied:
    - (i) the service is an integrated services digital service supplied by a carriage service provider;
    - (ii) the local access line is part of the infrastructure of a designated network (other than a hybrid fibre-coaxial network);
    - (iii) the carriage service provider is in a position to exercise control over the designated network;
    - (iv) such other conditions (if any) as are set out in an instrument in force under subsection (11B); or
  - (d) the following conditions are satisfied:
    - (i) the service is a PSTN pass-through service supplied in conjunction with a telecommunications network covered by paragraph (b) of the definition of ***optical fibre network*** in subsection (16);
    - (ii) such other conditions (if any) as are set out in an instrument in force under subsection (11C).
- (11) The Minister may, by legislative instrument, specify a telecommunications network for the purposes of subparagraph (10)(a)(iii).
- (11A) The Minister may, by legislative instrument, set out one or more conditions for the purposes of subparagraph (10)(b)(iv).
- (11B) The Minister may, by legislative instrument, set out one or more conditions for the purposes of subparagraph (10)(c)(iv).
- (11C) The Minister may, by legislative instrument, set out one or more conditions for the purposes of subparagraph (10)(d)(ii).



*Exempt line*

- (12) For the purposes of this section, **exempt line** means a line specified in an instrument in force under subsection (13).
- (13) The Minister may, by legislative instrument, specify a line for the purposes of subsection (12).

*Designated network*

- (14) For the purposes of this section, **designated network** means:
- (a) an optical fibre network; or
  - (b) a hybrid fibre-coaxial network; or
  - (c) a telecommunications network specified in an instrument in force under subsection (15).
- (15) The Minister may, by legislative instrument, specify a telecommunications network for the purposes of paragraph (14)(c).
- (15A) For the purposes of this section:
- (a) the question of whether a carriage service provider is in a position to exercise control over a designated network is to be determined under Division 7 of Part 33; and
  - (b) in determining that question for a carriage service provider other than Telstra, that Division applies in relation to the carriage service provider in a corresponding way to the way in which that Division applies in relation to Telstra.

*Review of determination*

- (15B) The ACMA must:
- (a) conduct a review of whether a determination in force under subsection (1) of this section should be varied or revoked; and
  - (b) do so at least 2 months before the start of the designated day (within the meaning of section 577A).

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*Definitions*

(16) In this section:

***integrated services digital network*** has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

***integrated services digital service*** has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

***local access line*** has the meaning given by section 349A.

***non-optical-fibre cable*** means a line other than an optical fibre line.

***optical fibre network*** means:

- (a) a telecommunications network the line component of which consists of optical fibre lines; or
- (b) a telecommunications network the line component of which consists of optical fibre lines to connecting nodes, supplemented by either or both of the following:
  - (i) non-optical-fibre cable connections from the nodes to premises occupied or used by end-users;
  - (ii) non-optical-fibre cable connections from the nodes to main distribution frames, and non-optical-fibre cable connections from main distribution frames to premises occupied or used by end-users.

***PSTN pass-through service*** has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

***public switched telephone network*** has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

*public switched telephone service* has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

### **349A Local access line**

- (1) For the purposes of this Part, a *local access line* is a line that is part of the infrastructure of a local access network.
- (2) However, a line does not form part of a *local access line* to the extent that the line is on the customer side of the boundary of a telecommunications network.
- (3) For the purposes of this section, the *boundary of a telecommunications network* is to be determined in the same manner in which it is determined under section 22 for the purposes of sections 20, 21 and 30.
- (4) For the purposes of this section, *local access network* has the meaning generally accepted within the telecommunications industry.

### **350 When pre-selection is provided in favour of a carriage service provider**

- (1) For the purposes of this Part, a determination requires a carrier to provide pre-selection in favour of a carriage service provider in relation to calls made using a particular carriage service if, and only if, the determination requires:
  - (a) the controlled networks and controlled facilities of the carrier to permit an end-user to:
    - (i) pre-select the carriage service provider as the end-user's preferred carriage service provider for such of the end-user's requirements, in relation to calls made using that carriage service, as are specified in the determination; and
    - (ii) change that selection from time to time; and

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- (c) the controlled networks and controlled facilities of the carrier to provide over-ride dial codes for selecting alternative carriage service providers, in relation to calls made using that carriage service, on a call-by-call basis.

Note: **End-user** is defined by subsection (3).

- (2) For the purposes of this Part, a determination requires a carriage service provider (the **first provider**) to provide pre-selection in favour of another carriage service provider (the **second provider**) in relation to calls made using a particular carriage service if, and only if, the determination requires:
  - (a) the controlled networks and controlled facilities of the first provider to permit an end-user to:
    - (i) pre-select the second provider as the end-user's preferred carriage service provider for such of the end-user's requirements, in relation to calls made using that carriage service, as are specified in the determination; and
    - (ii) change that selection from time to time; and
  - (c) the controlled networks and controlled facilities of the first provider to provide over-ride dial codes for selecting alternative carriage service providers, in relation to calls made using that carriage service, on a call-by-call basis.

Note: **End-user** is defined by subsection (3).

- (3) For the purposes of this section, an **end-user**, in relation to a controlled network or a controlled facility, is an end-user of a carriage service that involves the use of the network or facility.
- (4) Each of the following is an example of an end-user's requirements:
  - (a) the end-user's requirements relating to domestic long-distance calls;
  - (b) the end-user's requirements relating to international calls.

**350A Declared carriage services**

- (1) The ACCC may, by written instrument, declare that a specified carriage service is a *declared carriage service* for the purposes of this Part.
- (2) The declaration has effect accordingly.
- (3) In deciding whether to make a declaration under this section, the ACCC must have regard to whether the declaration will promote the long-term interests of end-users of:
  - (a) carriage services; or
  - (b) services supplied by means of carriage services.
- (4) The ACCC may have regard to any other matters that it thinks are relevant.
- (5) For the purposes of this section, the question whether a particular thing promotes the long-term interests of end-users of:
  - (a) carriage services; or
  - (b) services supplied by means of carriage services;is to be determined in the same manner in which that question is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.

Note: See section 152AB of the *Competition and Consumer Act 2010*.

**351 Pre-selection to be provided**

- (1) This section applies to a person if a determination under section 349 is in force and that determination requires the person to provide pre-selection.
- (2) A person must provide pre-selection 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;

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- (ii) the carriage service provider in whose favour pre-selection 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).
- (6) A person must comply with any rules set out in the determination as mentioned in paragraph 349(1)(b) or (2)(b).

**352 Exemptions from requirement to provide pre-selection**

- (1) The ACMA may, by writing, declare that a specified carrier or carriage service provider is exempt from a requirement imposed under section 349. 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 carriage service provider should be exempt from a requirement imposed under section 349, the ACMA must have regard to the following matters:
  - (a) whether it would be technically feasible for the carrier or provider to comply with the requirement concerned;
  - (b) whether compliance with the requirement concerned would impose unreasonable financial hardship on the carrier or provider.

- (3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.
- (4) Before making a declaration under this section, the ACMA must consult the ACCC.
- (5) The ACMA must publish a copy of a declaration under this section on the ACMA's website.
- (6) A declaration under this section is not a legislative instrument if:
  - (a) the declaration specifies a carrier by name; or
  - (b) the declaration specifies a carriage service provider by name.
- (7) A declaration under this section is a legislative instrument if:
  - (a) the declaration specifies a class of carriers; or
  - (b) the declaration specifies a class of carriage service providers.

### **353 Use of over-ride dial codes**

- (1) This section applies to a carriage service provider (the *first provider*) if:
  - (a) the first provider supplies a carriage service that involves the use of a controlled network, or a controlled facility, of a carrier, of the first provider or of another carriage service provider; and
  - (b) in accordance with a determination under section 349, the network or facility, as the case may be, provides over-ride dial codes for selecting alternative carriage service providers on a call-by-call basis.
- (2) Unless, in the ACMA's opinion:
  - (a) it would not be technically feasible; or
  - (b) it would impose unreasonable financial hardship on the first provider;the first provider must take such steps as are necessary to ensure that each end-user of the carriage service is able to make use of those codes for selecting alternative carriage service providers on a call-by-call basis.

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- (3) The requirement in subsection (2) does not, by implication, prevent an alternative carriage service provider from refusing to supply a carriage service to the end-user concerned.



## **Part 18—Calling line identification**

### **354 Simplified outline**

The following is a simplified outline of this Part:

- Certain switching systems must be capable of providing calling line identification.

### **355 Calling line identification**

- (1) This section applies to a person if:
  - (a) the person is a carrier or a carriage service provider; and
  - (b) a controlled facility of the person consists of:
    - (i) a switching system used in connection with the supply of a standard telephone service; or
    - (ii) a switching system of a kind specified in a determination under subsection (3); and
  - (c) either:
    - (i) the completion of the installation of the system occurred on or after 1 July 1997; or
    - (ii) immediately before 1 July 1997, the system was capable of providing calling line identification.
- (2) The person must take all reasonable steps to ensure that the system is capable of providing calling line identification.
- (3) The ACMA may, by legislative instrument, make a determination for the purposes of subparagraph (1)(b)(ii).

### **356 Exemptions from calling line identification requirement**

- (1) The ACMA may, by notice in the *Gazette*, declare that a specified person is exempt from the requirement set out in section 355. The declaration has effect accordingly.

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Note: A person may be identified by name, by inclusion in a particular class or in any other way.

- (2) In deciding whether a person should be exempt from the requirement set out in section 355, the ACMA must have regard to the following matters:
  - (a) whether it would be unreasonable to impose the requirement;
  - (b) whether it is in the public interest to impose the requirement.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.

## **Part 19—Statutory infrastructure providers**

### **Division 1—Introduction**

#### **360 Simplified outline of this Part**

- The statutory infrastructure provider for a service area must, on reasonable request by a carriage service provider on behalf of an end-user at premises in the service area, connect the premises to a qualifying telecommunications network in order that the carriage service provider can provide qualifying carriage services to the end-user at the premises.
- A statutory infrastructure provider must comply with standards, benchmarks and rules determined by the Minister.
- A statutory infrastructure provider must publish the terms and conditions on which it offers to:
  - (a) connect premises; or
  - (b) supply related eligible services to carriage service providers.

#### **360A Definitions**

In this Part:

***access agreement*** has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

***building redevelopment project*** has the meaning given by section 360Y.

***designated day*** means the day on which a declaration is made under paragraph 48(1)(c) or (2)(a) of the *National Broadband Network Companies Act 2011*.

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Note: The declaration will state that, in the Minister's opinion, the national broadband network should be treated as built and fully operational.

**designated service area** has the meaning given by section 360L.

**eligible service** has the same meaning as in section 152AL of the *Competition and Consumer Act 2010*.

**GDA94** means Geocentric Datum of Australia 1994.

**general service area** has the meaning given by section 360F.

**interim NBN service area** has the meaning given by section 360D.

**NBN Co** has the same meaning as in the *National Broadband Network Companies Act 2011*.

**nominated service area** has the meaning given by section 360H or 360J.

**project area**, for a building redevelopment project, has the meaning given by section 360Y.

**provisional interim NBN service area** has the meaning given by section 360D.

**provisional nominated service area** has the meaning given by section 360H.

**qualifying carriage service** means:

- (a) a qualifying fixed-line carriage service; or
- (b) a qualifying fixed wireless carriage service; or
- (c) a qualifying satellite carriage service.

**qualifying fixed-line carriage service** means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the carriage service is supplied using a line to premises occupied or used by an end-user; and

- (c) the peak download transmission speed of the carriage service is at least 25 megabits per second; and
- (d) the peak upload transmission speed of the carriage service is at least 5 megabits per second.

***qualifying fixed-line telecommunications network*** means a telecommunications network that is used to supply a qualifying fixed-line carriage service to customers in Australia.

***qualifying fixed wireless carriage service*** has the meaning given by section 360AA.

***qualifying satellite carriage service*** means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the carriage service is supplied using a satellite; and
- (c) the peak download transmission speed of the carriage service is at least 25 megabits per second; and
- (d) the peak upload transmission speed of the carriage service is at least 5 megabits per second;

but does not include a public mobile telecommunications service.

***qualifying telecommunications network*** means a telecommunications network that is used, or proposed to be used, to supply a qualifying carriage service to customers, or prospective customers, in Australia.

***relevant service area***, in relation to a statutory infrastructure provider, means a service area for which the provider is the statutory infrastructure provider.

***request*** includes a notional request by a corporation (in its capacity as a carriage service provider) to itself (in its capacity as a carrier).

***service area*** has the meaning given by section 360C.

***statutory infrastructure provider***:

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- (a) for an interim NBN service area—has the meaning given by section 360E; or
- (b) for the general service area—has the meaning given by section 360G; or
- (c) for a nominated service area—has the meaning given by section 360K; or
- (d) for a designated service area—has the meaning given by section 360L.

**TAB vector format** means the MapInfo proprietary format that contains a spatial representation of data using points, lines, and polygons.

**360AA Qualifying fixed wireless carriage service**

- (1) For the purposes of this Part, **qualifying fixed wireless carriage service** means a carriage service, where:
  - (a) the carriage service is supplied using a fixed wireless technology platform; and
  - (b) the carriage service is marketed to customers, or potential customers, as a fixed wireless service; and
  - (c) the carriage service enables end-users to download communications; and
  - (d) the peak download transmission speed of the carriage service is at least 25 megabits per second; and
  - (e) the peak upload transmission speed of the carriage service is at least 5 megabits per second; and
  - (f) the carriage service is not a public mobile telecommunications service; and
  - (g) the carriage service is a listed carriage service; and
  - (h) the conditions (if any) determined under subsection (2) are satisfied.
- (2) The Minister may, by legislative instrument, determine one or more conditions for the purposes of paragraph (1)(h).

- (3) For the purposes of this section, ***fixed wireless technology platform*** has the meaning generally accepted within the telecommunications industry.

## **Division 2—Service areas and statutory infrastructure providers**

### **Subdivision AA—Introduction**

#### **360B Simplified outline of this Division**

- There are 4 types of service area, as follows:
  - (a) an interim NBN service area;
  - (b) the general service area;
  - (c) a nominated service area;
  - (d) a designated service area.
- Interim NBN service areas exist only before the designated day.
- The general service area exists only after the start of the designated day.
- An NBN corporation will be the statutory infrastructure provider for an interim NBN service area.
- NBN Co will be the statutory infrastructure provider for the general service area.
- A nominated service area is an area that is attributable to:
  - (a) a declaration made by a carrier; or
  - (b) certain carrier licence conditions declarations made by the Minister.
- The statutory infrastructure provider for a nominated service area that is attributable to a declaration made by a carrier will be:
  - (a) the carrier; or
  - (b) another carrier declared by the Minister.



- The statutory infrastructure provider for a nominated service area that is attributable to a carrier licence conditions declaration will be:
  - (a) the carrier to whom the carrier licence conditions declaration applies; or
  - (b) another carrier declared by the Minister.
- A designated service area is an area declared by the Minister.
- The statutory infrastructure provider for a designated service area will be a carrier declared by the Minister.
- Nominated service areas and designated service areas are excluded from interim NBN service areas and the general service area.
- Designated service areas are excluded from nominated service areas.

### **360C Definition of *service area***

For the purposes of this Part, *service area* means:

- (a) before the designated day:
  - (i) an interim NBN service area; or
  - (ii) a nominated service area; or
  - (iii) a designated service area; or
- (b) after the start of the designated day:
  - (i) the general service area; or
  - (ii) a nominated service area; or
  - (iii) a designated service area.

## Subdivision A—Rules applicable before the designated day

### 360D Interim NBN service area

- (1) For the purposes of the application of this Part before the designated day, an *interim NBN service area* is so much of a provisional interim NBN service area as is not:
- (a) the whole or a part of a nominated service area; or
  - (b) the whole or a part of a designated service area.

#### *Provisional interim NBN service area*

- (2) If, during the period:
- (a) beginning at the commencement of this section; and
  - (b) ending immediately before the designated day;
- there begins to be published on NBN Co's website a statement to the effect that a particular area in Australia is ready for service, NBN Co must:
- (c) by written instrument, declare that the area is a *provisional interim NBN service area* for the purposes of the application of this Part before the designated day; and
  - (d) do so within 10 business days after the end of the month in which the statement began to be published.

Note: For the format of the description of the area, see section 360LA.

- (3) If, before the commencement of this section, there was published on NBN Co's website a statement to the effect that a particular area in Australia is ready for service, NBN Co must:
- (a) by written instrument, declare that the area is a *provisional interim NBN service area* for the purposes of the application of this Part before the designated day; and
  - (b) do so within 10 business days after the commencement of this section.

Note: For the format of the description of the area, see section 360LA.

*Publication etc.*

- (4) NBN Co must publish a copy of a declaration made by it under subsection (2) or (3) on its website.
- (5) NBN Co must give a copy of a declaration made by it under subsection (2) or (3) to the ACMA.

*Revocation*

- (6) A declaration made under subsection (2) or (3) cannot be revoked.

*Variation*

- (7) A declaration made under subsection (2) or (3) cannot be varied except under subsection (8) or (9).
- (8) A declaration made under subsection (2) or (3) cannot be varied by NBN Co except to correct a clerical error or obvious mistake.
- (9) The Minister may, by writing, vary a declaration made under subsection (2) or (3).
- (10) The Minister must give a copy of a variation under subsection (9) to the ACMA.
- (11) Before making a decision under subsection (9) to vary a declaration, the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft variation within the time limit specified in the notice; and
  - (b) consider any submissions received within the time limit specified in the notice.
- (12) The time limit must not be shorter than 10 business days after the notice is published.

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*Rules*

- (13) In making a declaration under subsection (2) or (3), NBN Co must comply with any rules under subsection (14).
- (14) The Minister may, by legislative instrument, make rules for the purposes of subsection (13).

*Declaration and variation are not legislative instruments*

- (15) A declaration made under subsection (2) or (3) is not a legislative instrument.
- (16) A variation under subsection (8) or (9) is not a legislative instrument.

**360E Statutory infrastructure provider for an interim NBN service area**

For the purposes of the application of this Part before the designated day, if:

- (a) an area is a provisional interim NBN service area because of a section 360D declaration made by NBN Co; and
- (b) the whole or a part of the provisional interim NBN service area is an interim NBN service area;

NBN Co is the *statutory infrastructure provider* for the interim NBN service area.

**Subdivision B—Rules applicable after the start of the designated day**

**360F General service area**

For the purposes of the application of this Part after the start of the designated day, the *general service area* means Australia, other than:

- (a) a nominated service area; or
- (b) a designated service area.

### **360G Statutory infrastructure provider for the general service area**

For the purposes of the application of this Part after the start of the designated day, NBN Co is the *statutory infrastructure provider* for the general service area.

### **Subdivision C—Rules applicable before, at and after the start of the designated day**

#### **360H Nominated service area—declaration made by a carrier**

- (1) For the purposes of this Part, if a provisional nominated service area is attributable to a declaration under this section, so much of the provisional nominated service area as is not:
- (a) the whole or a part of a provisional nominated service area that is attributable to a subsequent declaration under this section; or
  - (b) the whole or a part of a designated service area;
- is a *nominated service area*.

*Provisional nominated service area—real estate development project*

- (2) If:
- (a) after the commencement of this section, a carrier (other than an NBN corporation) installs telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a real estate development project; and
  - (b) the installation was carried out under a contract; and
  - (c) the conditions specified in an instrument under subsection (3) are satisfied;
- the carrier must:
- (d) by written instrument, declare that the whole of the project area is a *provisional nominated service area* for the purposes of this Part; and

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- (e) do so within 10 business days after completing the installation of that infrastructure.

Note: For the format of the description of the area, see section 360LA.

- (3) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(c).
- (3A) The Minister may, by legislative instrument, exempt a specified real estate development project from subsection (2).
- (3B) Subsection (2) does not apply if the supply of the eligible services mentioned in paragraph (2)(a) is, or will be, in the circumstances specified in a determination under subsection 360Q(4).

*Provisional nominated service area—building redevelopment project*

- (4) If:
  - (a) after the commencement of this section, a carrier (other than an NBN corporation) installs telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a building redevelopment project; and
  - (b) the installation was carried out under a contract; and
  - (c) the conditions specified in an instrument under subsection (5) are satisfied;the carrier must:
  - (d) by written instrument, declare that the whole of the project area is a **provisional nominated service area** for the purposes of this Part; and
  - (e) do so within 10 business days after completing the installation of that infrastructure.

Note: For the format of the description of the area, see section 360LA.

- (5) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (4)(c).

- (5A) The Minister may, by legislative instrument, exempt a specified building redevelopment project from subsection (4).
- (5B) Subsection (4) does not apply if the supply of the eligible services mentioned in paragraph (4)(a) is, or will be, in the circumstances specified in a determination under subsection 360Q(4).

*Infrastructure installed under a contract*

- (6) If:
- (a) a carrier (other than an NBN corporation) has installed telecommunications network infrastructure that will enable the supply of eligible services to all of the premises in a particular area; and
  - (b) the area does not consist of, and is not included in:
    - (i) the project area of a real estate development project; or
    - (ii) the project area of a building redevelopment project; and
  - (c) the installation was carried out under a contract; and
  - (d) under the contract, the carrier is or was required, on reasonable request by a carriage service provider on behalf of an end-user at premises in the area, to connect the premises to a qualifying telecommunications network in order that the carriage service provider can provide eligible services to the end-user at the premises; and
  - (e) the conditions specified in an instrument under subsection (7) are satisfied;

the carrier may, by written instrument, declare that the area is a ***provisional nominated service area*** for the purposes of this Part.

Note: For the format of the description of the area, see section 360LA.

- (7) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (6)(e).

*Publication etc.*

- (8) A carrier must publish on its website a copy of a declaration made by it under this section.

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- (9) A carrier must give a copy of a declaration made by it under this section to the ACMA.

*Principles*

- (10) In making a declaration under this section, a carrier must comply with any principles determined under subsection (11).
- (11) The Minister may, by legislative instrument, determine principles for the purposes of subsection (10).

*Revocation*

- (12) A declaration made under this section cannot be revoked.

*Variation*

- (13) A declaration made under this section cannot be varied except under subsection (14).
- (14) The Minister may, by writing, vary a declaration made under this section.
- (15) The Minister must give a copy of a variation under subsection (14) to the ACMA.
- (16) Before making a decision under subsection (14) to vary a declaration, the Minister must:
- (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft variation within the time limit specified in the notice; and
  - (b) consider any submissions received within the time limit specified in the notice.
- (17) The time limit must not be shorter than 10 business days after the notice is published.



*Declaration and variation are not legislative instruments*

- (18) A declaration made under this section is not a legislative instrument.
- (19) A variation under subsection (14) is not a legislative instrument.

*Area may consist of the whole or a part of a building*

- (20) An area specified in a declaration under subsection (6) may consist of the whole or a part of a building specified in the declaration.

**360HA Nominated service area—anticipatory notice to be given to the ACMA by a carrier**

*Nominated service area—real estate development project*

- (1) If:
  - (a) after the commencement of this section, a carrier (other than an NBN corporation) enters into a contract for the installation of telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a real estate development project; and
  - (b) when the installation is completed, the carrier will be required, by subsection 360H(2), to declare that the whole of the project area is a provisional nominated service area for the purposes of this Part;the carrier must:
  - (c) give the ACMA a written notice that:
    - (i) states that the carrier has entered into the contract; and
    - (ii) specifies the project area; and
    - (iii) describes the telecommunications network infrastructure that is to be installed under the contract; and
    - (iv) sets out the carrier's estimate of the likely completion date for the installation; and
  - (d) do so within 10 business days after entering into the contract.

Note: For the format of the description of the area, see section 360LA.

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- (2) If:
- (a) before the commencement of this section, a carrier (other than an NBN corporation) entered into a contract for the installation of telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a real estate development project; and
  - (b) the installation was not completed before the commencement of this section; and
  - (c) when the installation is completed, the carrier will be required, by subsection 360H(2), to declare that the whole of the project area is a provisional nominated service area for the purposes of this Part;

the carrier must:

- (d) give the ACMA a written notice that:
  - (i) states that the carrier has entered into the contract; and
  - (ii) specifies the project area; and
  - (iii) describes the telecommunications network infrastructure that is to be installed under the contract; and
  - (iv) sets out the carrier's estimate of the likely completion date for the installation; and
- (e) do so:
  - (i) within 90 days after the commencement of this section; or
  - (ii) if the ACMA allows a longer period—within that longer period.

Note: For the format of the description of the area, see section 360LA.

*Nominated service area—building redevelopment project*

- (3) If:
- (a) after the commencement of this section, a carrier (other than an NBN corporation) enters into a contract for the installation of telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a building redevelopment project; and

- (b) when the installation is completed, the carrier will be required, by subsection 360H(4), to declare that the whole of the project area is a provisional nominated service area for the purposes of this Part;

the carrier must:

- (c) give the ACMA a written notice that:
- (i) states that the carrier has entered into the contract; and
  - (ii) specifies the project area; and
  - (iii) describes the telecommunications network infrastructure that is to be installed under the contract; and
  - (iv) sets out the carrier's estimate of the likely completion date for the installation; and
- (d) do so within 10 business days after entering into the contract.

Note: For the format of the description of the area, see section 360LA.

(4) If:

- (a) before the commencement of this section, a carrier (other than an NBN corporation) entered into a contract for the installation of telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a building redevelopment project; and
- (b) the installation was not completed before the commencement of this section; and
- (c) when the installation is completed, the carrier will be required, by subsection 360H(4), to declare that the whole of the project area is a provisional nominated service area for the purposes of this Part;

the carrier must:

- (d) give the ACMA a written notice that:
- (i) states that the carrier has entered into the contract; and
  - (ii) specifies the project area; and
  - (iii) describes the telecommunications network infrastructure that is to be installed under the contract; and

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- (iv) sets out the carrier's estimate of the likely completion date for the installation; and
- (e) do so:
  - (i) within 90 days after the commencement of this section; or
  - (ii) if the ACMA allows a longer period—within that longer period.

Note: For the format of the description of the area, see section 360LA.

**360J Nominated service area—carrier licence conditions declarations**

For the purposes of this Part, if, immediately before the commencement of this section, a carrier licence held by a carrier was subject to a condition under any of the following declarations in relation to a development area (within the meaning of the declaration):

- (a) the *Carrier Licence Conditions (OptiComm Co Pty Ltd) Declaration 2013*;
- (b) the *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013*;
- (c) the *Carrier Licence Conditions (NT Technology Services Pty Ltd) Declaration 2014*;

the development area is a **nominated service area** for the purposes of this Part.

**360K Statutory infrastructure provider for a nominated service area**

*Nominated service area covered by a declaration under section 360H*

- (1) For the purposes of this Part, if:
  - (a) an area is a provisional nominated service area because of a declaration made by a carrier under section 360H; and
  - (b) the whole or a part of the provisional nominated service area is a nominated service area;

the carrier is the **statutory infrastructure provider** for the nominated service area.

- (2) The Minister may, by legislative instrument, declare that:
- (a) subsection (1) does not apply to a specified nominated service area; and
  - (b) a specified carrier is the **statutory infrastructure provider** for the nominated service area for the purposes of this Part.

*Nominated service area resulting from the application of section 360J*

- (3) For the purposes of this Part, if:
- (a) immediately before the commencement of this section, a carrier licence held by a carrier was subject to a condition under a declaration mentioned in section 360J; and
  - (b) as a result of the application of section 360J to the declaration, an area is a nominated service area;
- the carrier is the **statutory infrastructure provider** for the nominated service area.
- (4) The Minister may, by legislative instrument, declare that:
- (a) subsection (3) does not apply to a specified nominated service area; and
  - (b) a specified carrier is the **statutory infrastructure provider** for the nominated service area for the purposes of this Part.

### **360L Designated service area and statutory infrastructure provider**

The Minister may, by legislative instrument, declare that:

- (a) a specified area is a **designated service area** for the purposes of this Part; and
- (b) a specified carrier is the **statutory infrastructure provider** for the designated service area for the purposes of this Part.

Note: For the format of the description of the area, see section 360LA.

**Subdivision D—Format of description of areas**

**360LA Format of description of areas**

- (1) An area declared under:
  - (a) subsection 360D(2); or
  - (b) subsection 360D(3); or
  - (c) subsection 360H(2); or
  - (d) subsection 360H(4); or
  - (e) subsection 360H(6); or
  - (f) section 360L;must be described:
  - (g) in a TAB vector format using the GDA94 coordinate system;  
or
  - (h) if another format is determined under subsection (3)—in that other format.
- (2) An area specified under:
  - (a) subsection 360HA(1); or
  - (b) subsection 360HA(2); or
  - (c) subsection 360HA(3); or
  - (d) subsection 360HA(4);must be described:
  - (e) in a TAB vector format using the GDA94 coordinate system;  
or
  - (f) if another format is determined under subsection (3)—in that other format.
- (3) The ACMA may, by legislative instrument, determine a format for the purposes of paragraphs (1)(h) and (2)(f).

## **Division 3—Obligations of statutory infrastructure provider**

### **360P Obligation of statutory infrastructure provider to connect premises**

- (1) The statutory infrastructure provider for a service area must, on reasonable request by a carriage service provider on behalf of an end-user at premises in the service area:
  - (a) connect the premises to a qualifying fixed-line telecommunications network in order that the carriage service provider can provide qualifying fixed-line carriage services to the end-user at the premises; or
  - (b) if it is not reasonable for the statutory infrastructure provider to connect the premises to a qualifying fixed-line telecommunications network—connect the premises to a qualifying telecommunications network in order that the carriage service provider can provide:
    - (i) qualifying fixed wireless carriage services to the end-user at the premises; or
    - (ii) qualifying satellite carriage services to the end-user at the premises.

#### *Exceptions*

- (2) An obligation does not arise under subsection (1) in relation to the connection of premises in the circumstances (if any) specified in a determination under subsection (3).
- (3) The Minister may, by legislative instrument, determine circumstances for the purposes of subsection (2).

#### *Requirements*

- (4) In fulfilling its obligations under subsection (1), the statutory infrastructure provider for a service area must comply with such requirements (if any) as are determined under subsection (5).

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- (5) The Minister may, by legislative instrument, determine one or more requirements for the purposes of subsection (4).
- (6) A requirement may be of general application or may be limited to one or more service areas.
- (7) Subsection (6) does not, by implication, limit the application of subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Terms and conditions*

- (8) If:
  - (a) a carriage service provider makes a request as mentioned in subsection (1) in relation to the connection of premises in a service area; and
  - (b) as a result, the statutory infrastructure provider has an obligation under subsection (1) to connect the premises; and
  - (c) the statutory infrastructure provider has published on its website:
    - (i) the terms and conditions relating to price or a method of ascertaining price; and
    - (ii) other terms and conditions;on which it offers to connect premises in the service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises; and
  - (d) the carriage service provider requests the statutory infrastructure provider to enter into an agreement that:
    - (i) relates to the connection of premises in the service area to a qualifying telecommunications network in order that the carriage service provider can provide qualifying carriage services to an end-user at the premises; and
    - (ii) sets out terms and conditions that are the same as the terms and conditions published as mentioned in paragraph (c);the statutory infrastructure provider must comply with the request mentioned in paragraph (d).



Note: For publication, see section 360W.

- (9) If:
- (a) a carriage service provider makes a request as mentioned in subsection (1) in relation to the connection of premises; and
  - (b) as a result, the statutory infrastructure provider has an obligation under subsection (1) to connect the premises; and
  - (c) the connection is not covered by an agreement between the statutory infrastructure provider and the carriage service provider;

the statutory infrastructure provider must comply with the obligation on the terms and conditions that were published on the statutory infrastructure provider's website at the time when the request was made.

Note: For publication, see section 360W.

*Ministerial determination—reasonable*

- (10) The Minister may, by legislative instrument:
- (a) determine that, if the condition specified in the determination is satisfied in relation to premises, then, for the purposes of subsection (1), it is taken not to be reasonable for a statutory infrastructure provider to connect the premises to a qualifying fixed-line telecommunications network; or
  - (b) determine that, if the conditions specified in the determination are satisfied in relation to premises, then, for the purposes of subsection (1), it is taken not to be reasonable for a statutory infrastructure provider to connect the premises to a qualifying fixed-line telecommunications network.
- (11) A determination under subsection (10) must be an instrument of a legislative character.

*Response to request*

- (11A) If a carriage service provider makes a request as mentioned in subsection (1) on behalf of an end-user at particular premises:
- (a) the statutory infrastructure provider must:

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- (i) notify the carriage service provider that the statutory infrastructure provider will fulfil the request; or
    - (ii) refuse the request; and
  - (b) do so within:
    - (i) 10 business days after receiving the request; or
    - (ii) if a longer period is specified under subsection (11B)—that longer period.
- (11B) The Minister may, by legislative instrument, specify a period for the purposes of subparagraph (11A)(b)(ii).

*Notification of refusal of request*

- (12) If:
- (a) a carriage service provider makes a request as mentioned in subsection (1) on behalf of an end-user at particular premises; and
  - (b) the statutory infrastructure provider refuses the request;
- then:
- (c) the statutory infrastructure provider must:
    - (i) give written notice of the refusal to the carriage service provider; and
    - (ii) do so within 5 business days after the refusal; and
  - (d) if the carriage service provider receives the notice—the carriage service provider must:
    - (i) give a copy of the notice to the end-user; and
    - (ii) do so within 5 business days after receiving the notice.

**360Q Obligation of statutory infrastructure provider to supply eligible services—premises**

- (1) The statutory infrastructure provider for a service area must, on reasonable request by a carriage service provider:
- (a) supply an eligible service to the carriage service provider in order that the carriage service provider can provide

qualifying carriage services to end-users at premises in the service area; and

- (b) do so on the terms and conditions that were published on the statutory infrastructure provider's website at the time when the request was made.

Note: For publication, see section 360X.

- (1A) The eligible service must enable the carriage service provider to supply, to end-users at premises in the service area, carriage services that can be used by those end-users to make and receive voice calls.
- (1B) Subsection (1A) does not apply if the carriage service is supplied using a satellite.
- (1C) To avoid doubt, the requirement in subsection (1A) is part of the obligation under subsection (1).

*Exceptions*

- (2) If:
- (a) a statutory infrastructure provider for a service area supplies an eligible service to a carriage service provider in order that the carriage service provider can provide qualifying carriage services to end-users at premises in the service area; and
  - (b) the eligible service enables the carriage service provider to supply, to end-users at premises in the service area, carriage services that can be used by those end-users to make and receive voice calls; and
  - (c) the eligible service is a declared service (within the meaning of Part XIC of the *Competition and Consumer Act 2010*); and
  - (d) the statutory infrastructure provider is subject to a standard access obligation (within the meaning of Part XIC of the *Competition and Consumer Act 2010*) in relation to the eligible service;

the statutory infrastructure provider does not have an obligation under subsection (1) to supply the eligible service to the carriage service provider in order that the carriage service provider can

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provide qualifying carriage services to end-users at premises in the service area.

- (2A) Paragraph (2)(b) does not apply if the carriage service is supplied using a satellite.
- (3) An obligation does not arise under subsection (1) in relation to supply of an eligible service in the circumstances (if any) specified in a determination under subsection (4).
- (4) The Minister may, by legislative instrument, determine circumstances for the purposes of subsection (3).

*Requirements*

- (5) In fulfilling its obligations under subsection (1), the statutory infrastructure provider for a service area must comply with such requirements (if any) as are determined under subsection (6).
- (6) The Minister may, by legislative instrument, determine one or more requirements for the purposes of subsection (5).
- (7) A requirement may be of general application or may be limited to one or more service areas.
- (8) Subsection (7) does not, by implication, limit the application of subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Terms and conditions*

- (9) If:
  - (a) a carriage service provider makes a request as mentioned in subsection (1) in relation to the supply of an eligible service; and
  - (b) as a result, the statutory infrastructure provider has an obligation under subsection (1) to supply the eligible service; and
  - (c) the statutory infrastructure provider has published on its website:

- (i) the terms and conditions relating to price or a method of ascertaining price; and
- (ii) other terms and conditions;  
on which it offers to supply eligible services to carriage service providers in order that the carriage service providers can provide qualifying carriage services to end-users at premises in the service area; and
- (d) the carriage service provider requests the statutory infrastructure provider to enter into an agreement that:
  - (i) relates to the supply of eligible services to the carriage service provider in order that the carriage service provider can provide qualifying carriage services to end-users at premises in the service area; and
  - (ii) sets out terms and conditions that are the same as the terms and conditions published as mentioned in paragraph (c);

the statutory infrastructure provider must comply with the request mentioned in paragraph (d).

Note: For publication, see section 360X.

(10) If:

- (a) a carriage service provider makes a request as mentioned in subsection (1) in relation to the supply of an eligible service; and
- (b) as a result, the statutory infrastructure provider has an obligation under subsection (1) to supply the eligible service; and
- (c) the supply of the eligible service is not covered by an agreement between the statutory infrastructure provider and the carriage service provider;

the statutory infrastructure provider must comply with the obligation on the terms and conditions that were published on the statutory infrastructure provider's website at the time when the request was made.

Note: For publication, see section 360X.

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**360R Notification obligations of statutory infrastructure provider**

*Scope*

- (1) This section applies if a carrier (the *first carrier*) is the statutory infrastructure provider for:
- (a) a nominated service area; or
  - (b) a designated service area.

*Obligations*

- (2) If the first carrier becomes aware that it is likely that it will no longer be able to fulfil its obligations under section 360P or 360Q, so far as they relate to the area, the first carrier must:
- (a) give written notice of the matter to:
    - (i) the Secretary of the Department; and
    - (ii) the ACMA; and
  - (b) do so as soon as practicable after becoming so aware.
- (3) If:
- (a) subsection (2) applies; and
  - (b) the first carrier becomes aware that another carrier is willing to become the statutory infrastructure provider for the area;
- the first carrier must:
- (c) give written notice of the matter to:
    - (i) the Secretary of the Department; and
    - (ii) the ACMA; and
  - (d) do so as soon as practicable after becoming so aware.

**360S Targets for NBN Co**

- (1) The Parliament intends that NBN Co should take all reasonable steps to ensure that the telecommunications networks that:
- (a) are operated by NBN Co; and
  - (b) are used to supply qualifying fixed-line carriage services to customers in Australia;

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are (when considered together) capable of being used to supply fixed-line carriage services, where:

- (c) the peak download transmission speed of the carriage service is at least 50 megabits per second; and
- (d) the peak upload transmission speed of the carriage service is at least 10 megabits per second;

to at least 90% of premises in the areas that, according to NBN Co's website, are serviced by NBN Co's fixed-line carriage services.

- (2) The Parliament intends that NBN Co should take all reasonable steps to ensure that the telecommunications networks that:
  - (a) are operated by NBN Co; and
  - (b) are used to supply qualifying fixed-line carriage services to customers in Australia;are (when considered together) capable of being connected to at least 92% of premises in Australia.
- (3) In fulfilling its obligations under section 360P or 360Q, NBN Co must have regard to subsections (1) and (2) of this section.

## Division 4—Standards, benchmarks and rules

### 360U Standards and benchmarks

#### *Standards*

- (1) The Minister may, by legislative instrument, determine standards to be complied with by statutory infrastructure providers in relation to any or all of the following matters:
  - (a) the terms and conditions of the supply of an eligible service to a carriage service provider in order that the carriage service provider can provide qualifying carriage services to an end-user at premises in a relevant service area;
  - (b) the reliability of such an eligible service supplied to a carriage service provider;
  - (c) the maximum period within which a statutory infrastructure provider must begin to supply such an eligible service following the making of a request by a carriage service provider;
  - (d) the maximum period within which a statutory infrastructure provider must rectify a fault or service difficulty relating to such an eligible service following the making of a report by a carriage service provider about the fault or service difficulty;
  - (e) any other matter concerning the supply, or proposed supply, of such an eligible service to a carriage service provider;
  - (f) the maximum period within which the statutory infrastructure provider must connect premises in a relevant service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises, following the making of a request by the carriage service provider on behalf of the end-user;
  - (g) any other matter concerning the connection of premises in a relevant service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises.



- (2) A determination under subsection (1) may be of general application or may be limited as provided in the determination.
- (3) Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (3A) Standards determined under subsection (1) may make provision for or in relation to a matter by conferring a power on the ACMA to make a legislative instrument.

*Compliance with standards*

- (4) A statutory infrastructure provider must comply with a standard determined under subsection (1).
- (5) However, a statutory infrastructure provider is not required to comply with a standard determined under subsection (1) to the extent that the standard is inconsistent with an access agreement to which the statutory infrastructure provider is a party, so long as:
  - (a) the agreement was entered into before the commencement of the standard; and
  - (b) the agreement has not been varied after the commencement of the standard.

*Performance benchmarks*

- (6) The Minister may, by legislative instrument, set minimum benchmarks in relation to compliance by a statutory infrastructure provider with a standard determined under subsection (1).
- (7) An instrument under subsection (6) may be of general application or may be limited as provided in the instrument.
- (8) Subsection (7) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (8A) Benchmarks set under subsection (6) may make provision for or in relation to a matter by conferring a power on the ACMA to make a legislative instrument.

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*Provider must meet or exceed minimum benchmarks*

- (9) A statutory infrastructure provider must meet or exceed a minimum benchmark set by an instrument under subsection (6).

**360V Rules**

- (1) The Minister may, by legislative instrument, make rules to be complied with by statutory infrastructure providers in relation to any or all of the following matters:
- (a) the process for resolution of complaints about the supply of an eligible service to a carriage service provider in order that the carriage service provider can provide qualifying carriage services to an end-user at premises in a relevant service area;
  - (b) any other matter concerning the supply, or proposed supply, of such an eligible service to a carriage service provider;
  - (c) the process for resolution of complaints about the connection of premises in the service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises;
  - (d) any other matter concerning the connection of premises in the service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises.
- (1A) Rules under subsection (1) may make provision for or in relation to a matter by conferring a power on the ACMA to make a legislative instrument.

*Compliance*

- (2) A statutory infrastructure provider must comply with rules under subsection (1).
- (3) However, a statutory infrastructure provider is not required to comply with a rule under subsection (1) to the extent that the rule is inconsistent with an access agreement to which the statutory infrastructure provider is a party, so long as:

- (a) the agreement was entered into before the commencement of the rule; and
- (b) the agreement has not been varied after the commencement of the rule.

## Division 5—Publication of offers

### 360W Publication of offer etc.—connection of premises

- (1) A statutory infrastructure provider for a service area must publish on its website:
  - (a) the terms and conditions relating to price or a method of ascertaining price; and
  - (b) other terms and conditions;on which it offers to connect premises in the service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises.
- (2) The terms and conditions mentioned in subsection (1) must include the maximum period within which the statutory infrastructure provider must so connect premises following the making of a request by a carriage service provider on behalf of an end-user at the premises.
- (3) Subsection (2) does not limit subsection (1).
- (4) An offer published under subsection (1) has no effect to the extent to which it is inconsistent with:
  - (a) a standard determined under section 360U; or
  - (b) rules made under section 360V.

### 360X Publication of offer—supply of eligible services

- (1) A statutory infrastructure provider for a service area must publish on its website:
  - (a) the terms and conditions relating to price or a method of ascertaining price; and
  - (b) other terms and conditions;on which it offers to supply eligible services to carriage service providers in order that the carriage service providers can provide

qualifying carriage services to end-users at premises in the service area.

- (2) The terms and conditions mentioned in subsection (1) must include:
  - (a) the maximum period within which the statutory infrastructure provider must begin to supply such an eligible service following the making of a request by a carriage service provider; and
  - (b) the maximum period within which the statutory infrastructure provider must rectify a fault or service difficulty relating to such an eligible service following the making of a report by a carriage service provider about the fault or service difficulty.
- (3) Subsection (2) does not limit subsection (1).
- (4) An offer published under subsection (1) has no effect to the extent to which it is inconsistent with:
  - (a) a standard determined under section 360U; or
  - (b) rules made under section 360V.

## Division 6—Miscellaneous

### 360XA Periodic compliance reports

- (1) The Minister may, by legislative instrument, make rules requiring each statutory infrastructure provider to give to the ACMA periodic reports relating to the provider's compliance with this Part.

#### *Compliance*

- (2) A statutory infrastructure provider must comply with rules under subsection (1).
- (3) A person is not excused from giving a report under rules under subsection (1) on the ground that the report might tend to incriminate the person or expose the person to a penalty.
- (4) However, in the case of an individual:
  - (a) the report; or
  - (b) giving the report; or
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the report;is not admissible in evidence against the individual:
  - (d) in civil proceedings for the recovery of a penalty; or
  - (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to the report).

#### *Other information-gathering powers not limited*

- (5) This section does not, by implication, limit Part 27.

### 360Y Building redevelopment projects etc.

- (1) For the purposes of this Part, a project is a ***building redevelopment project*** if:

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- (a) the project involves:
    - (i) the significant refurbishment or repurposing of one or more buildings so as to bring into existence one or more building units; and
    - (ii) the making available of any or all of those building units for sale or lease; and
  - (b) the conditions (if any) specified in an instrument under subsection (3) are satisfied.
- (2) For the purposes of this Part, the area or areas occupied by the building or buildings are the *project area* for the building redevelopment project.
- (3) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (1)(b).
- (4) For the purposes of subsection (1), it is immaterial whether:
- (a) the project has been, is being, or will be, implemented in stages; or
  - (b) different elements of the project have been, are being, or will be, carried out by different persons; or
  - (c) one or more approvals are given, are required, or will be required, under a law of the Commonwealth, a State or a Territory, for the project, or any element of the project.

**360Z Register of statutory infrastructure providers and anticipatory notices**

- (1) The ACMA is to maintain a Register in which the ACMA includes:
- (a) the name of each statutory infrastructure provider; and
  - (b) for each of those providers—the relevant service area or areas; and
  - (c) a copy of each notice given by a carrier under:
    - (i) subsection 360HA(1); or
    - (ii) subsection 360HA(2); or
    - (iii) subsection 360HA(3); or

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(iv) subsection 360HA(4).

- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the ACMA's website.

**360ZA Delegation**

*Delegation to the ACMA*

- (1) The Minister may, by writing, delegate to the ACMA any or all of the Minister's powers under the following provisions:
  - (a) subsection 360D(14);
  - (b) subsection 360H(3);
  - (c) subsection 360H(5);
  - (d) subsection 360H(7);
  - (e) subsection 360H(11);
  - (f) subsection 360P(3);
  - (g) subsection 360P(5);
  - (h) subsection 360P(10);
  - (i) subsection 360Q(4);
  - (j) subsection 360Q(6);
  - (k) subsection 360U(1);
  - (l) subsection 360U(6);
  - (m) subsection 360XA(1);
  - (n) subsection 360Y(3).
- (2) In performing a delegated function or exercising a delegated power, the ACMA must comply with any written directions of the Minister.

*Delegation to a member of the ACMA or to a member of the staff of the ACMA*

- (3) The Minister may, by writing, delegate to:
  - (a) a member of the ACMA; or



- (b) a person who is:
  - (i) a member of the staff of the ACMA; and
  - (ii) an SES employee or acting SES employee;any or all of the Minister's powers under subsection 360H(14) (variation of nominated service area declaration).
- (4) In exercising a delegated power, the delegate must comply with any written directions of the Minister.

## **Part 20—International aspects of activities of the telecommunications industry**

### **Division 1—Simplified outline**

#### **364 Simplified outline**

The following is a simplified outline of this Part:

- The Minister may give directions to the Signatories to the INTELSAT Agreement and the Inmarsat Convention.
- Carriers and carriage service providers may be required to comply with certain international conventions.
- The Minister may make Rules of Conduct about dealings with international telecommunications operators.

## **Division 2—Compliance with international agreements**

### **365 INTELSAT and Inmarsat—directions to Signatories**

- (1) This section applies to a person if:
  - (a) the person is:
    - (i) a carrier; or
    - (ii) a carriage service provider; and
  - (b) either:
    - (i) the person is a Signatory within the meaning of the INTELSAT Agreement because the person has been designated, by or on behalf of the Commonwealth and in accordance with Article II(b) of that Agreement, to sign the INTELSAT Operating Agreement; or
    - (ii) the person is a Signatory within the meaning of the Convention on the International Maritime Satellite Organisation (Inmarsat) because the person has been designated, by or on behalf of the Commonwealth and in accordance with Article 2(3) of that Convention, to sign the Operating Agreement on the International Maritime Satellite Organisation (Inmarsat).
- (2) The Minister may give the person such written directions as the Minister thinks necessary in relation to the person's performance of the person's functions as a Signatory within the meaning of that Agreement or Convention.
- (3) The Minister must not give a direction under subsection (2) that relates to the manner in which the person is to deal with a particular customer.
- (4) A person must comply with a direction under subsection (2).

### **366 Compliance with conventions**

- (1) This section applies to a person who is:
  - (a) a carrier; or

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- (b) a carriage service provider.
- (2) The Minister may, by notice published in the *Gazette*, declare that, for the purposes of this section, a specified convention is binding in relation to the members of a specified class of persons.
- (3) A person who is a member of that class must, in connection with:
- (a) the operation by the person of telecommunications networks or of facilities; or
  - (b) the supply by the person of carriage services;
- act in a way consistent with Australia's obligations under that convention.
- (4) The Minister may, by notice published in the *Gazette*, declare that, for the purposes of this section, a specified part of a specified convention is binding in relation to the members of a specified class of persons.
- (5) A person who is a member of that class must, in connection with:
- (a) the operation by the person of telecommunications networks or of facilities; or
  - (b) the supply by the person of carriage services;
- act in a way consistent with Australia's obligations under that part of the convention.
- (6) In this section:
- convention** means:
- (a) a convention to which Australia is a party; or
  - (b) an agreement or arrangement between Australia and a foreign country;
- and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

### **Division 3—Rules of conduct about dealings with international telecommunications operators**

#### **367 Rules of conduct about dealings with international telecommunications operators**

- (1) For the purposes of this section, an international telecommunications operator *engages in unacceptable conduct* if, and only if:
  - (a) the operator uses, in a manner that is, or is likely to be, contrary to the national interest, the operator's power in a market for:
    - (i) carriage services; or
    - (ii) goods or services for use in connection with the supply of carriage services; or
    - (iii) the installation of, maintenance of, operation of, or provision of access to, telecommunications networks or facilities; or
  - (b) the operator uses, in a manner that is, or is likely to be, contrary to the national interest, any legal rights or legal status that the operator has because of foreign laws that relate to:
    - (i) carriage services; or
    - (ii) goods or services for use in connection with the supply of carriage services; or
    - (iii) the installation of, maintenance of, operation of, or provision of access to, telecommunications networks or facilities; or
  - (c) the operator engages in any other conduct that is, or is likely to be, contrary to the national interest.
- (2) With a view to preventing, mitigating or remedying unacceptable conduct engaged in by international telecommunications operators, the Minister may, by written instrument, make Rules of Conduct:

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- (a) prohibiting or regulating dealings by either or both of the following:
  - (i) carriers;
  - (ii) carriage service providers;with such operators and with other persons; or
- (b) authorising the ACCC to make written determinations of a legislative character, where the determination imposes requirements, prohibitions or restrictions on either or both of the following:
  - (i) carriers;
  - (ii) carriage service providers; or
- (c) authorising the ACCC to give either or both of the following:
  - (i) carriers;
  - (ii) carriage service providers;written directions of an administrative character, where the direction imposes a requirement, prohibition or restriction on the carrier or provider, as the case requires; or
- (d) requiring:
  - (i) carriers; and
  - (ii) carriage service providers;to comply with:
  - (iii) a determination mentioned in paragraph (b); or
  - (iv) a direction mentioned in paragraph (c); or
- (e) authorising the ACCC to make information available to:
  - (i) the public; or
  - (ii) a specified class of persons; or
  - (iii) a specified person;if, in the opinion of the ACCC, the disclosure of the information:
  - (iv) would promote the fair and efficient operation of a market; or
  - (v) would otherwise be in the national interest.

- (3) Before the ACCC makes a determination, or gives a direction, under the Rules of Conduct, the ACCC must consult the ACMA.
- (4) Rules of Conduct are legislative instruments.
- (5) A determination mentioned in paragraph (2)(b) is a legislative instrument.
- (6) For the purposes of this section, if a person carries on activities outside Australia that involve:
- (a) the supply of a carriage service specified in paragraph 16(1)(b) or (c); or
  - (b) the supply of goods or services for use in connection with the supply of a carriage service specified in paragraph 16(1)(b) or (c); or
  - (c) the installation of, maintenance of, operation of or provision of access to:
    - (i) a telecommunications network; or
    - (ii) a facility;where the network or facility is used to supply a carriage service specified in paragraph 16(1)(b) or (c);
- the person is an *international telecommunications operator*.
- (7) In this section:

*engaging in conduct* has the same meaning as in the *Competition and Consumer Act 2010*.

*foreign law* means a law of a place outside Australia.

*international telecommunications operator* has the meaning given by subsection (6).

### **368 ACCC to administer Rules of Conduct**

The ACCC has the general administration of the Rules of Conduct in force under section 367.

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### **369 Rules of Conduct to bind carriers and carriage service providers**

- (1) This section applies to a person who is:
  - (a) a carrier; or
  - (b) a carriage service provider.
- (2) The person must comply with Rules of Conduct in force under section 367.
- (3) If a provision of an agreement made by the person is inconsistent with Rules of Conduct in force under section 367, the provision is unenforceable (see section 370).

### **370 Unenforceability of agreements**

- (1) This section applies if an agreement, or a provision of an agreement, is unenforceable because of section 369.
- (2) A party to the agreement is not entitled, as against any other party:
  - (a) to enforce the agreement or provision, as the case may be, whether directly or indirectly; or
  - (b) to rely on the agreement or provision, as the case may be, whether directly or indirectly and whether by way of defence or otherwise.
- (3) A party (the *first party*) to the agreement is not entitled to recover by any means (including, for example, set-off, a quasi-contractual claim or a claim for a restitutionary remedy) any amount that another party would have been liable to pay to the first party under or in connection with the agreement or provision, as the case may be, if this section had not been enacted.

### **371 Investigations by the ACCC**

- (1) This Act does not prevent the ACCC from carrying out an investigation of a contravention of Rules of Conduct in force under section 367.



- (2) If the ACCC begins an investigation of a contravention of the Rules of Conduct, the ACCC must:
  - (a) notify the ACMA accordingly; and
  - (b) consult the ACMA about any significant developments that occur in the course of that investigation.

### **372 Reviews of the operation of this Division**

- (1) The ACCC must review, and report each financial year to the Minister on, the operation of this Division.
- (2) The ACCC must give a report under subsection (1) to the Minister as soon as practicable after the end of the financial year concerned.
- (3) The ACCC must, if directed in writing to do so by the Minister, review, and report to the Minister on, specified matters relating to the operation of this Division.
- (4) The ACCC must give a report under subsection (3) to the Minister before the end of the period specified in the direction.
- (5) The Minister must cause a copy of a report under this section to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

## **Part 20A—Deployment of optical fibre etc.**

### **Division 1—Simplified outline**

#### **372A Simplified outline**

The following is a simplified outline of this Part:

- If a real estate development project is specified in a legislative instrument made by the Minister, a person must not install a line in the project area unless the line is an optical fibre line.
- A person must not install a fixed-line facility in the project area for a real estate development project unless the facility is a fibre-ready facility.
- If the developer of a real estate development project is a constitutional corporation, the developer must not, in the course of carrying out the project, sell or lease a building lot or building unit unless a functional fibre-ready facility is installed in proximity to the lot or unit.
- If the developer of a real estate development project in a Territory is not a constitutional corporation, the developer must not, in the course of carrying out the project, sell or lease a building lot or building unit unless a functional fibre-ready facility is installed in proximity to the lot or unit.
- If the developer of a real estate development project in a State is not a constitutional corporation, the developer must not, in the course of carrying out the project, sell or lease a building lot or building unit unless a functional fibre-ready facility is installed in proximity to the lot or unit.
- These rules are subject to any exemptions specified in a legislative instrument made by the Minister.

- A third party access regime applies to fixed-line facilities owned or operated by a person other than a carrier.

## Division 2—Deployment of optical fibre lines

### 372B Deployment of optical fibre lines to building lots

#### *Scope*

- (1) This section applies to the installation of a line in the project area, or any of the project areas, for a real estate development project if:
- (a) the project involves the subdivision of one or more areas of land into building lots; and
  - (b) the project is specified in, or ascertained in accordance with, a legislative instrument made by the Minister; and
  - (c) the line is wholly or primarily used, or wholly or primarily for use, to supply one or more carriage services to either or both of the following:
    - (i) one or more end-users in one or more building units;
    - (ii) one or more prospective end-users in one or more building units; and
  - (d) those building units have been, are being, are to be, or may be, constructed on any of those building lots; and
  - (e) the line is not on the customer side of the boundary of a telecommunications network; and
  - (f) the line is used, or for use, to supply a carriage service to the public; and
  - (g) the installation occurs after the commencement of this section.

Note 1: For *real estate development project*, see section 372Q.

Note 2: For *subdivision* of an area of land, see section 372R.

Note 3: For *building lot*, see section 372Q.

Note 4: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

Note 5: For *building unit*, see section 372S.

Note 6: For *boundary of a telecommunications network*, see section 22.

Note 7: For *supply to the public*, see section 372ZA.

Note 8: For exemption of certain projects, see section 372P.

*Requirement*

- (2) A person must not install a line in the project area, or any of the project areas, for a real estate development project, unless:
- (a) the line is an optical fibre line; and
  - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note: For exemptions, see section 372D.

*Ancillary provisions*

- (3) For the purposes of paragraph (1)(c), it is immaterial whether the end-users or prospective end-users are capable of being identified.

*Conditions*

- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

*Functions and powers*

- (5) An instrument under paragraph (1)(b) may confer functions or powers on the ACMA.

*Ancillary contraventions*

- (6) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

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*Civil penalty provisions*

- (7) Subsections (2) and (6) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**372C Deployment of optical fibre lines to building units**

*Scope*

- (1) This section applies to the installation of a line in the project area, or any of the project areas, for a real estate development project if:
- (a) the project involves the construction of one or more building units on one or more areas of land; and
  - (b) the project is specified in, or ascertained in accordance with, a legislative instrument made by the Minister; and
  - (c) the line is wholly or primarily used, or wholly or primarily for use, to supply one or more carriage services to either or both of the following:
    - (i) one or more end-users in those building units;
    - (ii) one or more prospective end-users in those building units; and
  - (d) the line is not on the customer side of the boundary of a telecommunications network; and
  - (e) the line is used, or for use, to supply a carriage service to the public; and
  - (f) the installation occurs after the commencement of this section.

Note 1: For ***real estate development project***, see section 372Q.

Note 2: For ***building unit***, see section 372S.

Note 3: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

Note 4: For ***boundary of a telecommunications network***, see section 22.

Note 5: For ***supply to the public***, see section 372ZA.

Note 6: For exemption of certain projects, see section 372P.

*Requirement*

- (2) A person must not install a line in the project area, or any of the project areas, for a real estate development project, unless:
- (a) the line is an optical fibre line; and
  - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note: For exemptions, see section 372D.

*Ancillary provisions*

- (3) For the purposes of paragraph (1)(c), it is immaterial whether the end-users or prospective end-users are capable of being identified.

*Conditions*

- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

*Functions and powers*

- (5) An instrument under paragraph (1)(b) may confer functions or powers on the ACMA.

*Ancillary contraventions*

- (6) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (7) Subsections (2) and (6) are ***civil penalty provisions***.
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**Part 20A** Deployment of optical fibre etc.

**Division 2** Deployment of optical fibre lines

**Section 372D**

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Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**372D Exemptions—Ministerial instrument**

- (1) The Minister may, by legislative instrument, exempt:
  - (a) conduct specified in the instrument; or
  - (b) conduct ascertained in accordance with the instrument;from the scope of either or both of the following provisions:
  - (c) subsection 372B(2);
  - (d) subsection 372C(2).
- (2) An exemption under subsection (1) may be unconditional or subject to such conditions (if any) as are specified in the exemption.
- (3) An instrument under subsection (1) may confer functions or powers on the ACMA.



## **Division 3—Installation of fibre-ready facilities**

### **Subdivision A—Installation obligations**

#### **372E Installation of fibre-ready facilities—building lots**

##### *Scope*

- (1) This section applies to the installation of a fixed-line facility in the project area, or any of the project areas, for a real estate development project if:
  - (a) the project involves the subdivision of one or more areas of land into building lots; and
  - (b) the installation occurs after the commencement of this section; and
  - (c) sewerage services, electricity or water is, are, or will be, supplied to those lots.

Note 1: For *fixed-line facility*, see section 372V.

Note 2: For *real estate development project*, see section 372Q.

Note 3: For *subdivision* of an area of land, see section 372R.

Note 4: For *building lot*, see section 372Q.

Note 5: For *supply* of sewerage services, electricity or water, see section 372Z.

Note 6: For exemptions, see section 372K.

Note 7: For exemption of certain projects, see section 372P.

##### *Requirement*

- (2) A person must not install a fixed-line facility in the project area, or any of the project areas, for a real estate development project, unless:
  - (a) the facility is a fibre-ready facility; and
  - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

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Note 1: For *fibre-ready facility*, see section 372W.

Note 2: For exemptions, see section 372K.

- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

*Ancillary contraventions*

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (6) Subsections (2) and (5) are *civil penalty provisions*.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**372F Installation of fibre-ready facilities—building units**

*Scope*

- (1) This section applies to the installation of a fixed-line facility in the project area, or any of the project areas, for a real estate development project if:
- (a) the project involves the construction of one or more building units on one or more areas of land; and
  - (b) the installation occurs after the commencement of this section; and
  - (c) sewerage services, electricity or water is, are, or will be, supplied to those units.

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- Note 1: For **fixed-line facility**, see section 372V.
- Note 2: For **real estate development project**, see section 372Q.
- Note 3: For **building unit**, see section 372S.
- Note 4: For **supply** of sewerage services, electricity or water, see section 372Z.
- Note 5: For exemptions, see section 372K.
- Note 6: For exemption of certain projects, see section 372P.

*Requirement*

- (2) A person must not install a fixed-line facility in the project area, or any of the project areas, for a real estate development project, unless:
- (a) the facility is a fibre-ready facility; and
  - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

- Note 1: For **fibre-ready facility**, see section 372W.
- Note 2: For exemptions, see section 372K.

- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

*Ancillary contraventions*

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (6) Subsections (2) and (5) are **civil penalty provisions**.
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Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**Subdivision B—Sale of building lots and building units**

**372G Sale of building lots and building units—subdivisions**

*Scope*

- (1) This section applies if:
- (a) a real estate development project involves the subdivision of one or more areas of land into building lots; and
  - (b) the project involves either or both of the following:
    - (i) the making available of one or more of those lots for sale or lease, where it would be reasonable to expect that one or more building units would be subsequently constructed on the lots;
    - (ii) the construction of one or more building units on any of the lots and the making available of any of those building units for sale or lease; and
  - (c) if subparagraph (b)(i) applies—sewerage services, electricity or water is, are, or will be, supplied to those lots; and
  - (d) if subparagraph (b)(ii) applies—sewerage services, electricity or water is, are, or will be, supplied to those units.

Note 1: For *subdivision* of an area of land, see section 372R.

Note 2: For *building lot*, see section 372Q.

Note 3: For *building unit*, see section 372S.

Note 4: For *sale* of building lots, see section 372T.

Note 5: For *sale* of building units, see section 372U.

Note 6: For *supply* of sewerage services, electricity or water, see section 372Z.

Note 7: For exemptions, see section 372K.

Note 8: For exemption of certain projects, see section 372P.

*Requirements—building lots*

- (2) If subparagraph (1)(b)(i) applies to a building lot, a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the lot unless a functional fibre-ready facility is installed in proximity to the lot.

Note 1: For **functional fibre-ready facility**, see section 372W.

Note 2: For **proximity**, see section 372Y.

Note 3: For exemptions, see section 372K.

- (2A) If:

- (a) subparagraph (1)(b)(i) applies to a building lot; and  
(b) the lot is in a Territory;

a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the lot unless a functional fibre-ready facility is installed in proximity to the lot.

Note 1: For **functional fibre-ready facility**, see section 372W.

Note 2: For **proximity**, see section 372Y.

Note 3: For exemptions, see section 372K.

- (3) If:

- (a) subparagraph (1)(b)(i) applies to a building lot; and  
(b) the lot is in a State;

a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the lot unless a functional fibre-ready facility is installed in proximity to the lot.

Note 1: For **functional fibre-ready facility**, see section 372W.

Note 2: For **proximity**, see section 372Y.

Note 3: For exemptions, see section 372K.

*Requirements—building units*

- (4) If subparagraph (1)(b)(ii) applies to a building unit, a constitutional corporation must not, in the course of carrying out, or carrying out
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an element of, the project, sell or lease the unit unless a functional fibre-ready facility is installed in proximity to the unit.

Note 1: For *functional fibre-ready facility*, see section 372W.

Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

(4A) If:

- (a) subparagraph (1)(b)(ii) applies to a building unit; and
- (b) the unit is in a Territory;

a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a functional fibre-ready facility is installed in proximity to the unit.

Note 1: For *functional fibre-ready facility*, see section 372W.

Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

(5) If:

- (a) subparagraph (1)(b)(ii) applies to a building unit; and
- (b) the unit is in a State;

a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a functional fibre-ready facility is installed in proximity to the unit.

Note 1: For *functional fibre-ready facility*, see section 372W.

Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

*Ancillary contraventions*

(6) A person must not:

- (a) aid, abet, counsel or procure a contravention of subsection (2), (2A), (3), (4), (4A) or (5); or
- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2), (2A), (3), (4), (4A) or (5); or

- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2), (2A), (3), (4), (4A) or (5); or
- (d) conspire with others to effect a contravention of subsection (2), (2A), (3), (4), (4A) or (5).

*Civil penalty provisions*

- (7) Subsections (2), (2A), (3), (4), (4A), (5) and (6) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Validity of transactions*

- (8) A contravention of subsection (2), (2A), (3), (4), (4A) or (5) does not affect the validity of any transaction.

### **372H Sale of building units—other projects**

*Scope*

- (1) This section applies if:
- (a) a real estate development project involves:
    - (i) the construction of one or more building units on one or more areas of land; and
    - (ii) the making available of any or all of those building units for sale or lease; and
  - (b) sewerage services, electricity or water is, are, or will be, supplied to those units.

Note 1: For ***building unit***, see section 372S.

Note 2: For ***sale*** of building units, see section 372U.

Note 3: For ***supply*** of sewerage services, electricity or water, see section 372Z.

Note 4: For exemptions, see section 372K.

Note 5: For exemption of certain projects, see section 372P.

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*Requirements*

- (2) A constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease such a building unit unless a functional fibre-ready facility is installed in proximity to the unit.

Note 1: For *functional fibre-ready facility*, see section 372W.

Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

- (3) If such a building unit is in a Territory, a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a functional fibre-ready facility is installed in proximity to the unit.

Note 1: For *functional fibre-ready facility*, see section 372W.

Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

- (3A) If such a building unit is in a State, a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a functional fibre-ready facility is installed in proximity to the unit.

Note 1: For *functional fibre-ready facility*, see section 372W.

Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

*Ancillary contraventions*

- (4) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2), (3) or (3A); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2), (3) or (3A); or



- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2), (3) or (3A); or
- (d) conspire with others to effect a contravention of subsection (2), (3) or (3A).

*Civil penalty provisions*

- (5) Subsections (2), (3), (3A) and (4) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Validity of transactions*

- (6) A contravention of subsection (2), (3) or (3A) does not affect the validity of any transaction.

### **372J Acquisition of property**

This Subdivision does not apply to the extent that the operation of the Subdivision would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

## **Subdivision D—Exemptions**

### **372K Exemptions—Ministerial instrument**

*Real estate development projects*

- (1) The Minister may, by legislative instrument, exempt:
  - (a) a real estate development project specified in the instrument;
  - or
  - (b) a real estate development project ascertained in accordance with the instrument;from the scope of any or all of the following provisions:
  - (c) section 372E;
  - (d) section 372F;

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- (e) section 372G;
- (f) section 372H.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (2) An exemption under subsection (1) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

*Installations*

- (3) The Minister may, by legislative instrument, exempt:
  - (a) conduct specified in the instrument; or
  - (b) conduct ascertained in accordance with the instrument;from the scope of either or both of the following provisions:
  - (c) subsection 372E(2);
  - (d) subsection 372F(2).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (4) An exemption under subsection (3) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

*Building lots*

- (5) The Minister may, by legislative instrument, exempt:
  - (a) a building lot specified in the instrument; or
  - (b) a building lot ascertained in accordance with the instrument;from the scope of any or all of the following provisions:
  - (c) subsection 372G(2);
  - (d) subsection 372G(2A);
  - (e) subsection 372G(3).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (6) An exemption under subsection (5) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

*Building units*

- (7) The Minister may, by legislative instrument, exempt:
- (a) a building unit specified in the instrument; or
  - (b) a building unit ascertained in accordance with the instrument;
- from the scope of any or all of the following provisions:
- (c) subsection 372G(4);
  - (ca) subsection 372G(4A);
  - (cb) subsection 372G(5);
  - (d) subsection 372H(2);
  - (e) subsection 372H(3);
  - (f) subsection 372H(3A).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (8) An exemption under subsection (7) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

*Functions and powers*

- (9) An instrument under subsection (1), (3), (5) or (7) may confer functions or powers on the ACMA.

## Division 4—Third party access regime

### 372L Third party access regime

#### *Scope*

- (1) This section applies to a fixed-line facility installed in Australia if:
  - (a) the installation occurs after the commencement of this section; and
  - (b) the facility is owned or operated by a person other than a carrier.

Note 1: For *fixed-line facility*, see section 372V.

Note 2: For exemptions, see section 372N.

#### *Access to facility*

- (2) The owner or operator of the facility must, if requested to do so by a carrier, give the carrier access to the facility.
- (3) The owner or operator of the facility is not required to comply with subsection (2) unless:
  - (a) the access is provided for the sole purpose of enabling the carrier:
    - (i) to provide facilities and carriage services; or
    - (ii) to establish its own facilities; and
  - (b) the carrier gives the owner or operator of the facility reasonable notice that the carrier requires the access.
- (4) The owner or operator of the facility is not required to comply with subsection (2) in relation to the facility if there is in force a written certificate issued by the ACCC stating that, in the ACCC's opinion, compliance with subsection (2) in relation to the facility is not technically feasible.
- (5) In determining whether compliance with subsection (2) in relation to a facility is technically feasible, the ACCC must have regard to:

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- (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
  - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the facility; and
  - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
    - (i) changing the configuration or operating parameters of the facility; and
    - (ii) making alterations to the facility; and
  - (d) such other matters (if any) as the ACCC considers relevant.
- (6) Before issuing a certificate under subsection (4), the ACCC may consult the ACMA.
- (7) If the ACCC receives a request to make a decision about the issue of a certificate under subsection (4), the ACCC must use its best endeavours to make that decision within 10 business days after the request was made.
- (8) Subsection (2) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have the effect of depriving any person of a right under a contract that was in force at the time the request was made.

*Ancillary contraventions*

- (9) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

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*Civil penalty provisions*

- (10) Subsections (2) and (9) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**372M Terms and conditions of access**

- (1) The owner or operator of a fixed-line facility must comply with subsection 372L(2) on such terms and conditions as are:
- (a) agreed between the following parties:
    - (i) the owner or operator of the facility;
    - (ii) the carrier who made the request under that subsection;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.

- (2) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (3) 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.
- (4) Subsection (3) does not, by implication, limit subsection (2).
- (5) If:
- (a) an agreement mentioned in paragraph (1)(a) is in force; and
  - (b) the agreement is in writing;
- a determination under this section has no effect to the extent to which it is inconsistent with the agreement.

**372N Exemptions—Ministerial instrument**

- (1) The Minister may, by legislative instrument, exempt:
- (a) a fixed-line facility specified in the instrument; or
  - (b) a fixed-line facility ascertained in accordance with the instrument;
- from the scope of section 372L.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (2) An exemption under subsection (1) may be unconditional or subject to such conditions (if any) as are specified in the exemption.
- (3) An instrument under subsection (1) may confer functions or powers on the ACCC.
- (4) The ACCC may, by writing, delegate any or all of the functions or powers conferred on it by an instrument under subsection (1) to a member of the Commission (within the meaning of the *Competition and Consumer Act 2010*).

**372NA Code relating to access**

- (1) The ACCC may, by legislative instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Division.
- (2) The owner or operator of a fixed-line facility must comply with the Code.
- (3) This section does not, by implication, limit a power conferred by or under this Act to make an instrument.
- (4) This section does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.
- (5) Subsections (3) and (4) do not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.

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*Ancillary contraventions*

- (6) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (7) Subsections (2) and (6) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.



## **Division 5—Exemption of certain projects**

### **372P Exemption of certain projects**

- (1) A real estate development project is exempt from the scope of Division 2 if, before the commencement of this section, a person who carries out, or carries out an element of, the project:
  - (a) began to install lines in the project area, or any of the project areas, for the project; or
  - (b) entered into a contract with another person for the installation of lines in the project area, or any of the project areas, for the project.
- (2) A real estate development project is exempt from the scope of Division 3 if, before the commencement of this section, a person who carries out, or carries out an element of, the project:
  - (a) began to install fixed-line facilities in the project area, or any of the project areas, for the project; or
  - (b) entered into a contract with another person for the installation of fixed-line facilities in the project area, or any of the project areas, for the project.
- (3) A real estate development project is exempt from the scope of Division 3 if, before the commencement of this section:
  - (a) civil works associated with the project began to be carried out; or
  - (b) a person who carries out, or carries out an element of, the project entered into a contract with another person for the carrying out of civil works associated with the project.

## Division 6—Miscellaneous

### 372Q Real estate development projects etc.

#### *Subdivisions*

- (1) For the purposes of this Act, a project is a **real estate development project** if:
- (a) the project involves the subdivision of one or more areas of land in Australia into lots (however described); and
  - (b) the project involves either or both of the following:
    - (i) the making available of one or more of those lots for sale or lease, where it would be reasonable to expect that one or more building units would be subsequently constructed on the lots;
    - (ii) the construction of one or more building units on any of the lots and the making available of any of those building units for sale or lease; and
  - (c) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note 1: For **subdivision** of an area of land, see section 372R.

Note 2: For **sale** of building lots, see section 372T.

Note 3: For **building unit**, see section 372S.

Note 4: For **sale** of building units, see section 372U.

- (2) For the purposes of this Act, an area of land mentioned in subsection (1) is a **project area** for the real estate development project.
- (3) For the purposes of this Act, a lot mentioned in subsection (1) is a **building lot**.
- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (1)(c).

*Building units*

- (5) For the purposes of this Act, a project is a **real estate development project** if:
- (a) the project involves:
    - (i) the construction of one or more building units on one or more areas of land in Australia; and
    - (ii) the making available of any or all of those building units for sale or lease; and
  - (b) the conditions (if any) specified in an instrument under subsection (7) are satisfied.
- Note 1: For **building unit**, see section 372S.
- Note 2: For **sale** of building units, see section 372U.
- (6) For the purposes of this Act, an area of land mentioned in subsection (5) is a **project area** for the real estate development project.
- (7) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (5)(b).

*Application*

- (8) For the purposes of subsections (1) and (5), it is immaterial whether:
- (a) the project has been, is being, or will be, implemented in stages; or
  - (b) different elements of the project have been, are being, or will be, carried out by different persons; or
  - (c) one or more approvals are given, are required, or will be required, under a law of the Commonwealth, a State or Territory, for the project, or any element of the project; or
  - (d) in a case where the project relates to 2 or more areas of land—those areas of land are under common ownership.

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**372R Subdivision of an area of land**

For the purposes of this Act, if an area of land has been subdivided into lots (however described) it is immaterial whether, after the subdivision, a part of the area of land (for example, a road) is not included in any of those lots.

**372S Building units**

*Scope*

- (1) This section applies to a building that has been, is being, or is to be, constructed.

*Building units*

- (2) For the purposes of this Act, if the whole of the building is, or is to be, for single occupation or use, the building is a **building unit**.
- (3) For the purposes of this Act, if the whole or a part of the building is, or is to be, held as a unit under a strata title system (or a similar system) established under a law of a State or Territory, the whole or the part, as the case may be, of the building is a **building unit**.
- (4) For the purposes of this Act, if a part of the building is, or is to be, for separate lease, that part of the building is a **building unit**.

**372T Sale of building lots**

For the purposes of this Act, a person **sells** a building lot if:

- (a) in a case where the person holds a freehold interest in the land concerned—the person transfers the whole or a part of the freehold interest in the land; or
- (b) in a case where the person holds a leasehold interest in the land concerned—the person transfers the whole or a part of the leasehold interest in the land.

### **372U Sale of building units**

For the purposes of this Act, a person *sells* a building unit if:

- (a) in a case where:
  - (i) the building unit is covered by subsection 372S(2), but is not covered by subsection 372S(3); and
  - (ii) the person holds a freehold interest in the land on which the building unit is situated;the person transfers the whole or a part of the freehold interest; or
- (b) in a case where:
  - (i) the building unit is covered by subsection 372S(2), but is not covered by subsection 372S(3); and
  - (ii) the person holds a leasehold interest in the land on which the building unit is situated;the person transfers the whole or a part of the leasehold interest; or
- (c) in a case where:
  - (i) the building unit is covered by subsection 372S(3); and
  - (ii) the person holds an interest in the unit;the person transfers the whole or a part of the interest in the unit.

### **372V Fixed-line facilities**

For the purposes of this Act, a *fixed-line facility* is a facility (other than a line) used, or for use, in connection with a line, where the line:

- (a) is not on the customer side of the boundary of a telecommunications network; and
- (b) is used, or for use, to supply a carriage service to the public.

Note 1: For *boundary of a telecommunications network*, see section 22.

Note 2: For *supply to the public*, see section 372ZA.

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**372W Fibre-ready facility**

- (1) For the purposes of this Act, each of the following is a ***fibre-ready facility***:
- (a) an underground fixed-line facility that:
    - (i) is used, or for use, in connection with an optical fibre line; and
    - (ii) satisfies such conditions (if any) as are specified in a legislative instrument made by the Minister;
  - (b) a fixed-line facility that:
    - (i) is used, or for use, in connection with an optical fibre line; and
    - (ii) is specified in a legislative instrument made by the Minister; and
    - (iii) satisfies such conditions (if any) as are specified in a legislative instrument made by the Minister.
- (2) For the purposes of this Act, a ***functional fibre-ready facility*** is a fibre-ready facility that is technically capable of being used in connection with an optical fibre line.
- (3) For the purposes of subsection (2), in determining whether a fibre-ready facility is technically capable of being used in connection with an optical fibre line, regard must be had to applicable industry codes registered, or applicable industry standards determined, under Part 6 (if any).

**372X Installation of a facility**

For the purposes of this Part, ***install***, in relation to a facility, includes:

- (a) construct the facility on, over or under any land; and
- (b) attach the facility to any building or other structure.

**372Y Installation of a fibre-ready facility in proximity to a building lot or building unit**

*Building lot*

- (1) For the purposes of this Part, a fibre-ready facility used, or for use, in connection with a line is installed in *proximity* to a building lot if, and only if, it is installed:
  - (a) in, on or under the lot, so as to enable the line to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; or
  - (b) in sufficient proximity to the lot as to enable the line to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot.

*Building unit*

- (2) For the purposes of this Part, a fibre-ready facility used, or for use, in connection with a line is installed in *proximity* to a building unit if, and only if, it is installed in sufficient proximity to the building unit as to enable the line to be readily connected to the building unit.

**372Z Sewerage services, electricity or water supplied to a building lot or building unit**

*Sewerage services*

- (1) For the purposes of this Part, sewerage services are *supplied* to a building lot if, and only if:
  - (a) a sewerage pipeline is installed:
    - (i) under the lot; or
    - (ii) in sufficient proximity to the lot as to enable sewerage services to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; and
  - (b) the pipeline is part of a public sewerage system.

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- (2) For the purposes of this Part, sewerage services are **supplied** to a building unit if, and only if:
- (a) a sewerage pipeline is installed in sufficient proximity to the building unit as to enable sewerage services to be readily connected to the building unit; and
  - (b) the pipeline is part of a public sewerage system.

*Electricity*

- (3) For the purposes of this Part, electricity is **supplied** to a building lot if, and only if:
- (a) an electricity cable is installed:
    - (i) over or under the lot; or
    - (ii) in sufficient proximity to the lot as to enable electricity to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; and
  - (b) the cable is part of an electricity supply grid.
- (4) For the purposes of this Part, electricity is **supplied** to a building unit if, and only if:
- (a) an electricity cable is installed in sufficient proximity to the building unit as to enable electricity to be readily connected to the building unit; and
  - (b) the cable is part of an electricity supply grid.

*Water*

- (5) For the purposes of this Part, water is **supplied** to a building lot if, and only if:
- (a) a water pipeline is installed:
    - (i) under the lot; or
    - (ii) in sufficient proximity to the lot as to enable water to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; and
  - (b) the pipeline is part of a reticulated water supply system.



- (6) For the purposes of this Part, water is *supplied* to a building unit if, and only if:
- (a) a water pipeline is installed in sufficient proximity to the building unit as to enable water to be readily connected to the building unit; and
  - (b) the pipeline is part of a reticulated water supply system.

### **372ZA Supply to the public**

- (1) For the purposes of this Part, if:
- (a) a line consists of, or forms part of, a network unit; and
  - (b) under section 44, the network unit is taken, for the purposes of section 42, to be used to supply a carriage service to the public;
- the line is taken to be used, or for use, to supply a carriage service to the public.
- (2) For the purposes of this Part, if:
- (a) a line neither consists of, nor forms part of, a network unit; and
  - (b) assuming that the line were a network unit, then, under section 44, the network unit would be taken, for the purposes of section 42, to be used to supply a carriage service to the public;
- the line is taken to be used, or for use, to supply a carriage service to the public.

### **372ZB Concurrent operation of State and Territory laws**

This Part is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.

### **372ZD NBN Co**

In this Part:

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***NBN Co*** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

## **Part 21—Technical regulation**

### **Division 1—Simplified outline**

#### **373 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA may make the following types of standards:
  - (a) technical standards about customer equipment and customer cabling;
  - (b) standards relating to the features of customer equipment that are designed to cater for the special needs of persons with disabilities;
  - (c) technical standards about the interconnection of facilities;
  - (d) technical standards relating to Layer 2 bitstream services.
- The ACMA may require customer equipment and customer cabling to be labelled so as to indicate compliance with standards.
- The ACMA may issue connection permits, and make connection rules, authorising the connection of customer equipment and customer cabling that does not comply with the labelling requirements.
- A label may include a compliance symbol. The unauthorised use of compliance symbols is prohibited.

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- The ACMA may grant cabling licences, and make cabling provider rules, authorising the performance of cabling work.
- Civil actions may be instituted for unlawful or dangerous connections of customer equipment or customer cabling.
- Dangerous equipment and cabling may be disconnected from networks.
- The ACMA may prohibit the supply or possession of dangerous equipment or cabling.

## **Division 2—Interpretative provisions**

### **374 Part applies to networks or facilities in Australia operated by carriers or carriage service providers**

- (1) A reference in this Part to a *telecommunications network* is a reference to a telecommunications network in Australia that is operated by a carrier or carriage service provider.
- (2) A reference in this Part to a *facility* is a reference to a facility in Australia that is operated by a carrier or carriage service provider.

### **375 Manager of network or facility**

For the purposes of this Part, the *manager* of:

- (a) a telecommunications network; or
- (b) a facility of a telecommunications network;

is the carrier, or carriage service provider, who operates the network or facility, as the case may be.

## **Division 3—Technical standards about customer equipment and customer cabling**

### **376 ACMA’s power to make technical standards**

- (1) The ACMA may, by legislative instrument, make a technical standard relating to specified customer equipment or specified customer cabling.
- (2) Standards under this section are to consist only of such requirements as are necessary or convenient for:
  - (a) protecting the integrity of a telecommunications network or a facility; or
  - (b) protecting the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or
    - (iv) are otherwise reasonably likely to be affected by the operation of;a telecommunications network or a facility; or
  - (c) ensuring that customer equipment can be used to give access to an emergency call service; or
  - (d) ensuring, for the purpose of the supply of a standard telephone service, the interoperability of customer equipment with a telecommunications network to which the equipment is, or is proposed to be, connected; or
  - (da) ensuring, for the purpose of the supply of a carriage service using:
    - (i) the national broadband network; or
    - (ii) any other superfast telecommunications network;the interoperability of customer equipment with such a network; or
  - (db) ensuring that customer equipment or customer cabling that is, or is proposed to be, connected to:
    - (i) the national broadband network; or

- (ii) any other superfast telecommunications network; meets particular performance requirements; or
  - (dc) ensuring that customer equipment or customer cabling that is, or is proposed to be, connected to:
    - (i) the national broadband network; or
    - (ii) any other superfast telecommunications network; has particular design features; or
  - (e) achieving an objective specified in the regulations.
- (3) Regulations made for the purposes of paragraph (2)(e) must not specify an objective if the achievement of the objective is likely to have the effect (whether direct or indirect) of requiring a telecommunications network or a facility to:
- (a) have particular design features; or
  - (b) meet particular performance requirements.
- (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*.
- (7) In this section:

***national broadband network*** has the same meaning as in section 577BA.

***superfast carriage service*** means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the download transmission speed of the carriage service is normally more than 25 megabits per second; and
- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

***superfast telecommunications network*** means a telecommunications network that is capable of being used to supply a superfast carriage service.

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**376A ACMA must make technical standards if directed by the Minister**

- (1) The Minister may, by legislative instrument, direct the ACMA to:
  - (a) make a technical standard under section 376 that deals with one or more specified matters; and
  - (b) do so within a specified period.
- (2) The Minister must not give the ACMA a direction under section 14 of the *Australian Communications and Media Authority Act 2005* requiring the ACMA to make a technical standard under section 376 of this Act that deals with one or more specified matters.

**377 Adoption of voluntary standards**

- (1) In making a technical standard under section 376, the ACMA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
  - (a) Standards Australia; or
  - (b) any other body or association;either:
  - (c) as in force or existing at a particular time; or
  - (d) as in force or existing from time to time.
- (2) Subsection (1) does not, by implication, limit section 589.

**378 Procedures for making technical standards**

- (1) Before making a technical standard under section 376, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representation so made.



Note: This subsection has effect subject to section 379 (which deals with the ACMA's power to make standards in cases of urgency).

- (2) The ACMA may make an arrangement with any of the following bodies or associations:
- (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;
- under which the body or association:
- (d) prepares a draft of a standard; and
  - (e) publishes the draft standard; and
  - (f) undertakes a process of public consultation on the draft standard; and
  - (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

### **379 Making technical standards in cases of urgency**

- (1) The ACMA is not required to comply with subsection 378(1) in relation to the making of a particular technical standard if the ACMA is satisfied that it is necessary to make the standard as a matter of urgency in order to:
- (a) protect the integrity of a telecommunications network or of a facility; or
  - (b) protect the health or safety of persons who:

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- (i) operate; or
  - (ii) work on; or
  - (iii) use services supplied by means of; or
  - (iv) are otherwise reasonably likely to be affected by the operation of;  
a telecommunications network or a facility.
- (2) If subsection (1) applies to a standard (the *urgent standard*), the urgent standard ceases to have effect 12 months after it came into operation. However, this rule does not prevent the ACMA from revoking the urgent standard and making another standard under section 376 that:
- (a) is not a standard to which subsection (1) applies; and
  - (b) deals with the same subject matter as the urgent standard.

## **Division 4—Disability standards**

### **380 Disability standards**

- (1) The ACMA may, by legislative instrument, make a standard relating to specified customer equipment if:
  - (a) the customer equipment is for use in connection with the standard telephone service; and
  - (b) the customer equipment is for use primarily by persons who do not have a disability; and
  - (c) the standard relates to the features of the equipment that are designed to cater for any or all of the special needs of persons with disabilities.
- (2) The following are examples of features mentioned in paragraph (1)(c):
  - (a) an induction loop that is designed to assist in the operation of a hearing aid;
  - (b) a raised dot on the button labelled “5” on a telephone.
- (3) 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*.
- (6) In this section:

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

### **381 Adoption of voluntary standards**

- (1) In making a standard under section 380, the ACMA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
  - (a) Standards Australia; or
  - (b) any other body or association;

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either:

- (c) as in force or existing at a particular time; or
- (d) as in force or existing from time to time.

(2) Subsection (1) does not, by implication, limit section 589.

**382 Procedures for making disability standards**

- (1) Before making a standard under section 380, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representation so made.
- (2) The ACMA may make an arrangement with any of the following bodies or associations:
  - (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;under which the body or association:
  - (d) prepares a draft of a standard; and
  - (e) publishes the draft standard; and
  - (f) undertakes a process of public consultation on the draft standard; and
  - (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.

- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

### **383 Effect of compliance with disability standards**

- (1) In determining whether a person has infringed section 24 of the *Disability Discrimination Act 1992* in relation to the supply or provision of customer equipment, regard must be had to whether the customer equipment complies with a standard in force under section 380.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.

## Division 5—Technical standards about the interconnection of facilities

### 384 ACMA's power to make technical standards

- (1) The ACMA may, by legislative instrument, make a technical standard relating to the interconnection of facilities.

Note: For enforcement of the standards, see sections 152AR and 152AXB of the *Competition and Consumer Act 2010*.

- (2) The ACMA must not make a standard under subsection (1) unless the ACMA is directed to do so by the ACCC under subsection (3).
- (3) The ACCC may give written directions to the ACMA in relation to the exercise of the power to make standards under subsection (1).
- (4) The ACMA must exercise its powers under subsection (1) in a manner consistent with any directions given by the ACCC under subsection (3).
- (5) The ACCC must not give a direction under subsection (3) unless, in the ACCC's opinion, it is necessary to do so in order to:
- (a) promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services; or
  - (b) reduce or eliminate the likelihood of hindrance to the provision of access to declared services.
- (6) A standard under subsection (1) 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*.
- (9) In this section:

***declared service*** has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

### **385 Adoption of voluntary standards**

- (1) In making a technical standard under section 384, the ACMA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
  - (a) Standards Australia; or
  - (b) any other body or association;either:
  - (c) as in force or existing at a particular time; or
  - (d) as in force or existing from time to time.
- (2) Subsection (1) does not, by implication, limit section 589.

### **386 Procedures for making technical standards**

- (1) Before making a technical standard under section 384, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representations so made.
- (2) The ACMA may make an arrangement with any of the following bodies or associations:
  - (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;under which the body or association:
  - (d) prepares a draft of a standard; and
  - (e) publishes the draft standard; and
  - (f) undertakes a process of public consultation on the draft standard; and

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- (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

**387 Procedures for making technical standards**

- (1) The ACMA must not make a standard under section 384 relating to a particular matter unless:
  - (a) the ACMA has given a body or association a written notice requesting the body or association to make a standard relating to that matter within the period specified in the notice; and
  - (b) one of the following subparagraphs applies:
    - (i) the body or association does not comply with the request;
    - (ii) the body or association complies with the request, but the ACMA is not satisfied that the body's or association's standard deals with that matter in an adequate way;
    - (iii) the body or association complies with the request, but the ACMA is not satisfied that the body's or association's standard is operating adequately.
- (2) The period specified under paragraph (1)(a) must run for at least 120 days after the notice was given.



- (3) In making a decision under subparagraph (1)(b)(ii) or (iii), the ACMA must have regard to:
- (a) whether the body's or association's standard is likely to promote the long-term interests of end-users of carriage services and of services supplied by means of carriage services; and
  - (b) whether the body's or association's standard is likely to reduce or eliminate the likelihood of hindrance to the provision of access to declared services.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACMA may have regard.
- (5) Before making a decision under subparagraph (1)(b)(ii) or (iii), the ACMA must consult the ACCC.

### **388 Provision of access**

A reference in this Division to the *provision of access* is a reference to the provision of access to:

- (a) service providers generally; or
  - (b) a particular class or classes of service providers; or
  - (c) a particular service provider or particular service providers;
- in order that the service provider or providers can provide carriage services and/or content services.

### **389 Promotion of the long-term interests of end-users of carriage services and of services supplied by means of carriage services**

For the purposes of this Division, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as it is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.

## Division 5A—Technical standards relating to Layer 2 bitstream services

### 389A ACMA's power to determine technical standards

The ACMA may, by legislative instrument, determine technical standards relating to Layer 2 bitstream services.

Note: See section 589 (instruments under this Act may provide for matters by reference to other instruments).

### 389B Compliance with technical standards

- (1) A carrier or carriage service provider must comply with a standard determined under section 389A.
- (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 provides for pecuniary penalties for breaches of civil penalty provisions.

#### *Exemptions*

- (4) The Minister may, by written instrument, exempt a specified carrier, or a specified carriage service provider, from subsection (1).

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (5) An instrument under subsection (4) may be:
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- (a) unconditional; or
  - (b) subject to such conditions (if any) as are specified in the instrument.
- (6) Before making an instrument under subsection (4), the Minister must consult:
- (a) the ACCC; and
  - (b) the ACMA.
- (7) An instrument under subsection (4) is not a legislative instrument.

## Division 6—Connection permits and connection rules

### Subdivision A—Connection permits authorising the connection of non-standard customer equipment and non-standard cabling

#### 390 Application for connection permit

##### *Customer equipment*

- (1) A person (the ***applicant***) may apply to the ACMA for a permit authorising the applicant, and such other persons as are from time to time nominated by the applicant, to:
  - (a) connect specified customer equipment to a telecommunications network or to a facility; and
  - (b) maintain such a connection.

The permit is called a ***connection permit***.

##### *Customer cabling*

- (2) A person (the ***applicant***) may apply to the ACMA for a permit authorising the applicant, and such other persons as are from time to time nominated by the applicant, to:
  - (a) connect specified customer cabling to a telecommunications network or to a facility; and
  - (b) maintain such a connection.

The permit is called a ***connection permit***.

#### 391 Form of application

An application must be:

- (a) in writing; and
- (b) in accordance with the form approved in writing by the ACMA.

### **392 Application to be accompanied by charge**

An application must be accompanied by the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*.

### **393 Further information**

- (1) The ACMA may request the applicant to give the ACMA further information about the application.
- (2) The ACMA may refuse to consider the application until the applicant gives the ACMA the information.

### **394 Issue of connection permits**

- (1) After considering an application, the ACMA may issue a connection permit in accordance with the application.
- (2) In deciding whether to issue a connection permit, the ACMA may have regard to:
  - (a) whether the purpose for which the permit is sought is a purpose related to:
    - (i) education or research; or
    - (ii) the testing of customer equipment or customer cabling; or
    - (iii) the demonstration of customer equipment or customer cabling; and
  - (b) the knowledge and experience of the applicant.
- (3) In deciding whether to issue a connection permit, the ACMA must have regard to:
  - (a) the protection of the integrity of a telecommunications network or of a facility; and
  - (b) the protection of the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or

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- (iv) are otherwise reasonably likely to be affected by the operation of;  
a telecommunications network or a facility.
- (4) Subsections (2) and (3) do not, by implication, limit the matters to which the ACMA may have regard.
- (5) If the ACMA decides to refuse to issue the connection permit, it must give the applicant a written notice setting out the decision.

**395 Connection permit has effect subject to this Act**

- (1) A connection permit has effect subject to this Act.
- (2) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**396 Nominees of holder**

If the ACMA issues a connection permit, the persons nominated by the holder are called the holder's *nominees*.

**397 Duration of connection permits**

- (1) A connection permit comes into force when it is issued and remains in force:
  - (a) if the permit specifies a day of expiration—until the end of that day; or
  - (b) otherwise—indefinitely.
- (2) The ACMA may, by written notice given to the holder of a connection permit, declare that the permit has effect as if the permit had specified a day specified in the notice as the day of expiration of the connection permit. The declaration has effect accordingly.

- (3) A day specified in a notice under subsection (2) must be later than the day on which the notice is given to the holder of the connection permit.

### **398 Conditions of connection permits**

- (1) A connection permit is subject to the following conditions:
- (a) a condition that the holder and the holder's nominees must comply with this Division;
  - (b) any condition to which the permit is subject under subsection (2);
  - (c) any other conditions specified in the permit.
- (2) The ACMA may, by legislative instrument, determine that:
- (a) each connection permit is subject to such conditions as are specified in the determination; or
  - (b) each connection permit included in a specified class of connection permits is subject to such conditions as are specified in the determination.
- (3) The ACMA may, by written notice given to the holder of a connection permit:
- (a) impose one or more further conditions to which the permit is subject; or
  - (b) vary or revoke any condition:
    - (i) imposed under paragraph (a); or
    - (ii) specified in the permit.
- (4) A condition of a connection permit may relate to the kinds of persons who can be the holder's nominees.
- (5) Subsection (4) does not, by implication, limit the conditions to which a connection permit may be subject.

### **399 Offence of contravening condition**

- (1) A person commits an offence if:

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- (a) the person is the holder of a connection permit, or a nominee of such a holder; and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes a condition to which the permit is subject.

Penalty: 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

- (2) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**400 Formal warnings—breach of condition**

The ACMA may issue a formal warning to the holder of a connection permit if the holder, or a nominee of the holder, contravenes a condition to which the permit is subject.

**401 Surrender of connection permit**

The holder of a connection permit may, at any time, surrender the permit by written notice given to the ACMA.

**402 Cancellation of connection permit**

- (1) The ACMA may, by written notice given to the holder of a connection permit, cancel the permit.
- (2) In deciding whether to cancel the permit, the ACMA may have regard to any matter which the ACMA was entitled, under subsection 394(2), to have regard in deciding whether to issue a permit.



- (3) In deciding whether to cancel the permit, the ACMA must have regard to:
  - (a) any matter to which the ACMA was required, under subsection 394(3), to have regard in deciding whether to issue a permit; and
  - (b) whether or not the holder, or a nominee of the holder, has been convicted of an offence against this Division.
- (4) Subsections (2) and (3) do not, by implication, limit the matters to which the ACMA may have regard.

### **403 Register of connection permits**

- (1) The ACMA is to maintain a Register in which it includes:
  - (a) all connection permits currently in force; and
  - (b) all conditions of such permits.
- (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 60 of the *Australian Communications and Media Authority Act 2005*:
  - (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 ACMA 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 ACMA may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.

## Subdivision B—Connection rules

### 404 Connection rules

- (1) The ACMA may, by legislative instrument, make rules (*connection rules*) that:
  - (a) are expressed to apply to specified persons; and
  - (b) relate to any or all of the following:
    - (i) the connection of specified customer equipment to a telecommunications network or to a facility;
    - (ii) maintaining a connection referred to in subparagraph (i);
    - (iii) the connection of specified customer cabling to a telecommunications network or to a facility;
    - (iv) maintaining a connection referred to in subparagraph (iii).

Note 1: A person may be specified by name, by inclusion in a specified class or in any other way.

Note 2: Equipment or cabling may be specified by name, by inclusion in a specified class or in any other way.

- (2) A person specified under paragraph (1)(a) is said to be *subject to the connection rules*.
- (3) The connection rules may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

### 405 Procedures for making connection rules

- (1) Before making connection rules under section 404, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed rules (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representation so made.

- (2) The ACMA may make an arrangement with any of the following bodies or associations:
- (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;
- under which the body or association:
- (d) prepares draft rules; and
  - (e) publishes the draft rules; and
  - (f) undertakes the process of public consultation on the draft rules; and
  - (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

## **Division 7—Labelling of customer equipment and customer cabling**

### **406 Application of labels**

- (1) A reference in this Division to a *label* includes a reference to a statement.
- (2) For the purposes of this Division, a label is taken to be *applied* to a thing if:
  - (a) the label is affixed to the thing; or
  - (b) the label is woven in, impressed on, worked into or annexed to the thing; or
  - (c) the label is affixed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is supplied; or
  - (d) the label is affixed to, or incorporated in, an instruction or other document that accompanies the first-mentioned thing.

### **406A Application of Division to agent of manufacturer or importer**

For the purposes of this Act and to avoid doubt, a reference in this Division to a manufacturer or importer of customer equipment or customer cabling includes a reference to a person who is authorised in writing by such a manufacturer or importer to act in Australia as an agent of the manufacturer or importer (as the case may be) for the purposes of this Division.

### **407 Labelling requirements**

- (1) The ACMA may, by written instrument, require any person who is a manufacturer or importer of specified customer equipment or specified customer cabling to apply to the equipment or cabling a label that indicates whether the equipment or cabling meets the requirements of the section 376 standards specified in the instrument.

- (2) An instrument under this section is a legislative instrument.

#### **408 Requirements to apply labels—ancillary matters**

- (1) This section applies to an instrument under section 407.
- (2) The label must be in the form specified by the ACMA in the instrument.
- (3) The method of applying the label to the equipment or cabling must be as specified by the ACMA in the instrument.
- (4) The instrument may state that the requirement does not apply to imported customer equipment, or imported customer cabling, if there is applied to the equipment or cabling a label of a specified kind that indicates that the equipment or cabling complies with the requirements of:
- (a) a specified law of a specified foreign country; or
  - (b) a specified instrument in force under a specified law of a specified foreign country; or
  - (c) a specified convention, treaty or international agreement; or
  - (d) a specified instrument in force under a specified convention, treaty or international agreement.
- (5) The instrument may specify requirements that must be met before a label can be applied, including (but not limited to):
- (a) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must have obtained a written statement from a certification body certifying that the equipment or cabling complies with a specified section 376 standard; and
  - (b) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the equipment or cabling must have been tested by a recognised testing authority for compliance with the standards specified in the instrument; and

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- (c) a requirement that a manufacturer or importer must:
  - (i) conduct quality assurance programs; or
  - (ii) be satisfied that quality assurance programs have been conducted; or
  - (iii) have regard to the results of quality assurance programs; before the manufacturer or importer applies the label to the equipment or cabling; and
- (d) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must have obtained a written statement from a competent body certifying that reasonable efforts have been made to avoid a contravention of a specified section 376 standard; and
- (e) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must make a written declaration in relation to the equipment or cabling, being a declaration in a form specified in the instrument.

Note 1: **Certification body** is defined by section 410.

Note 2: **Recognised testing authority** is defined by section 409.

Note 3: **Competent body** is defined by section 409.

- (6) The instrument may specify requirements that must be met after a label has been applied to customer equipment or customer cabling, including (but not limited to) a requirement that a manufacturer or importer retain for inspection, for the period specified in the instrument:
  - (a) records of the quality assurance programs conducted in accordance with the instrument in respect of the equipment or cabling; and
  - (b) records of any results of any tests conducted in relation to compliance with the standards specified in the instrument; and
  - (c) a declaration, or a copy of a declaration, made as mentioned in paragraph (5)(e).

#### **409 Recognised testing authorities and competent bodies**

- (1) The ACMA may, by notice published in the *Gazette*, determine that a specified person or association is an **accreditation body** for the purposes of this section. The determination has effect accordingly.
- (2) An accreditation body may, by written instrument, determine that a specified person is a **recognised testing authority** for the purposes of this Division. The determination has effect accordingly.
- (3) An accreditation body may, by written instrument, determine that a specified person or association is a **competent body** for the purposes of this Division. The determination has effect accordingly.

#### **410 Certification bodies**

- (1) The ACMA may, by notice published in the *Gazette*, determine that a specified person or association is an **approving body** for the purposes of this section. The determination has effect accordingly.
- (2) An approving body may, by written instrument, determine that a specified person or association is a **certification body** for the purposes of this Division. The determination has effect accordingly.

#### **411 Connection of customer equipment or customer cabling— breach of section 376 standards**

##### *Basic prohibition*

- (1) A person must not:
  - (a) connect customer equipment or customer cabling to a telecommunications network or to a facility; or
  - (b) maintain such a connection;if:

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- (c) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and
- (d) either:
  - (i) the manufacturer or importer did not comply with the requirement; or
  - (ii) the manufacturer or importer complied with the requirement, but the label indicated that the equipment or cabling did not meet the requirements of the section 376 standards that were specified in the first-mentioned requirement.

*Offence*

- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

*Exception—reasonable excuse for contravention*

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

*Exception—connection permit*

- (3) A person does not contravene subsection (1) in relation to:
  - (a) connecting customer equipment, or customer cabling, to a telecommunications network, or to a facility; or
  - (b) maintaining such a connection;

if the connection, or the maintenance of the connection, as the case may be, is in accordance with a connection permit.

Note: Connection permits are issued under section 394.



*Exception—compliance with connection rules*

- (4) A person does not contravene subsection (1) in relation to:
- (a) connecting customer equipment, or customer cabling, to a telecommunications network, or to a facility; or
  - (b) maintaining such a connection;
- if:
- (c) the person is subject to the connection rules; and
  - (d) the connection, or the maintenance of the connection, as the case may be, is in accordance with the connection rules.

Note: The connection rules are dealt with by section 404.

*Exception—consent of network manager*

- (5) A person does not contravene subsection (1) in relation to the connection of customer equipment, or customer cabling, to a telecommunications network, or to a facility, if:
- (a) the manager of the network or facility consents in writing to the connection; and
  - (b) the equipment or cabling has applied to it a label that indicates that the equipment or cabling does not meet the requirements of each of the standards under section 376 that were applicable to it when it was connected.

Note: *Manager* is defined by section 375.

**412 Connection of labelled customer equipment or customer cabling not to be refused**

- (1) If:
- (a) at a particular time, a person proposes to connect customer equipment or customer cabling to a telecommunications network or to a facility; and
  - (b) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and
  - (c) both:

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- (i) the manufacturer or importer complied with the requirement; and
- (ii) the label indicated that the equipment or cabling met the requirements of the section 376 standards that were specified in the first-mentioned requirement;

the manager of the network or facility must not refuse to give written consent to the connection.

Note: **Manager** is defined by section 375.

- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (3) A manager of a telecommunications network, or of a facility, does not contravene subsection (1) in relation to a refusal to give consent to the connection of customer equipment, or customer cabling, to the network, or to the facility, if:
  - (a) the manager has reasonable grounds to believe that a label has been applied to the equipment or cabling in contravention of section 414 or 416; or
  - (b) the manager has reasonable grounds to believe that the connection would, or would be likely to, constitute a threat to the integrity of a telecommunications network or of a facility; or
  - (c) the manager has reasonable grounds to believe that the connection would, or would be likely to, constitute a threat to the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or
    - (iv) are otherwise reasonably likely to be affected by the operation of;

a telecommunications network or a facility.

- (4) This section does not, by implication, impose an obligation to supply a carriage service to a particular person.

#### **413 Supply of unlabelled customer equipment or unlabelled customer cabling**

- (1) If a person:
- (a) is a manufacturer or importer of customer equipment or customer cabling; and
  - (b) is required under section 407 to apply to it a label in a particular form;
- the person must not supply the equipment or cabling unless a label in that form has been applied to the equipment or cabling.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (3) In this section:

**supply** includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

#### **414 Applying labels before satisfying requirements under subsection 408(5)**

- (1) If a person is subject to requirements that:
- (a) have been specified under subsection 408(5); and

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(b) must be met before applying a particular label to customer equipment or customer cabling;

the person must not apply:

(c) the label; or

(d) a label that purports to be such a label;

before the person satisfies those requirements.

(2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

**415 Failure to retain records etc.**

(1) If the ACMA makes an instrument under subsection 407(1) that specifies requirements to be met after a label has been applied, a manufacturer or importer must not contravene those requirements.

(2) A person commits an offence if:

(a) the person is a manufacturer or importer of customer equipment or customer cabling; and

(b) the person engages in conduct; and

(c) the person's conduct contravenes a requirement referred to in subsection (1).

Penalty: 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

(3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

#### **416 Application of labels containing false statements about compliance with standards**

- (1) A person must not apply a label to customer equipment or customer cabling if:
  - (a) the label contains a statement to the effect that the equipment or cabling complies with a section 376 standard; and
  - (b) the statement is false or misleading.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

## Division 8—Protected symbols

### 417 Protected symbols

- (1) A person must not:
- (a) use in relation to a business, trade, profession or occupation;  
or
  - (b) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let on hire;  
or
  - (c) use in relation to:
    - (i) goods or services; or
    - (ii) the promotion, by any means, of the supply or use of goods or services;
- a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 30 penalty units.
- Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.
- Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).
- (3) Nothing in subsection (1) limits anything else in that subsection.
- (4) Nothing in subsection (1), so far as it applies in relation to a protected symbol, affects rights conferred by law on a person in relation to:
- (a) a trade mark that is registered under the *Trade Marks Act 1995*; or
  - (b) a design that is registered under the *Designs Act 2003*; and was registered under the *Trade Marks Act 1995* or the *Designs Act 1906* immediately before 16 August 1996 in relation to the symbol.

- (5) Nothing in this section, so far as it applies to a protected symbol, affects the use, or rights conferred by law relating to the use, of the symbol by a person in a particular manner if, immediately before 16 August 1996, the person:
- (a) was using the symbol in good faith in that manner; or
  - (b) would have been entitled to prevent another person from passing off, by means of the use of the symbol or a similar symbol, goods or services as the goods or services of the first-mentioned person.
- (6) This section does not apply to a person who uses or applies a protected symbol for the purposes of labelling customer equipment or customer cabling in accordance with section 407.
- (6A) This section does not apply to a person who uses or applies a protected symbol for the purposes of labelling equipment in accordance with equipment rules made under the *Radiocommunications Act 1992*.
- (7) This section does not apply to a person who uses or applies a protected symbol for a purpose of a kind specified in a written determination made by the ACMA.
- (8) A reference in this section to a ***protected symbol*** is a reference to:
- (a) the symbol known in the telecommunications industry as the C-Tick mark:
    - (i) the design of which is set out in a written determination made by the ACMA; and
    - (ii) a purpose of which, after the commencement of this section, is to indicate compliance by customer equipment or customer cabling with applicable section 376 standards; or
  - (b) a symbol:
    - (i) the design of which is set out in a written determination made by the ACMA; and
    - (ii) a purpose of which, after the commencement of this section, is to indicate compliance by customer

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equipment or customer cabling with applicable section 376 standards; or

(c) a symbol:

- (i) the design of which is set out in a written determination made by the ACMA; and
- (ii) a purpose of which, after the commencement of this section, is to indicate non-compliance by customer equipment or customer cabling with applicable section 376 standards.

(9) For the purposes of this Part, if:

- (a) a label is applied to customer equipment or customer cabling; and
- (b) the label embodies a symbol referred to in paragraph (8)(a) or (b);

the label is taken to indicate that the equipment or cabling meets the requirements of each applicable section 376 standard.

(10) For the purposes of this Part, if:

- (a) a label is applied to customer equipment or customer cabling; and
- (b) the label embodies a symbol referred to in paragraph (8)(c);

the label is taken to indicate that the equipment or cabling does not meet the requirements of each applicable section 376 standard.

(11) For the purposes of this section, a section 376 standard is taken to be applicable in relation to customer equipment or customer cabling if, and only if, the standard was specified in the section 407 requirement that dealt with the manufacture or importation of the equipment or cabling.

(12) A determination made by the ACMA under subsection (7) or (8) is a legislative instrument.

(13) In addition to its effect apart from this subsection, this section also has the effect it would have if a reference in subsection (1) to a person were, by express provision, confined to a corporation to which paragraph 51(xx) of the Constitution applies.



- (14) In addition to its effect apart from this subsection, this section also has the effect it would have if each reference in subsection (1) to use, or to application, were a reference to use or application, as the case may be, in the course of, or in relation to:
- (a) trade or commerce between Australia and places outside Australia; or
  - (b) trade or commerce among the States; or
  - (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
  - (d) the supply of goods or services to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory; or
  - (e) the defence of Australia; or
  - (f) the operation of lighthouses, lightships, beacons or buoys; or
  - (g) astronomical or meteorological observations; or
  - (h) an activity of a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (i) banking, other than State banking; or
  - (j) insurance, other than State insurance; or
  - (k) weighing or measuring.

## Division 9—Cabling providers

### 418 Cabling work

A reference in this Division to ***cabling work*** is a reference to:

- (a) the installation of customer cabling for connection to a telecommunications network or to a facility; or
- (b) the connection of customer cabling to a telecommunications network or to a facility; or
- (c) the maintenance of customer cabling connected to a telecommunications network or to a facility.

### 419 Types of cabling work

- (1) The ACMA may, by legislative instrument, declare that a specified kind of cabling work is a type of cabling work for the purposes of this Division.
- (2) The declaration has effect accordingly.
- (3) For the purposes of this Division, the type of cabling work is to be ascertained solely by reference to the declaration.

### 420 Prohibition of unauthorised cabling work

- (1) A person must not perform a particular type of cabling work unless:
  - (a) the person is subject to the cabling provider rules; or
  - (b) the person performs the work under the supervision of another person who is subject to the cabling provider rules; or
  - (c) the person is the holder of a cabling licence that authorises the performance of that type of cabling work; or
  - (d) the person performs the work under the supervision of the holder of a cabling licence that authorises the performance of that type of cabling work.

- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

#### **421 Cabling provider rules**

- (1) The ACMA may, by legislative instrument, make rules (***cabling provider rules***) that:

- (a) are expressed to apply to specified persons; and
- (b) relate to:
  - (i) the performance of cabling work; or
  - (ii) the supervision of the performance of cabling work;or both.

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

- (2) A person specified under paragraph (1)(a) is said to be ***subject to the cabling provider rules***.
- (3) A person who is subject to the cabling provider rules must comply with the cabling provider rules.
- (4) A person who contravenes subsection (3) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.
- Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.
- Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).
- (5) The cabling provider rules may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

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**422 Procedures for making cabling provider rules**

- (1) Before making cabling provider rules under section 421, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed rules (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representation so made.
- (2) The ACMA may make an arrangement with any of the following bodies or associations:
  - (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;under which the body or association:
  - (d) prepares a draft of the cabling provider rules; and
  - (e) publishes the draft rules; and
  - (f) undertakes a process of public consultation on the draft rules; and
  - (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

#### **423 Application for cabling licence**

An individual may apply to the ACMA for a cabling licence that authorises the performance of a particular type of cabling work.

#### **424 Form of application**

- (1) An application must:
  - (a) be in writing; and
  - (b) describe the knowledge and experience of the applicant to perform cabling work; and
  - (c) be in accordance with the form approved in writing by the ACMA.
- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.

#### **425 Application to be accompanied by charge**

An application must be accompanied by the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*.

#### **426 Further information**

- (1) The ACMA may, within 7 days after an application is made, request the applicant to give the ACMA further information about the application.
- (2) The ACMA may refuse to consider the application until the applicant gives the ACMA the information.

#### **427 Grant of cabling licence**

- (1) After considering an application, the ACMA may grant a cabling licence in accordance with the application.

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- (2) The ACMA must not grant a cabling licence authorising the performance of a particular type of cabling work unless it is satisfied that:
- (a) the applicant has the necessary knowledge and experience to perform cabling work of that type; and
  - (b) cabling work of that type performed in accordance with the conditions included in the licence would comply with standards in force under section 376; and
  - (c) the issue of the licence is not contrary to directions given by the Minister under section 440.

**428 Time limit on licence decision**

If the ACMA neither grants, nor refuses to grant, a cabling licence before the end of whichever of the following periods is applicable:

- (a) if the ACMA did not give a request under section 426 in relation to the licence application—the period of 30 days after the day on which the ACMA received the application;
- (b) if:
  - (i) the ACMA gave a request under section 426 in relation to the licence application; and
  - (ii) the request was complied with;the period of 30 days after the day on which the request was complied with;
- (c) if:
  - (i) the ACMA gave a request under section 426 in relation to the licence application; and
  - (ii) the request was not complied with;the period of 30 days after the end of the period specified in the request;

the ACMA is taken, at the end of that 30-day period, to have refused to grant the licence under section 427.

#### **429 Notification of refusal of application**

If the ACMA decides to refuse to grant a cabling licence, the ACMA must give written notice of the decision to the applicant.

#### **430 Cabling licence has effect subject to this Act**

- (1) A cabling licence has effect subject to this Act.
- (2) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

#### **431 Duration of cabling licence**

A cabling licence comes into force when it is issued and remains in force:

- (a) if the licence specifies a day of expiration—until the end of that day; or
- (b) otherwise—indefinitely.

#### **432 Conditions of cabling licence**

- (1) A cabling licence is subject to such conditions as are specified in a written determination made by the ACMA for the purposes of this subsection.
- (2) A cabling licence is subject to such conditions as are specified in the licence.
- (3) The ACMA may, by written notice given to the holder of a cabling licence:
  - (a) impose one or more further conditions to which the licence is subject; or
  - (b) revoke or vary any condition:
    - (i) imposed under paragraph (a); or
    - (ii) specified in the licence.

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- (4) The following are examples of conditions to which a cabling licence could be subject:
  - (a) conditions relating to the types of premises in or on which the holder of the licence may perform cabling work;
  - (b) conditions requiring customer cabling to be inspected by persons authorised in writing by the ACMA for the purposes of this paragraph.
- (5) A determination under subsection (1) is a legislative instrument.

**433 Procedures for changing licence conditions**

- (1) The ACMA's powers under subsection 432(3) may be exercised:
  - (a) on the ACMA's own initiative; or
  - (b) on application made to the ACMA by the holder of the licence.
- (2) An application under paragraph (1)(b) must:
  - (a) be in writing; and
  - (b) be in accordance with the form approved in writing by the ACMA.
- (3) The approved form of application may provide for verification by statutory declaration of statements in applications.
- (4) If the ACMA refuses an application under paragraph (1)(b), the ACMA must give written notice of the refusal to the applicant.
- (5) If the ACMA neither grants, nor refuses to grant, an application under paragraph (1)(b) before the end of 30 days after receiving the application, the ACMA is taken, at the end of that period, to have refused the application.

**434 Offence in relation to contravening condition**

- (1) A person commits an offence if:
  - (a) the person is the holder of a cabling licence that authorises the performance of a particular type of cabling work; and



- (b) the person performs cabling work of that type; and
- (c) the performance of that work contravenes a condition to which the licence is subject.

Penalty: 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

- (2) A person commits an offence if:
- (a) the person is the holder of a cabling licence that authorises the performance of a particular type of cabling work; and
  - (b) the person engages in conduct; and
  - (c) the result of the person's conduct is a failure to take all reasonable steps to ensure that cabling work of that type performed under the person's supervision does not contravene the conditions of the licence.

Penalty: 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

- (3) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

### **435 Formal warnings—breach of condition**

The ACMA may issue a formal warning if the holder of a cabling licence contravenes a condition to which the licence is subject.

### **436 Surrender of cabling licence**

- (1) The holder of a cabling licence may, at any time, surrender the licence by:

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- (a) returning it to the ACMA; and
  - (b) giving the ACMA written notice that it is surrendered.
- (2) The surrender of a cabling licence takes effect on the day on which the notice is given to the ACMA.

**437 Suspension of cabling licence**

- (1) The ACMA may, by written notice given to the holder of a cabling licence, suspend the cabling licence for a period of not longer than 28 days.
- (2) In deciding whether to suspend the cabling licence, the ACMA must have regard to:
- (a) any matter to which the ACMA was required, under section 427, to have regard in deciding whether to grant a cabling licence; and
  - (b) whether or not the holder of the cabling licence has been convicted of an offence against this Division.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.
- (4) During the period of suspension, section 420 has effect as if the licence did not exist.

**438 Cancellation of cabling licence**

- (1) The ACMA may, by written notice given to the holder of a cabling licence, cancel the cabling licence.
- (2) In deciding whether to cancel the cabling licence, the ACMA must have regard to:
- (a) any matter to which the ACMA was required, under section 427, to have regard in deciding whether to grant a cabling licence; and
  - (b) whether or not the holder of the cabling licence has been convicted of an offence against this Division.

- (3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.

**439 ACMA may limit application of Division in relation to customer cabling**

- (1) The ACMA may, by legislative instrument, declare that this Division, or specified provisions of it, do not apply in relation to specified kinds of customer cabling.
- (2) An instrument under subsection (1) may specify a kind of customer cabling:
- (a) by reference to the technical characteristics of the cabling; or
  - (b) by reference to the functions of the cabling; or
  - (c) by reference to the purposes for which the cabling is used, or is intended to be used, by the customer concerned; or
  - (d) by reference to the location of the cabling.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) This Division has effect in accordance with an instrument in force under subsection (1).

**440 Ministerial directions**

- (1) The Minister may, by legislative instrument, give the ACMA written directions about how it is to perform its functions or exercise its powers under this Division.
- (2) A direction under subsection (1) may require the ACMA to make cabling provider rules that deal with one or more specified matters.
- (2A) Subsection (2) does not limit subsection (1).
- (3) A direction under subsection (1) must not concern the way in which the ACMA is to deal with a particular application for a cabling licence.
- (4) The Minister must not give the ACMA a direction under section 14 of the *Australian Communications and Media Authority Act 2005*

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about how the ACMA is to perform its functions or exercise its powers under this Division.

**441 Delegation**

- (1) The ACMA may, by writing, delegate to a person any or all of its functions and powers under this Division.
- (1A) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated a function or power referred to in subsection (1) to a Division of the ACMA, the following provisions have effect:
  - (a) the Division may delegate the function or power to a person;
  - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.
- (2) Subsections (1) and (1A) do not apply to the following powers:
  - (a) the power to refuse an application for a cabling licence;
  - (b) the power conferred by subsection 432(3);
  - (c) the power to cancel or suspend a cabling licence;
  - (d) the power to make a declaration under section 439.
- (3) The delegate is, in the exercise of the delegated function or power, subject to the written directions of:
  - (a) the ACMA, if the delegation to the delegate was under subsection (1); or
  - (b) the Division that delegated the power, if the delegation to the delegate was under subsection (1A).
- (4) The powers conferred on the ACMA by subsection (1), and on a Division of the ACMA by subsection (1A), are in addition to the powers conferred by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

#### **442 Register of cabling licences**

- (1) The ACMA is to maintain a Register in which it includes:
  - (a) all cabling licences currently in force; and
  - (b) all conditions of such licences.
- (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 60 of the *Australian Communications and Media Authority Act 2005*:
  - (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 ACMA 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 ACMA may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.

**Division 10—Remedies for unauthorised connections to telecommunications networks etc.**

**443 Civil action for unauthorised connections to telecommunications networks etc.**

- (1) If:
- (a) a person:
    - (i) connects customer equipment, or customer cabling, to a telecommunications network, or to a facility, contrary to section 411; or
    - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network, or to a facility, where the equipment or cabling was so connected by another person contrary to section 411; and
  - (b) as a result of:
    - (i) the connection of the customer equipment or customer cabling to the network or facility; or
    - (ii) the customer equipment or customer cabling being used while it was so connected;either:
    - (iii) damage is caused to the network or the facility; or
    - (iv) the manager of the network or facility suffers a loss or incurs a liability;the manager of the network or facility may apply to the Federal Court for remedial relief.
- (2) The relief that may be granted includes an injunction and, at the option of the manager, either damages or an account of profits.
- (3) If an application is made to the Federal Court for an injunction under this section, the court may grant an interim injunction pending determination of the application.

- (4) The power of the court under this section to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.
- (5) The power of the court under this section to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.
- (6) An application under this section must be made within 3 years after the damage was caused, the loss was suffered or the liability was incurred, as the case requires.

#### **444 Remedy for contravention of labelling requirements**

- (1) If:
- (a) a person (the *first person*) contravenes section 413, 414 or 415 in relation to particular customer equipment or particular customer cabling; and

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- (b) a person (who may be the first person) connects the equipment or cabling to a telecommunications network or to a facility; and
  - (c) as a result of:
    - (i) the connection of the equipment or cabling to the network or facility; or
    - (ii) the equipment or cabling being used while it was so connected;either:
    - (iii) damage is caused to the network or the facility; or
    - (iv) the manager of the network or facility suffers a loss;the manager of the network or facility may apply to the Federal Court for the recovery from the first person of the amount of the loss or damage.
- (2) An application under this section must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

**445 Remedies for connection of unlabelled customer equipment or unlabelled customer cabling**

- (1) This section applies if:
- (a) a person:
    - (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
    - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
  - (b) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and
  - (c) either:
    - (i) the manufacturer or importer did not comply with the requirement; or



- (ii) the manufacturer or importer complied with the requirement, but the label indicated that the equipment or cabling did not meet the requirements of the section 376 standards that were specified in the first-mentioned requirement.
- (2) If, as a result of:
- (a) the connection of the equipment or cabling to the network or facility; or
  - (b) the equipment or cabling being used while it was so connected;
- either:
- (c) damage is caused to the network or the facility; or
  - (d) the manager of the network or facility suffers a loss;
- the manager of the network or facility may apply to the Federal Court for remedial relief.
- (3) The relief that may be granted includes an injunction and, at the option of the manager, either damages or an account of profits.
- (4) The manager of the network or facility may disconnect the equipment or cabling from the network or facility.
- (5) If it is necessary for other customer equipment or other customer cabling to be disconnected from the network or facility in order to achieve the disconnection mentioned in subsection (4), the manager may disconnect that other equipment or cabling.
- (6) If an application is made to the Federal Court for an injunction under this section, the court may grant an interim injunction pending determination of the application.
- (7) The power of the court under this section to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the

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- person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.
- (8) The power of the court under this section to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.
- (9) An application under this section must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

**446 Disconnection of dangerous customer equipment or customer cabling**

- (1) If:
- (a) a person (the *first person*):
- (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
- (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and

- (b) the manager of the network or facility has an honest belief that the equipment or cabling is, or is likely to be, a threat to the health or safety of persons who:
- (i) operate; or
  - (ii) work on; or
  - (iii) use services supplied by means of; or
  - (iv) are otherwise reasonably likely to be affected by the operation of;
- a telecommunications network or a facility;
- the manager of the network or facility may:
- (c) disconnect the equipment or cabling; and
  - (d) if it is necessary to disconnect other customer equipment or other customer cabling for the purposes of achieving the disconnection referred to in paragraph (c)—disconnect that other equipment or cabling.
- (2) If:
- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
  - (b) the ACMA is satisfied that there were no reasonable grounds for the belief mentioned in paragraph (1)(b);
- the ACMA may, by written notice given to the manager of the network or facility, direct the manager to reconnect the equipment or cabling.
- (3) A person must comply with a direction under subsection (2).
- (4) If:
- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
  - (b) the manager of the network or facility had no reasonable grounds for the belief mentioned in paragraph (1)(b); and
  - (c) as a result of the disconnection, the first person suffers loss or damage;
- the first person may apply to the Federal Court for the recovery from the manager of the amount of the loss or damage.

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- (5) An application under subsection (4) must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

**447 Disconnection of customer equipment or customer cabling—  
protection of the integrity of networks and facilities**

- (1) If:
- (a) a person (the *first person*):
    - (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
    - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
  - (b) the manager of the network or facility has an honest belief that the equipment or cabling is, or is likely to be, a threat to the integrity of a telecommunications network or a facility;
- the manager of the network or facility may:
- (c) disconnect the equipment or cabling; and
  - (d) if it is necessary to disconnect other customer equipment or other customer cabling for the purposes of achieving the disconnection referred to in paragraph (c)—disconnect that other equipment or cabling.
- (2) If:
- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
  - (b) the ACMA is satisfied that there were no reasonable grounds for the belief mentioned in paragraph (1)(b);
- the ACMA may, by written notice given to the manager of the network or facility, direct the manager to reconnect the equipment or cabling.
- (3) A person must comply with a direction under subsection (2).
- (4) If:

- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
  - (b) the manager of the network or facility had no reasonable grounds for the belief mentioned in paragraph (1)(b); and
  - (c) as a result of the disconnection, the first person suffers loss or damage;
- the first person may apply to the Federal Court for the recovery from the manager of the amount of the loss or damage.
- (5) An application under subsection (4) must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

#### **448 Civil action for dangerous connections to telecommunications networks etc.**

- (1) If:
- (a) a person:
    - (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
    - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
  - (b) the equipment or cabling is, or is likely to be, a threat to the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or
    - (iv) are otherwise reasonably likely to be affected by the operation of;a telecommunications network or a facility; and
  - (c) as a result of:
    - (i) the connection of the equipment or cabling to the network or facility; or
    - (ii) the equipment or cabling being used while it was so connected;

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either:

(iii) damage is caused to the network or the facility; or

(iv) the manager of the network or facility suffers a loss;

the manager of the network or facility may apply to the Federal Court for the recovery from the person of the amount of the loss or damage.

- (2) An application under subsection (1) must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

**449 Other remedies not affected**

This Division does not, by implication, affect other remedies.

## **Division 11—Prohibited customer equipment and prohibited customer cabling**

### **450 Declaration of prohibited customer equipment or prohibited customer cabling**

- (1) The ACMA may, by legislative instrument, declare that operation or supply, or possession for the purpose of operation or supply, of:
  - (a) specified customer equipment; or
  - (b) specified customer cabling;is prohibited for the reasons set out in the instrument.
- (2) Those reasons must relate to:
  - (a) the protection of the integrity of a telecommunications network or of a facility; or
  - (b) the protection of the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or
    - (iv) are otherwise reasonably likely to be affected by the operation of;a telecommunications network or a facility.
- (3) A copy of an instrument under subsection (1) must be published on the ACMA's website.
- (5) In this section:

*supply* includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

### **452 Operation of prohibited customer equipment or customer cabling**

- (1) A person must not:

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- (a) operate or supply customer equipment, or customer cabling, in respect of which a declaration is in force under section 450; or
  - (b) have in his or her possession customer equipment, or customer cabling, in respect of which such a declaration is in force, if the possession is for the purpose of operating or supplying the equipment or cabling.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 2,000 penalty units.

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

- (3) In this section:

**supply** includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.



## **Division 12—Pre-commencement labels**

### **453 Pre-commencement labels**

- (1) This section applies if:
  - (a) before the commencement of this section, customer equipment was labelled in accordance with a condition of a kind mentioned in paragraph 258(2)(a) of the *Telecommunications Act 1991*; and
  - (b) the label embodied the protected symbol (within the meaning of section 402A of that Act).
- (2) This Part has effect as if:
  - (a) at the time when the equipment was manufactured or imported, the manufacturer or importer had been required by subsection 407(1) to apply the label to the equipment; and
  - (b) the manufacturer or importer had complied with that requirement by applying the label to the equipment; and
  - (c) the label had indicated that the equipment met the requirements of each of the section 376 standards that were applicable to the equipment when it was manufactured or imported.

## Division 13—Penalties payable instead of prosecution

### 453A Penalties payable instead of prosecution

- (1) The regulations may make provision in relation to enabling a person who is alleged to have committed an offence of a kind referred to in the following table to pay to the Commonwealth, as an alternative to prosecution, a penalty of an amount worked out in accordance with subsection (2).
- (2) The amount of penalty payable to the Commonwealth under regulations made for the purposes of subsection (1) in respect of an offence is determined using the following table:

<b>Penalties payable</b>			
<b>Item</b>	<b>Alleged offence</b>	<b>Penalty for individual</b>	<b>Penalty for body corporate</b>
1	subsection 399(1)	12 penalty units	60 penalty units
2	subsection 411(2)	12 penalty units	60 penalty units
3	subsection 413(2)	12 penalty units	60 penalty units
4	subsection 414(2)	12 penalty units	60 penalty units
5	subsection 415(2)	12 penalty units	60 penalty units
6	subsection 416(2)	12 penalty units	60 penalty units
7	subsection 417(2)	6 penalty units	30 penalty units
8	subsection 420(2)	12 penalty units	60 penalty units
9	subsection 421(4)	12 penalty units	60 penalty units
10	subsection 434(1) or (2)	12 penalty units	60 penalty units

## **Part 22—Numbering of carriage services and regulation of electronic addressing**

### **Division 1—Simplified outline**

#### **454 Simplified outline**

The following is a simplified outline of this Part:

- The numbering of carriage services in Australia, and the use of numbers in connection with the supply of such services, may either be:
  - (a) managed by a numbering scheme manager determined by the Minister; or
  - (b) administered by the ACMA under a numbering plan.
- Numbers may be allocated to carriage service providers:
  - (a) in accordance with an allocation system; or
  - (b) otherwise than in accordance with such a system.
- The ACMA will specify emergency service numbers.
- The ACMA and the ACCC may give directions to managers of electronic addressing so long as the electronic addressing is of public importance.

## Division 2—Numbering of carriage services

### Subdivision AA—Management by numbering scheme manager

#### 454A Minister may determine numbering scheme manager

- (1) The Minister may, by legislative instrument, determine that a specified person is to manage the numbering scheme.
- (2) The person is the *numbering scheme manager*.
- (3) The Minister must not determine a person as the numbering scheme manager unless the Minister is satisfied that the person will manage the numbering scheme in accordance with the numbering scheme principles.
- (4) Before determining a person as the numbering scheme manager, the Minister must consult with the ACMA and the ACCC.

#### 454B No property rights in numbers

Determination of a person as the numbering scheme manager does not confer any property rights in numbers used in connection with the supply of carriage services in Australia.

#### 454C Numbering scheme principles

- (1) The numbering scheme manager must manage the numbering scheme in accordance with the numbering scheme principles.
- (2) The *numbering scheme principles* are as follows:
  - (a) there must be an adequate and appropriate supply of numbers for carriage services;
  - (b) future needs for numbering must be planned for, having regard to community needs, industry needs and global trends;
  - (c) numbering arrangements must be effective and efficient and support the effective and efficient supply of carriage services;

- (d) numbering arrangements must have regard to recognised international standards and ensure that numbering in Australia operates in conjunction with international numbering arrangements;
- (e) there must be fair and transparent access to numbers for all carriage service providers, and numbering arrangements must support competition in the supply of carriage services;
- (f) the interests of users of carriage services must be protected, including in relation to the use and portability of numbers;
- (g) the numbering scheme's provisions for the portability of numbers must be consistent with any directions made by the ACCC to the ACMA under subsection 458(2) in relation to portability of numbers;
- (h) the numbering scheme must support the use of emergency call services;
- (i) numbering arrangements must meet the requirements of Australian law enforcement and national security agencies;
- (j) numbering arrangements must provide for the collection of charges imposed under the *Telecommunications (Numbering Charges) Act 1997*;
- (k) the Register (see section 465) must be kept up to date;
- (l) the rules and processes of the numbering scheme, including a plan for numbering of carriage services:
  - (i) must be adhered to by the numbering scheme manager; and
  - (ii) must be published and available at no charge;
- (m) the numbering scheme must include compliance mechanisms to provide for enforcement of scheme rules;
- (n) the numbering scheme must make effective complaints processes available to both the telecommunications industry and users of carriage services;
- (o) the recovery of costs in relation to the management of the numbering scheme must reasonably reflect costs and must be fair and transparent;
- (p) public consultation must be undertaken before any significant change to the numbering scheme;

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- (q) any additional principles determined by the Minister by legislative instrument.

**454D Revocation of determination**

- (1) The Minister may, by legislative instrument, revoke the determination of a person as the numbering scheme manager if:
  - (a) the Minister is not satisfied the person is managing the numbering scheme in accordance with the numbering scheme principles; or
  - (b) the Minister is satisfied it is in the best interests of one or more of the following:
    - (i) the telecommunications industry;
    - (ii) users of carriage services;
    - (iii) the general community; or
  - (c) the Minister is satisfied it is in the best interests of national security.
- (2) Before the Minister revokes the determination of a person as the numbering scheme manager, the Minister must consult the person, the ACMA and the ACCC.

**454E Directions to numbering scheme manager**

*Directions by Minister*

- (1) The Minister may, by legislative instrument, direct the numbering scheme manager to amend the rules or change the processes of the numbering scheme.
- (2) The direction must be consistent with the numbering scheme principles.

*Directions by the ACMA or the ACCC*

- (3) The ACMA or the ACCC may, by legislative instrument, direct the numbering scheme manager to do, or refrain from doing, a

specified act or thing in relation to the management of the numbering scheme.

- (4) The direction must be consistent with the numbering scheme principles and the rules and processes of the numbering scheme.
- (5) Before the ACMA gives a direction under this section, it must consult with the Minister, the ACCC and the numbering scheme manager.
- (6) Before the ACCC gives a direction under this section, it must consult with the Minister, the ACMA and the numbering scheme manager.

*Numbering scheme manager must comply with directions*

- (7) The numbering scheme manager must comply with a direction under this section.
- (8) Subsection (7) is a civil penalty provision.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

#### **454F Numbering scheme manager providing information to the ACMA**

- (1) The ACMA may, in writing, request information from the numbering scheme manager relating to numbers for carriage services.
- (2) The ACMA may request the information for the following purposes:
  - (a) identifying persons liable for a charge under the *Telecommunications (Numbering Charges) Act 1997*;
  - (b) working out the amount of a charge under that Act;
  - (c) otherwise administering charges under that Act.
- (3) The request may specify the form in which the information is required, such as a written report.

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(4) The numbering scheme manager must comply with a request under this section.

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**454G Directions to comply with rules**

(1) The ACMA or the ACCC may, by written notice given to a person who is:

- (a) a carriage service provider; or
- (b) a carrier; or
- (c) a person of a kind determined by the Minister in a legislative instrument;

direct the person to comply with a rule or process published by the numbering scheme manager.

(2) The person must comply with the direction.

(3) Subsection (2) is a civil penalty provision.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

(4) A direction under subsection (1) is not a legislative instrument.

**454H Numbering scheme documents are not legislative instruments**

Documents containing the rules and processes of the numbering scheme, including a plan for numbering of carriage services, are not legislative instruments.

**Subdivision A—Management by the ACMA**

**455A Application**

This Subdivision does not apply if there is a numbering scheme manager (see section 454A).



### 455 Numbering plan

- (1) The ACMA must, by legislative instrument, make a plan for:
  - (a) the numbering of carriage services in Australia; and
  - (b) the use of numbers in connection with the supply of such services.
- (2) The plan is called the *numbering plan*.
- (3) The numbering plan must specify the numbers that are for use in connection with the supply of carriage services to the public in Australia.

Note: *Specification* is the “first tier” concept. It operates at the level of a general specification of numbers.

- (4) Different numbers may be specified for use in connection with the supply of different types of carriage services.
- (5) The numbering plan may set out rules about:
  - (a) the allocation of numbers to carriage service providers; and
  - (b) the transfer of allocated numbers between carriage service providers; and
  - (c) the surrender or withdrawal of allocated numbers; and
  - (d) the portability of allocated numbers (including rules about the maintenance of, and access to, databases that facilitate portability); and
  - (e) the use of allocated numbers in connection with the supply of carriage services to the public in Australia (including rules about the issue of allocated numbers by carriage service providers to customers for use in connection with the supply of carriage services).

Note 1: *Allocation* is the “second tier” concept. It operates at the level of particular carriage service providers.

Note 2: *Issue* is the “third tier” concept. It operates at the level of particular customers of carriage service providers. The issue of an allocated number to a customer does not affect the allocation of the number to the carriage service provider concerned.

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- (6) Rules made for the purposes of paragraph (5)(a) may authorise the allocation of specified numbers:
  - (a) in accordance with an allocation system determined under section 463; or
  - (b) otherwise than in accordance with such a system.
- (7) The numbering plan may make provision for, or in relation to, a matter by empowering the ACMA to make decisions of an administrative character.
- (8) Subsections (3) to (7) (inclusive) do not, by implication, limit the matters that may be dealt with by the numbering plan.
- (9) The renumbering of a number in accordance with the numbering plan does not affect the continuity of:
  - (a) the allocation of the number; or
  - (b) the issue of the number.
- (10) In making or varying the numbering plan, the ACMA must have regard to:
  - (a) the obligations imposed on carriage service providers by Part 4 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
  - (b) recognised international standards.

This subsection does not, by implication, limit the matters to which regard may be had.
- (12) Despite subsection (1), the ACMA is not required to make a numbering plan before 1 January 1998.

**456 Numbering plan—supply to the public**

- (1) This section sets out the circumstances in which a carriage service is taken, for the purposes of section 455, to be supplied to the public.
- (2) If:
  - (a) a carriage service is used for the carriage of communications between 2 end-users; and

- (b) each end-user is outside the immediate circle of the supplier of the service;  
the service is supplied to the public.

**457 Numbering plan—allocation otherwise than in accordance with an allocation system**

- (1) The numbering plan must impose the following requirements in relation to an application for the allocation of a number otherwise than in accordance with an allocation system determined under section 463:
- (a) a requirement that the application must be accompanied by the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*;
  - (b) a requirement that the applicant must tender the amount of charge (if any) imposed on the allocation by Part 2 of the *Telecommunications (Numbering Charges) Act 1997*.
- (2) If an applicant tenders an amount as mentioned in paragraph (1)(b), but the application is not successful, the amount is to be refunded to the applicant.

**458 Numbering plan—rules about portability of allocated numbers**

- (1) The ACMA must not make a numbering plan that sets out rules about the matter mentioned in paragraph 455(5)(d) (portability of allocated numbers) unless the ACMA is directed to do so by the ACCC under subsection (2).
- (2) The ACCC may give written directions to the ACMA in relation to the exercise of the power to determine a numbering plan setting out rules as mentioned in subsection (1).

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- (3) In exercising the power conferred by subsection (2), the ACCC must ensure that, at all times when the numbering plan is in force, the plan sets out rules about the matter mentioned in paragraph 455(5)(d).
- (4) The ACMA must exercise its powers under section 455 in a manner consistent with any directions given by the ACCC under subsection (2).
- (5) In exercising the power conferred by subsection (2), the ACCC must have regard to whether portability of particular allocated numbers is required in order to promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services.
- (6) For the purposes of this section, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as that question is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.

**459 ACMA to administer numbering plan**

The ACMA has the general administration of the numbering plan.

**459A Delegation**

- (1) The ACMA may, by writing, delegate any or all of the powers conferred on the ACMA by the numbering plan to a body corporate.
- (2) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated a power referred to in subsection (1) to a Division of the ACMA:
  - (a) the Division may delegate the power to a body corporate; and
  - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect

as if the delegation by the Division were a delegation under section 52 of that Act.

- (3) The delegate is, in the exercise of a delegated power, subject to the written directions of:
  - (a) the ACMA, if the delegation to the delegate was under subsection (1); or
  - (b) the Division that delegated the power, if the delegation to the delegate was under subsection (2).
- (4) Before giving a direction under subsection (3), the ACMA or the Division (as the case requires) must consult the ACCC.
- (5) The powers conferred on the ACMA by subsection (1), and on a Division of the ACMA by subsection (2), are in addition to the powers conferred by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

#### **460 Consultation about numbering plan**

- (1) Before making a numbering plan, the ACMA must publish on its website a notice:
  - (a) stating that the ACMA has prepared a draft of the plan; and
  - (b) setting out the draft; and
  - (c) inviting interested persons to give written comments about the draft to the ACMA within 90 days after the publication of the notice.
- (2) If interested persons have given comments about the draft in accordance with the notice, the ACMA must have due regard to those comments in making the plan.
- (3) If the ACMA is of the opinion:
  - (a) that a variation of a numbering plan:
    - (i) will affect a number issued to a customer of a carriage service provider; and

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- (ii) is not a variation that, under a written declaration made by the ACMA under this subparagraph, is taken to be a minor variation; or
  - (b) that it is in the public interest that the public should be consulted about a variation of a numbering plan;  
the ACMA must publish on its website a notice:
  - (c) stating that the ACMA has prepared a draft of the variation; and
  - (d) setting out the draft; and
  - (e) inviting interested persons to give written comments about the draft to the ACMA within 30 days after the publication of the notice.
- (4) If interested persons have given comments about the draft in accordance with the notice, the ACMA must have due regard to those comments in varying the plan.
- (4A) A declaration under subparagraph (3)(a)(ii) is a legislative instrument.

**461 Consultation with ACCC**

- (1) Before making or varying a numbering plan, the ACMA must consult the ACCC.
- (2) The numbering plan may provide that, before exercising a power conferred on the ACMA by the numbering plan, the ACMA must consult the ACCC.

**461A Making numbering plan in cases of urgency**

- (1) This section applies if the ACMA is satisfied that it is necessary to make or vary a numbering plan as a matter of urgency to ensure that numbering of carriage services and the use of numbers are properly managed in the absence of a numbering scheme manager.
- (2) In the circumstances described in subsection (1):

- (a) the ACMA is not required to comply with section 460 before making or varying a plan; and
  - (b) the ACMA is not required to consult the ACCC in accordance with subsection 461(1) if it is not practicable to do so.
- (3) If a numbering plan is made or varied in the circumstances described in subsection (1), the plan ceases to have effect 12 months after it was made or varied.
- (4) Subsection (3) does not prevent the ACMA from repealing the plan and making another numbering plan after complying with section 460 and subsection 461(1).

#### **462 Compliance with the numbering plan**

- (1) A person who is a carrier or a carriage service provider must comply with the numbering plan.
- (2) If:
- (a) a person (the *first person*) is a carrier or a carriage service provider; and
  - (b) the plan requires the first person to provide number portability in relation to customers of a carriage service provider;
- the first person must comply with that requirement on such terms and conditions as are:
- (c) agreed between the following parties:
    - (i) the first person;
    - (ii) the carriage service provider; or
  - (d) 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.

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(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) the numbering plan; or
- (b) with a pricing principles determination.

For this purpose, a *pricing principles determination* is a written determination made by the Minister that sets out principles dealing with price-related terms and conditions relating to a requirement of a kind referred to in paragraph (2)(b).

(7) A determination made by the Minister under subsection (6) is a legislative instrument.

(8) In this section:

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

**Subdivision B—Allocation system for numbers**

**463A Numbering scheme manager**

(1) If there is a numbering scheme manager, the allocation system determined by the ACMA under this Subdivision may be prepared by the numbering scheme manager.

(2) However, the ACMA must not determine an allocation system that does not meet the ACMA's requirements (including in relation to the *Telecommunications (Numbering Charges) Act 1997*).



### **463 Allocation system for numbers**

- (1) The ACMA may, by legislative instrument, determine an allocation system for allocating specified numbers to carriage service providers.
- (2) Before so determining the system, the ACMA must consult the ACCC.
- (3) A system so determined:
  - (a) may apply generally or in respect of a particular area; and
  - (b) may require payment of an application fee.
- (4) A system so determined may:
  - (a) impose limits on the quantity of numbers that the ACMA may allocate to:
    - (i) any one person; or
    - (ii) a specified person; or
  - (b) impose limits on the quantity of numbers that the ACMA may, in total, allocate to the members of a specified group of persons.

Note: Persons or groups may be specified by name, by inclusion in a specified class or in any other way.
- (5) Subsections (3) and (4) do not, by implication, limit subsection (1).
- (6) A system so determined must provide for:
  - (a) the successful applicant for the allocation of a particular number; and
  - (b) an amount, to be known as the eligible amount, in relation to the allocation of that number;to be determined by reference to the results of:
  - (c) a tender process; or
  - (d) a public auction; or
  - (e) another process;carried out or conducted as provided by the system.

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- (7) The ACMA may enter into an arrangement with a person about the collection, on behalf of the ACMA, of fees of a kind referred to in subsection (3).
- (8) The ACMA may delegate any of the powers conferred on the ACMA by an allocation system to the numbering scheme manager or another person.

**464 Consultation about an allocation system**

- (1) Before determining or varying an allocation system under section 463, the ACMA must publish on its website a notice:
  - (a) stating that the ACMA has prepared a draft of the plan or variation; and
  - (b) setting out the draft; and
  - (c) inviting interested persons to give written comments about the draft to the ACMA within 30 days after the publication of the notice.
- (2) If interested persons have given comments about the draft in accordance with the notice, the ACMA must have due regard to those comments in determining or varying the system, as the case may be.
- (3) Subsection (1) does not apply to a variation if the variation is of a minor nature.

**Subdivision C—Miscellaneous**

**465 Register of allocated numbers**

- (1) For the purposes of this section, the *designated authority* is:
  - (a) the ACMA; or
  - (aa) if there is a numbering scheme manager—the numbering scheme manager; or
  - (b) if the ACMA enters into an arrangement with another person under which the other person agrees to perform the functions

conferred on the designated authority by this section—that other person.

Note: An arrangement under paragraph (b) may provide for the payment of amounts by the ACMA to the other person.

- (2) The designated authority is to maintain a Register in which the designated authority includes:
- (a) particulars of numbers that have been allocated to carriage service providers; and
  - (b) in the case of a number that has been allocated in accordance with an allocation system determined under section 463:
    - (i) the name of the successful applicant for the allocation; and
    - (ii) the eligible amount in relation to the allocation of the number; and
  - (c) in the case of numbers that have been allocated otherwise than in accordance with such a system—the names of the persons to whom the numbers were allocated.
- (3) The designated authority may include in the Register particulars relating to numbers that are taken, for the purposes of Part 3 of the *Telecommunications (Numbering Charges) Act 1997*, to be held by carriage service providers. Those particulars are to include the names of the carriage service providers concerned.
- (4) The Register may be maintained by electronic means.
- (5) If the ACMA is the designated authority, a person may, on payment of the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*:
- (a) inspect the Register; and
  - (b) make a copy of, or take extracts from, the Register.
- (6) If the ACMA is not the designated authority, a person may, on payment to the designated authority of the fee (if any) specified in the regulations:
- (a) inspect the Register; and

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- (b) make a copy of, or take extracts from, the Register.
- (7) 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 designated authority gives the person a printout of, or of the relevant parts of, the Register.
- (8) If a person requests that a copy be provided in an electronic form, the designated authority may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.

**466 Emergency service numbers**

- (1) The object of this section is to identify numbers for the purpose of calling an emergency call service in connection with emergencies that are likely to require the provision of assistance by any or all of the following services:
  - (a) a police force or service;
  - (b) a fire service;
  - (c) an ambulance service;
  - (d) if there is a numbering scheme manager—a service specified by the ACMA for the purposes of this paragraph in a legislative instrument;
  - (e) if there is no numbering scheme manager—a service specified for the purposes of this paragraph in the numbering plan made by the ACMA.
- (2) For the purposes of this Act, an **emergency service number** is a number specified for the purposes of this section in:
  - (a) if there is a numbering scheme manager—a legislative instrument made by the ACMA; or
  - (b) if there is no numbering scheme manager—the numbering plan made by the ACMA.
- (3) Different emergency service numbers may be specified for use in different areas.

- (4) Different emergency service numbers may be specified for use in connection with different types of services.
- (5) Rules about the use of emergency service numbers may be set out in:
  - (a) the rules and processes published by the numbering scheme manager; or
  - (b) the numbering plan made by the ACMA.
- (6) In specifying emergency service numbers, the ACMA must have regard to the objective that, as far as practicable, there should be no more than one emergency service number for use throughout Australia.
- (7) Subsection (6) does not, by implication, limit section 455.

#### **468 Collection of numbering charges**

##### *Definitions*

- (1) In this section:

**allocation charge** means a charge imposed by Part 2 of the *Telecommunications (Numbering Charges) Act 1997*.

**annual charge** means a charge imposed by Part 3 of the *Telecommunications (Numbering Charges) Act 1997*.

**late payment penalty** means an amount that is payable by way of penalty in accordance with a determination under subsection (4).

##### *When allocation charge due and payable*

- (2) An allocation charge imposed on the allocation of a number is due and payable when the number is allocated.

##### *When annual charge due and payable*

- (3) An annual charge is due and payable at the time ascertained in accordance with a written determination made by the ACMA.

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*Late payment penalty*

- (4) The ACMA may, by written instrument, determine that, if any annual charge payable by a person remains unpaid after the time when it became due for payment, the person is liable to pay to the Commonwealth, by way of penalty, an amount calculated at the rate of:
- (a) 20% per annum; or
  - (b) if the determination specifies a lower percentage—that lower percentage per annum;
- on the amount unpaid, computed from that time.

*Determination has effect*

- (5) A determination under subsection (4) has effect accordingly.

*Remission of penalty*

- (6) A determination under subsection (4) may authorise the ACMA to make decisions about the remission of the whole or a part of an amount of late payment penalty.

*Payment of charge and late payment penalty*

- (7) Allocation charge, annual charge and late payment penalty are payable to the ACMA on behalf of the Commonwealth.

*Recovery of charge and penalty*

- (8) Allocation charge, annual charge and late payment penalty may be recovered by the ACMA, on behalf of the Commonwealth, as debts due to the Commonwealth.

*Payment to the Commonwealth*

- (9) Amounts received by way of allocation charge, annual charge or late payment penalty must be paid to the Commonwealth.

*Withdrawal of number for non-payment of annual charge*

- (10) If any annual charge payable by a person in relation to a number remains unpaid after the time when it became due for payment, the ACMA or the numbering scheme manager may, by written notice given to the person, withdraw the number. Such a withdrawal is taken to be in accordance with the numbering plan and the numbering scheme.

*Legislative instrument*

- (11) A determination under subsection (3) or (4) is a legislative instrument.

**469 Collection of charges on behalf of the Commonwealth**

The ACMA may enter into an arrangement with a person under which the person may, on behalf of the Commonwealth, collect payments of charge imposed by the *Telecommunications (Numbering Charges) Act 1997*.

**470 Cancellation of certain exemptions from charge**

- (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 charge imposed by the *Telecommunications (Numbering Charges) Act 1997*.
- (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 charge imposed by the *Telecommunications (Numbering Charges) Act 1997*.

**471 Commonwealth not liable to charge**

- (1) The Commonwealth is not liable to pay charge imposed by the *Telecommunications (Numbering Charges) Act 1997*.
- (2) Even though the Commonwealth is not liable to pay charge imposed by Division 1 of Part 2 of the *Telecommunications*

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*(Numbering Charges) Act 1997*, it is the intention of the Parliament that the following should be notionally liable for such a charge:

- (a) a Department of State;
  - (b) a Department of the Parliament established under the *Parliamentary Service Act 1999*;
  - (c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable by, the Secretary of a Department of the Australian Public Service;
  - (d) an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.
- (3) The Finance Minister may give such written directions as are necessary or convenient to be given for carrying out or giving effect to subsection (2) and, in particular, may give directions in relation to the transfer of money within the Public Account.
  - (4) Directions under subsection (3) have effect, and must be complied with, despite any other law of the Commonwealth.
  - (5) A reference in this section to the *Commonwealth* includes a reference to an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.

**472 Integrated public number database**

- (1) The Minister may, by legislative instrument, determine that a specified person (other than Telstra Limited) is to provide and maintain an integrated public number database.
- (2) If a determination is in force under subsection (1) in relation to a person, the person must comply with the determination.
- (3) If a determination is in force under subsection (1) in relation to a person, the Minister may, by written notice given to the person, direct the person to do, or refrain from doing, a specified act or



thing relating to the provision or maintenance of the integrated public number database.

- (4) A direction under subsection (3) may require the database to include specified information. This subsection does not, by implication, limit subsection (3).
- (5) A determination under subsection (1) has no effect if Telstra Limited is obliged by a condition of a carrier licence to provide and maintain an integrated public number database.
- (7) In this section:

***public number*** means a number specified for use in connection with the supply of carriage services to the public in Australia (within the meaning of subsection 456(2)).

#### **473 Letters and symbols taken to be numbers**

For the purposes of this Division, a letter or a symbol is taken to be a number.

## Division 3—Regulation of electronic addressing

### 474 Declared manager of electronic addressing

- (1) The ACMA may, by notice in the *Gazette*, determine that, for the purposes of this Division, a specified person or association is a ***declared manager of electronic addressing*** in relation to a specified kind of electronic addressing and a specified kind of listed carriage service.
- (2) The determination has effect accordingly.
- (3) The ACMA must not make a determination under subsection (1) in relation to a particular person or association unless:
  - (a) the ACMA is directed to do so by the ACCC under subsection (4); or
  - (b) the ACMA considers that the person or association is not managing that kind of electronic addressing to the ACMA's satisfaction.
- (4) The ACCC may give written directions to the ACMA in relation to the exercise of the power conferred by subsection (1).
- (5) The ACMA must exercise its powers under subsection (1) in a manner consistent with directions given by the ACCC under subsection (4).
- (6) The ACCC must not give a direction under subsection (4) unless, in the ACCC's opinion, compliance with the direction is likely to have a bearing on competition or consumer protection.

### 475 ACMA may give directions to declared manager of electronic addressing

- (1) The ACMA may, by written notice given to a declared manager of electronic addressing in relation to a particular kind of electronic addressing and a particular kind of listed carriage service, direct the manager to do, or refrain from doing, a specified act or thing

relating to that kind of electronic addressing and that kind of carriage service.

- (2) The ACMA must not give a direction under this section unless, in the ACMA's opinion, the electronic addressing is of public importance.
- (3) In determining whether the kind of electronic addressing is of public importance, the ACMA must have regard to the extent to which the addressing is of significant social and/or economic importance.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACMA may have regard.
- (5) Before giving a direction under this section, the ACMA must consult the ACCC.
- (6) A person must comply with a direction under this section.
- (7) A person commits an offence if:
  - (a) the person has been given a direction under this section; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

- (8) A direction under this section is a legislative instrument.
- (9) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

#### **476 ACCC may give directions to declared manager of electronic addressing**

- (1) The ACCC may, by written notice given to a declared manager of electronic addressing in relation to a particular kind of electronic

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addressing and a particular kind of listed carriage service, direct the manager to do, or refrain from doing, a specified act or thing relating to that kind of electronic addressing and that kind of carriage service.

- (2) The ACCC must not give a direction under this section unless, in the ACCC's opinion:
  - (a) the electronic addressing is of public importance; and
  - (b) compliance with the direction is likely to have a bearing on competition or consumer protection.
- (3) In determining whether the kind of electronic addressing is of public importance, the ACCC must have regard to the extent to which the addressing is of significant social and/or economic importance.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACCC may have regard.
- (5) Before giving a direction under this section, the ACCC must consult the ACMA.
- (6) A person must comply with a direction under this section.
- (7) A person commits an offence if:
  - (a) the person has been given a direction under this section; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

- (8) A direction under this section is a legislative instrument.
- (9) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**477 ACCC's directions to prevail over the ACMA's directions**

A direction given by the ACMA under section 475 has no effect to the extent to which it is inconsistent with a direction given by the ACCC under section 476.

## **Part 23—Standard agreements for the supply of carriage services**

### **478 Simplified outline**

The following is a simplified outline of this Part:

- The terms and conditions on which certain telecommunications-related goods and services are supplied are:
  - (a) as agreed between the supplier and the customer; or
  - (b) failing agreement, set out in a standard form of agreement formulated for the purposes of this Part.

### **479 Standard terms and conditions apply unless excluded**

- (1) This section applies to the supply to an ordinary person by a carriage service provider of:
  - (a) a standard telephone service; or
  - (b) a carriage service of a kind specified in the regulations; or
  - (c) ancillary goods of a kind specified in the regulations; or
  - (d) an ancillary service of a kind specified in the regulations.
- (2) The terms and conditions on which the goods or services are supplied are:
  - (a) so far as the provider and the person agree on the terms and conditions on which the goods or services are supplied—the agreed terms and conditions; and
  - (b) if the provider and the person do not agree on terms and conditions, but terms and conditions are set out in a standard form of agreement that:

- (i) is formulated by the provider for the purpose of this section; and
  - (ii) relates to the goods or services; and
  - (iii) is in force at the time of the supply;
- the terms and conditions so set out, so far as they are applicable to the supply of the goods or services.
- (3) Subsection (2) has effect subject to any express provision of this Act or any other Act.
- (4) In this section:

***ancillary goods*** means goods for use in connection with a carriage service.

***ancillary service*** means a service for use in connection with a carriage service.

***ordinary person*** means a person other than a carrier or a carriage service provider.

***terms and conditions***, in relation to the supply of goods or services, includes:

- (a) charges for the supply of the goods or services; and
- (b) any discounts, allowances, rebates or credits given or allowed in relation to the supply of the goods or services; and
- (c) any commissions or similar benefits (whether monetary or otherwise) payable or given in relation to the supply of the goods or services; and
- (d) the supply of other goods or services, where the other goods or services are supplied in connection with the first-mentioned goods or services; and
- (e) the making of payments for such other goods or services.

#### **482 Concurrent operation of State/Territory laws**

This Part does not prevent or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.

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**483 Competition and Consumer Act not affected by this Part**

This Part has no effect to the extent (if any) to which it is inconsistent with the *Competition and Consumer Act 2010*.



## **Part 24—Carriers' powers and immunities**

### **484 Schedule 3**

Schedule 3 has effect.

**Part 24A** Submarine cables

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**Part 24A—Submarine cables**

**484A Schedule 3A**

Schedule 3A has effect.

## **Part 25—Public inquiries**

### **Division 1—Simplified outline**

#### **485 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA and the ACCC may hold public inquiries about certain matters relating to telecommunications.

## Division 2—Inquiries by the ACMA

### 486 When inquiry must be held

- (1) The Minister may give the ACMA a written direction to hold a public inquiry under this Division about a specified matter concerning:
  - (a) carriage services; or
  - (b) content services; or
  - (c) the telecommunications industry.
- (2) The Minister must not give the ACMA a direction under subsection (1) to hold a public inquiry about a matter concerning the content of a content service.
- (3) If the Minister gives a direction under subsection (1) about a particular public inquiry, the Minister may direct the ACMA to:
  - (a) consult with one or more specified persons, bodies or agencies in connection with the conduct of the inquiry; and
  - (b) have regard to one or more specified matters in connection with the conduct of the inquiry.
- (4) The ACMA must comply with a direction under this section.

### 487 When inquiry may be held

- (1) This section applies if the ACMA considers that it is appropriate and practicable to hold a public inquiry under this Division about a matter relating to:
  - (a) the performance of any of the ACMA's telecommunications functions; or
  - (b) the exercise of any of the ACMA's telecommunications powers.
- (2) The ACMA may hold such an inquiry about the matter.

#### **488 Informing the public about an inquiry**

- (1) If the ACMA holds a public inquiry, it must publish, in whatever ways it thinks appropriate, notice of:
  - (a) the fact that it is holding the inquiry; and
  - (b) the period during which the inquiry is to be held; and
  - (c) the nature of the matter to which the inquiry relates; and
  - (d) the period within which, and the form in which, members of the public may make submissions to the ACMA about that matter; and
  - (e) the matters that the ACMA would like such submissions to deal with; and
  - (f) the address or addresses to which submissions may be sent.
- (2) The ACMA need not publish at the same time or in the same way notice of all the matters referred to in subsection (1).

#### **489 Discussion paper**

- (1) After deciding to hold a public inquiry about a matter, the ACMA may cause to be prepared a discussion paper that:
  - (a) identifies the issues that, in the ACMA's opinion, are relevant to that matter; and
  - (b) sets out such background material about, and discussion of, those issues as the ACMA thinks appropriate.
- (2) The ACMA must make copies of the discussion paper available at each of the ACMA's offices. The ACMA may charge a reasonable price for supplying copies of the discussion paper in accordance with this subsection.
- (3) The ACMA may otherwise publish the discussion paper, including in electronic form. The ACMA may charge for supplying a publication under this subsection in accordance with a determination under section 60 of the *Australian Communications and Media Authority Act 2005*.

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**490 Written submissions and protection from civil actions**

- (1) The ACMA must provide a reasonable opportunity for any member of the public to make a written submission to the ACMA about the matter to which a public inquiry relates.
- (2) For the purposes of subsection (1), the ACMA is taken not to have provided a reasonable opportunity to make submissions unless there was a period of at least 28 days during which the submissions could be made.
- (3) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information, to the ACMA in connection with a public inquiry under this Division.
- (4) The rule in subsection (3) applies whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

**491 Hearings**

- (1) The ACMA may hold hearings for the purposes of a public inquiry.
- (2) Hearings may be held, for example:
  - (a) in order to receive submissions about the matter to which the inquiry relates; or
  - (b) in order to provide a forum for public discussion of issues relevant to that matter.
- (3) At a hearing, the ACMA may be constituted by:
  - (a) a member or members determined in writing by the Chair for the purposes of that hearing; or
  - (b) if the functions or powers of the ACMA in relation to the hearing have been delegated to a person, or to a Division of the ACMA, under section 50, 51 or 52 of the *Australian Communications and Media Authority Act 2005*—that person or Division.

- (4) The Chair is to preside at all hearings at which he or she is present.
- (5) If the Chair is not present at a hearing, the hearing is to be presided over by:
  - (a) if paragraph (3)(a) applies—the member, specified in an instrument under that paragraph, as the member who is to preside at the hearing; or
  - (b) if paragraph (3)(b) applies and the delegation is to a person—that person; or
  - (c) if paragraph (3)(b) applies and the delegation is to a Division of the ACMA—a member of the Division chosen by the Division.
- (6) The ACMA may regulate the conduct of proceedings at a hearing as it thinks appropriate.

#### **492 Hearing to be in public except in exceptional cases**

- (1) This section applies to a hearing conducted under this Division.
- (2) The basic rule is that the hearing must take place in public.
- (3) However, the hearing, or a part of the hearing, may be conducted in private if the ACMA is satisfied that:
  - (a) evidence that may be given, or a matter that may arise, during the hearing or a part of the hearing is of a confidential nature; or
  - (b) hearing a matter, or part of a matter, in public would not be conducive to the due administration of this Act.
- (4) If the hearing is to be conducted in public, the ACMA must give reasonable public notice of the conduct of the hearing.
- (5) In this section:

*this Act* includes:

  - (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
  - (b) the *Spam Act 2003* and regulations under that Act; and

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- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**493 Confidential material not to be published**

- (1) This section applies to a hearing conducted under this Division.
- (2) If:
- (a) the hearing, or a part of the hearing, takes place in public; and
  - (b) the ACMA is of the opinion that:
    - (i) evidence or other material presented to the hearing; or
    - (ii) material in a written submission lodged with the ACMA;is of a confidential nature;
- the ACMA may order that:
- (c) the evidence or material not be published; or
  - (d) its disclosure be restricted.
- (3) A person must not fail to comply with an order under subsection (2).
- (4) A person commits an offence if:
- (a) the ACMA has made an order under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the order.

Penalty: 50 penalty units.

- (5) Subsections (3) and (4) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) In this section:

***engage in conduct*** means:

- (a) do an act; or



- (b) omit to perform an act.

#### **494 Direction about private hearings**

- (1) This section applies to a hearing conducted under this Division.
- (2) If the hearing, or a part of the hearing, takes place in private, the ACMA:
- (a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and
  - (b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.
- (3) A person must not fail to comply with a direction under subsection (2).
- (4) A person commits an offence if:
- (a) the ACMA has given a direction under paragraph (2)(a); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

- (5) A person commits an offence if:
- (a) the ACMA has given a direction under paragraph (2)(b); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.

- (6) Subsections (3), (4) and (5) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) In this section:

***engage in conduct*** means:

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- (a) do an act; or
- (b) omit to perform an act.

**495 Reports on inquiries**

- (1) If the ACMA holds a public inquiry, the ACMA must prepare a report setting out its findings as a result of the inquiry.
- (2) If the inquiry was held because of a direction given by the Minister under section 486, the ACMA must give a copy of the report to the Minister.
- (3) If the inquiry was held otherwise than because of a direction given by the Minister under section 486, the ACMA must publish the report.
- (4) The ACMA is not required to include in a report any material:
  - (a) that is of a confidential nature; or
  - (b) the disclosure of which is likely to prejudice the fair trial of a person; or
  - (c) that is the subject of an order or direction under section 493 or 494.

## **Division 3—Inquiries by the ACCC**

### **496 When inquiry must be held**

- (1) The Minister may give the ACCC a written direction to hold a public inquiry under this Division about a specified matter concerning:
  - (a) carriage services; or
  - (b) content services; or
  - (c) the telecommunications industry.
- (2) The Minister must not give the ACCC a direction under subsection (1) to hold a public inquiry about a matter concerning the content of a content service.
- (3) If the Minister gives a direction under subsection (1) about a particular public inquiry, the Minister may direct the ACCC to:
  - (a) consult with one or more specified persons, bodies or agencies in connection with the conduct of the inquiry; and
  - (b) have regard to one or more specified matters in connection with the conduct of the inquiry.
- (4) The ACCC must comply with a direction under this section.

### **497 When inquiry may be held**

- (1) This section applies if the ACCC considers that it is appropriate and practicable to hold a public inquiry under this Division about a matter relating to the ACCC's telecommunications functions and powers.
- (2) The ACCC may hold such an inquiry about the matter.

### **498 Informing the public about an inquiry**

- (1) If the ACCC holds a public inquiry, it must publish, in whatever ways it thinks appropriate, notice of:

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- (a) the fact that it is holding the inquiry; and
  - (b) the period during which the inquiry is to be held; and
  - (c) the nature of the matter to which the inquiry relates; and
  - (d) the period within which, and the form in which, members of the public may make submissions to the ACCC about that matter; and
  - (e) the matters that the ACCC would like such submissions to deal with; and
  - (f) the address or addresses to which submissions may be sent.
- (2) The ACCC need not publish at the same time or in the same way notice of all the matters referred to in subsection (1).

**499 Discussion paper**

- (1) After deciding to hold a public inquiry about a matter, the ACCC may cause to be prepared a discussion paper that:
- (a) identifies the issues that, in the ACCC's opinion, are relevant to that matter; and
  - (b) sets out such background material about, and discussion of, those issues as the ACCC thinks appropriate.
- (2) The ACCC must make copies of the discussion paper available at each of the ACCC offices. The ACCC may charge a reasonable price for supplying copies of the discussion paper in accordance with this subsection.
- (3) The ACCC may otherwise publish the discussion paper, including in electronic form. The ACCC may charge a fee for supplying a publication under this subsection.

**500 Written submissions and protection from civil actions**

- (1) The ACCC must provide a reasonable opportunity for any member of the public to make a written submission to the ACCC about the matter to which a public inquiry relates.

- (2) For the purposes of subsection (1), the ACCC is taken not to have provided a reasonable opportunity to make submissions unless there was a period of at least 28 days during which the submissions could be made.
- (3) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information, to the ACCC in connection with a public inquiry under this Division.
- (4) The rule in subsection (3) applies whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

### **501 Hearings**

- (1) The ACCC may hold hearings for the purposes of a public inquiry.
- (2) Hearings may be held, for example:
  - (a) in order to receive submissions about the matter to which the inquiry relates; or
  - (b) in order to provide a forum for public discussion of issues relevant to that matter.
- (3) At a hearing, the ACCC may be constituted by a member or members determined in writing by the Chairperson for the purposes of that hearing.
- (4) The Chairperson is to preside at all hearings at which he or she is present.
- (5) If the Chairperson is not present at a hearing, the member specified, in an instrument under subsection (3), as the member who is to preside at the hearing is to preside.
- (6) The ACCC may regulate the conduct of proceedings at a hearing as it thinks appropriate.

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**502 Hearing to be in public except in exceptional cases**

- (1) This section applies to a hearing conducted under this Division.
- (2) The basic rule is that the hearing must take place in public.
- (3) However, the hearing, or a part of the hearing, may be conducted in private if the ACCC is satisfied that:
  - (a) evidence that may be given, or a matter that may arise, during the hearing or a part of the hearing is of a confidential nature; or
  - (b) hearing a matter, or part of a matter, in public would not be conducive to the due administration of this Act.
- (4) If the hearing is to be conducted in public, the ACCC must give reasonable public notice of the conduct of the hearing.
- (5) In this section:

*this Act* includes:

  - (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
  - (b) the *Spam Act 2003* and regulations under that Act; and
  - (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**503 Confidential material not to be published**

- (1) This section applies to a hearing conducted under this Division.
- (2) If:
  - (a) the hearing, or a part of the hearing, takes place in public; and
  - (b) the ACCC is of the opinion that:
    - (i) evidence or other material presented to the hearing; or
    - (ii) material in a written submission lodged with the ACCC; is of a confidential nature;

the ACCC may order that:

- (c) the evidence or material not be published; or
  - (d) its disclosure be restricted.
- (3) A person must not fail to comply with an order under subsection (2).
- (4) A person commits an offence if:
- (a) the ACCC has made an order under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the order.

Penalty: 50 penalty units.

- (5) Subsections (3) and (4) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

#### **504 Direction about private hearings**

- (1) This section applies to a hearing conducted under this Division.
- (2) If the hearing, or a part of the hearing, takes place in private, the ACCC:
- (a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and
  - (b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.
- (3) A person must not fail to comply with a direction under subsection (2).

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- (4) A person commits an offence if:
- (a) the ACCC has given a direction under paragraph (2)(a); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

- (5) A person commits an offence if:
- (a) the ACCC has given a direction under paragraph (2)(b); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.

- (6) Subsections (3), (4) and (5) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**505 Reports on inquiries**

- (1) If the ACCC holds a public inquiry, the ACCC must prepare a report setting out its findings as a result of the inquiry.
- (2) If the inquiry was held because of a direction given by the Minister under section 496, the ACCC must give a copy of the report to the Minister.
- (3) If the inquiry was held otherwise than because of a direction given by the Minister under section 496, the ACCC must publish the report.
- (4) The ACCC is not required to include in a report any material:



- (a) that is of a confidential nature; or
- (b) the disclosure of which is likely to prejudice the fair trial of a person; or
- (c) that is the subject of an order or direction under section 503 or 504.

**505A ACCC may use material presented to a previous public inquiry**

- (1) This section applies if:
  - (a) the ACCC has held a public inquiry (the *original inquiry*) under this Part; and
  - (b) any of the following subparagraphs applies:
    - (i) evidence or other material was presented to a hearing for the purposes of the original inquiry;
    - (ii) a written submission was lodged with the ACCC for the purposes of the original inquiry;
    - (iii) any other information obtained by the ACCC was used by the ACCC for the purposes of the original inquiry; and
  - (c) the ACCC holds another public inquiry under this Part.
- (2) The ACCC may:
  - (a) in the case of evidence or other material presented to a hearing—treat the whole or a part of the evidence or other material as if it had also been presented to a hearing for the purposes of the other public inquiry; or
  - (b) in the case of a written submission lodged with the ACCC—treat the whole or a part of the written submission as if it had also been lodged with the ACCC for the purposes of the other public inquiry; or
  - (c) in the case of any other information obtained by the ACCC—use the whole or a part of the information for the purposes of the other public inquiry.

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- (3) This section does not, by implication, limit the information that may be used by the ACCC for the purposes of a public inquiry under this Part.

**505B ACCC may adopt a finding from a previous public inquiry**

If:

- (a) the ACCC has held a public inquiry (the *original inquiry*) under this Part; and
  - (b) the ACCC has prepared a report about the original inquiry under section 505; and
  - (c) the ACCC holds another public inquiry under this Part;
- the ACCC may, for the purposes of the other public inquiry, adopt a finding set out in the report about the original inquiry.

**506 ACCC's other powers not limited**

This Division does not, by implication, limit the powers conferred on the ACCC by the *Competition and Consumer Act 2010*.

## Part 26—Investigations

### 507 Simplified outline

The following is a simplified outline of this Part:

- The ACMA may investigate certain matters relating to telecommunications.

### 508 Matters to which this Part applies

This Part applies to the following matters:

- (a) a contravention of this Act;
- (aa) a contravention of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or regulations under that Act;
- (ab) a contravention of the *Spam Act 2003* or regulations under that Act;
- (ac) a contravention of the *Do Not Call Register Act 2006* or regulations under that Act;
- (b) a contravention of a code registered under Part 6;
- (c) a failure by a carriage service provider to comply with an obligation, or discharge a liability, under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- (d) a matter relating to the supply of, or a refusal or failure to supply, a carriage service;
- (e) a matter relating to the connection of, or a refusal or failure to connect, customer equipment;
- (f) a matter relating to the performance of the ACMA's telecommunications functions, or the exercise of the ACMA's telecommunications powers;

except to the extent (if any) to which the matter relates to the content of a content service.

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**509 Complaints to the ACMA**

- (1) A person may complain to the ACMA about a matter.
- (2) A complaint must be in writing.
- (3) A complaint must specify, as the respondent in respect of the complaint, the person against whom the complaint is made.
- (4) If it appears to the ACMA that:
  - (a) a person wishes to make a complaint; and
  - (b) the person requires assistance to formulate the complaint or to reduce it to writing;it is the duty of the ACMA to take reasonable steps to provide appropriate assistance to the person.
- (5) If it appears to the ACMA that:
  - (a) a person (the **first person**) wishes to make a complaint about:
    - (i) a contravention of a code registered under Part 6, where the code applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants; or
    - (ii) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants; or
    - (iii) a contravention of the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the complaint relates to a voice call (within the meaning of the *Do Not Call Register Act 2006*) made, or attempted to be made, to an Australian number; and
  - (c) the first person does not have sufficient information to identify:
    - (i) the person who made, or attempted to make, the call; or

- (ii) the person who caused the call to be made or attempted;  
and
  - (d) the first person gives the ACMA such information about the call as the ACMA requires;
- it is the duty of the ACMA to take reasonable steps to assist the first person to identify whichever of the following is applicable:
- (e) the person who made, or attempted to make, the call;
  - (f) the person who caused the call to be made or attempted.
- (6) Subsection (5) does not limit subsection (4).
- (7) If it appears to the ACMA that:
- (a) a person (the ***first person***) wishes to make a complaint about:
    - (i) a contravention of a code registered under Part 6, where the code applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants; or
    - (ii) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants; or
    - (iii) a contravention of the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the complaint relates to a marketing fax sent, or attempted to be sent, to an Australian number; and
  - (c) the first person does not have sufficient information to identify:
    - (i) the person who sent, or attempted to send, the fax; or
    - (ii) the person who caused the fax to be sent or attempted;  
and
  - (d) the first person gives the ACMA such information about the fax as the ACMA requires;

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it is the duty of the ACMA to take reasonable steps to assist the first person to identify whichever of the following is applicable:

- (e) the person who sent, or attempted to send, the fax;
  - (f) the person who caused the fax to be sent or attempted.
- (8) Subsection (7) does not limit subsection (4).

**510 Investigations by the ACMA**

- (1) The ACMA may investigate a matter of a kind referred to in section 508 if:
- (a) in the case of a matter covered by paragraph 508(a)—the ACMA has reason to suspect that a person may have contravened this Act; or
  - (aa) in the case of a matter covered by paragraph 508(aa)—the ACMA has reason to suspect that a person may have contravened the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or regulations under that Act; or
  - (ab) in the case of a matter covered by paragraph 508(ab)—the ACMA has reason to suspect that a person may have contravened the *Spam Act 2003* or regulations under that Act; or
  - (ac) in the case of a matter covered by paragraph 508(ac)—the ACMA has reason to suspect that a person may have contravened the *Do Not Call Register Act 2006* or regulations under that Act; or
  - (b) in any case—a complaint is made under section 509; or
  - (c) in any case—the ACMA thinks that it is desirable to investigate the matter.
- (2) The ACMA must not conduct such an investigation if it thinks that the subject matter of the investigation would not be a matter relevant to the performance of any of its functions.
- (3) The ACMA must investigate:
- (a) a matter of a kind referred to in section 508; or

- (b) any other matter concerning carriage services or the telecommunications industry;  
if the Minister requests the ACMA so to investigate.

### **511 Preliminary inquiries**

If a complaint has been made to the ACMA under section 509, the ACMA may make inquiries of the respondent for the purposes of determining:

- (a) whether the ACMA has power to investigate the matter to which the complaint relates; or
- (b) whether the ACMA should, in its discretion, investigate the matter.

### **512 Conduct of investigations**

- (1) Before beginning an investigation of a matter to which a complaint relates, the ACMA must inform the respondent that the matter is to be investigated.
- (1A) However, the ACMA is not required to inform the respondent that the matter is to be investigated if:
  - (a) the matter relates to a possible breach of:
    - (i) the *Spam Act 2003* or regulations under that Act; or
    - (ii) the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the ACMA has reasonable grounds to believe that informing the respondent is likely to result in the concealment, loss or destruction of a thing connected with the breach.
- (2) An investigation under this Part is to be conducted as the ACMA thinks fit.
- (3) The ACMA may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as it thinks fit.

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- (4) It is not necessary for a complainant or a respondent to be given an opportunity to appear before the ACMA in connection with an investigation. This subsection has effect subject to subsection (5).
- (5) The ACMA must not, as a result of the investigation, make a finding that is adverse to a complainant or a respondent unless it has given the complainant or respondent an opportunity to make submissions about the matter to which the investigation relates.
- (6) However, the ACMA is not required to give the respondent an opportunity to make submissions if:
  - (a) the matter relates to a possible breach of:
    - (i) the *Spam Act 2003* or regulations under that Act; or
    - (ii) the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the ACMA has reasonable grounds to believe that giving the respondent an opportunity to make submissions is likely to result in the concealment, loss or destruction of a thing connected with the breach.

**513 Complainant and certain other persons to be informed of various matters**

- (1) If the ACMA decides not to investigate, or not to investigate further, a matter to which a complaint relates, it must, as soon as practicable and in such manner as it thinks fit, inform the complainant and the respondent of the decision and of the reasons for the decision.
- (2) However, the ACMA is not required to inform the respondent of the decision and of the reasons for the decision if:
  - (a) the matter relates to a possible breach of:
    - (i) the *Spam Act 2003* or regulations under that Act; or
    - (ii) the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the ACMA has reasonable grounds to believe that informing the respondent is likely to result in the concealment, loss or destruction of a thing connected with the breach.



**514 Reference of matters to Ombudsman or other responsible person**

- (1) If, before the ACMA starts, or after it has started, an investigation of a matter to which a complaint relates, the ACMA forms the opinion that:
- (a) a complaint relating to that matter has been, or could have been, made by the complainant to:
    - (i) the Ombudsman under the *Ombudsman Act 1976*; or
    - (ii) the Telecommunications Industry Ombudsman; or
    - (iii) another person or body responsible for handling complaints under a code registered, or standard determined, under Part 6; and
  - (b) the matter could be more conveniently or effectively dealt with by:
    - (i) the Ombudsman; or
    - (ii) the Telecommunications Industry Ombudsman; or
    - (iii) another person or body responsible for handling complaints under a code registered, or standard determined, under Part 6;
- the ACMA may decide not to investigate the matter, or not to investigate the matter further, as the case may be.
- (2) If the ACMA decides as mentioned in subsection (1), it must:
- (a) transfer the complaint to:
    - (i) the Ombudsman; or
    - (ii) the Telecommunications Industry Ombudsman; or
    - (iii) another person or body responsible for handling complaints under a code registered, or standard determined, under Part 6;as the case requires; and
  - (b) give written notice to the complainant stating that the complaint has been so transferred.
- (3) If the ACMA decides as mentioned in subsection (1), then:

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- (a) in a case where subparagraph (1)(a)(i) applies—the ACMA must give the Ombudsman any information or documents that relate to the complaint and that are in the ACMA’s possession or under its control; and
  - (b) in a case where subparagraph (1)(a)(ii) applies—the ACMA may give the Telecommunications Industry Ombudsman any information or documents that relate to the complaint and that are in the ACMA’s possession or under its control; and
  - (c) in a case where subparagraph (1)(a)(iii) applies—the ACMA may give the person or body mentioned in that subparagraph:
    - (i) any information or documents that relate to the complaint and that are in the ACMA’s possession or under its control; or
    - (ii) copies of, or extracts from, such information or documents.
- (4) A complaint transferred under subsection (2) to the Ombudsman is taken to be a complaint made to the Ombudsman under the *Ombudsman Act 1976*.

**515 Reference of matters to the ACCC**

- (1) If, before the ACMA commences, or after it has commenced, an investigation of a matter to which a complaint relates, the ACMA forms the opinion that the matter could be more conveniently or effectively dealt with by the ACCC, it may decide not to investigate the matter, or not to investigate the matter further, as the case may be.
- (2) If the ACMA so decides, it must:
  - (a) transfer the complaint to the ACCC; and
  - (b) give written notice to the complainant stating that the complaint has been so transferred; and
  - (c) give to the ACCC any information or documents that relate to the complaint and that are in the ACMA’s possession or under its control.

- (3) The ACCC may hold an investigation into the matter and, if it decides to do so, it must report to the ACMA on:
  - (a) the conduct of the investigation; and
  - (b) any findings that it has made as a result of the investigation; and
  - (c) the evidence and other material on which those findings were based; and
  - (d) such other matters relating to, or arising out of, the investigation as the ACCC thinks fit.
- (4) If the ACCC decides not to hold an investigation into the matter, it must give to the ACMA a written notice informing the ACMA of its decision and of the reasons for its decision.

### **515A Reference of matters to Information Commissioner**

- (1) This section applies to a complaint about any of the following matters:
  - (a) a contravention of a code registered under Part 6, where the code applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants;
  - (b) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants;
  - (ba) a contravention of a code registered under Part 6, where the code applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants;
  - (bb) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the fax marketing industry (within the meaning of

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- Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants;
- (c) a contravention of the *Do Not Call Register Act 2006* or regulations under that Act.
- (2) If, before the ACMA starts, or after it has started, an investigation of a matter to which a complaint relates, the ACMA forms the opinion that:
- (a) a complaint relating to that matter has been, or could have been, made by the complainant to the Information Commissioner under section 36 of the *Privacy Act 1988*; and
  - (b) the matter could be more conveniently or effectively dealt with by the Information Commissioner;
- the ACMA may decide not to investigate the matter, or not to investigate the matter further, as the case may be.
- (3) If the ACMA decides as mentioned in subsection (2), it must:
- (a) transfer the complaint to the Information Commissioner; and
  - (b) give written notice to the complainant stating that the complaint has been so transferred; and
  - (c) give the Information Commissioner any information or documents that relate to the complaint and that are in the ACMA's possession or under its control.
- (4) A complaint transferred under subsection (3) to the Information Commissioner is taken to be a complaint made to the Information Commissioner under section 36 of the *Privacy Act 1988*.

### 516 Reports on investigations

- (1) After concluding an investigation under subsection 510(1), the ACMA may prepare and give to the Minister a report under this section.
- (2) After concluding an investigation under subsection 510(3), the ACMA must prepare and give to the Minister a report under this section.

- (3) A report under this section must cover:
- (a) the conduct of the investigation concerned; and
  - (b) any findings that the ACMA has made as a result of the investigation; and
  - (c) the evidence and other material on which those findings were based; and
  - (d) such other matters relating to, or arising out of, the investigation as the ACMA thinks fit or as the Minister directs.

### **517 Publication of reports**

- (1) This section applies if the ACMA prepares a report under section 516.
- (2) If the report was prepared under subsection 516(1), the ACMA may cause the report to be published.
- (3) If the report was prepared under subsection 516(2), the Minister may direct the ACMA to publish the report. The ACMA must comply with the direction. The ACMA must not otherwise cause the report to be published.
- (4) The ACMA is not required to publish, or to disclose to a person to whose affairs it relates, a report or a part of a report if the publication or disclosure would:
- (a) disclose a matter of a confidential character; or
  - (b) be likely to prejudice the fair trial of a person.
- (5) The ACMA is not required to publish a report or part of a report if the publication would involve the unreasonable disclosure of personal information about any individual (including a deceased individual).

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**518 Person adversely affected by report to be given opportunity to comment**

- (1) This section applies if the publication of a matter in a report or a part of a report would, or would be likely to, adversely affect the interests of a person.
- (2) The ACMA must not publish the report or the part of the report, as the case may be, until the ACMA has given the person a reasonable period (not exceeding 30 days) to make representations, either orally or in writing, in relation to the matter.
- (3) However, the ACMA is not required to give the person a reasonable period to make representations if:
  - (a) the matter relates to a possible breach of:
    - (i) the *Spam Act 2003* or regulations under that Act; or
    - (ii) the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the ACMA has reasonable grounds to believe that giving the person a reasonable period to make representations is likely to result in the concealment, loss or destruction of a thing connected with the breach.

**519 Protection from civil actions**

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:
  - (a) the making of a complaint under section 509;
  - (b) the making of a statement to, or the giving of a document or information to, the ACMA in connection with an investigation under section 510;
  - (c) the making of a complaint to the Telecommunications Industry Ombudsman;
  - (d) subject to subsection (2), the making of a statement to, or the giving of a document or information to, the Telecommunications Industry Ombudsman in connection

with the consideration by the Telecommunications Industry Ombudsman of a complaint.

- (2) Paragraph (1)(d) does not apply to the making of a statement, or the giving of a document or information, by:
- (a) a carrier; or
  - (b) a person who is a service provider and who is participating in the Telecommunications Industry Ombudsman scheme under which the Telecommunications Industry Ombudsman has been appointed.

## **Part 27—The ACMA's information-gathering powers**

### **Division 1—Simplified outline**

#### **520 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA may obtain information from carriers, service providers and other persons if the information is relevant to:
  - (a) the performance of any of the ACMA's telecommunications functions; or
  - (b) the exercise of any of the ACMA's telecommunications powers.
- The ACMA may make record-keeping rules that apply to carriers and carriage service providers.



## **Division 2—Information-gathering powers**

### **521 The ACMA may obtain information and documents from carriers and service providers**

- (1) This section applies to a carrier or a service provider if the ACMA has reason to believe that the carrier or provider:
  - (a) has information or a document that is relevant to:
    - (i) the performance of any of the ACMA's telecommunications functions; or
    - (ii) the exercise of any of the ACMA's telecommunications powers; or
  - (b) is capable of giving evidence which the ACMA has reason to believe is relevant to:
    - (i) the performance of any of the ACMA's telecommunications functions; or
    - (ii) the exercise of any of the ACMA's telecommunications powers.
- (2) The ACMA may, by written notice given to the carrier or provider, require the carrier or provider:
  - (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies; or
  - (d) if the carrier or provider is an individual—to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
  - (e) if the carrier or provider is a body corporate or a public body—to cause a competent officer of the body to appear

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before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or

- (f) if the carrier or provider is a partnership—to cause an individual who is:
- (i) a partner in the partnership; or
  - (ii) an employee of the partnership;
- to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.
- (3) A carrier or service provider must comply with a requirement under subsection (2).
- (4) A notice given to a carrier under this section must set out the effect of the following provisions:
- (a) subsection (3);
  - (b) section 68;
  - (c) section 570;
  - (d) Part 1 of Schedule 1;
  - (e) section 525.
- (5) A notice given to a service provider under this section must set out the effect of the following provisions:
- (a) subsection (3);
  - (b) section 101;
  - (c) section 570;
  - (d) Part 1 of Schedule 2;
  - (e) section 525.

**522 The ACMA may obtain information and documents from other persons**

- (1) This section applies to a person if the ACMA has reason to believe that the person:
- (a) has information or a document that is relevant to:

- (i) the performance of any of the ACMA's telecommunications functions; or
    - (ii) the exercise of any of the ACMA's telecommunications powers; or
  - (b) is capable of giving evidence which the ACMA has reason to believe is relevant to:
    - (i) the performance of any of the ACMA's telecommunications functions; or
    - (ii) the exercise of any of the ACMA's telecommunications powers.
- (2) The ACMA may, by written notice given to the person, require the person:
- (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies; or
  - (d) if the person is an individual—to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
  - (e) if the person is a body corporate or a public body—to cause a competent officer of the body to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
  - (f) if the person is a partnership—to cause an individual who is:
    - (i) a partner in the partnership; or
    - (ii) an employee of the partnership;to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.
- (3) A person must comply with a requirement under subsection (2).
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- (4) A person commits an offence if:
- (a) the ACMA has given a notice to the person under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 20 penalty units.

- (5) A notice under this section must set out the effect of subsection (4) and section 525.
- (6) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**523 Copying documents—reasonable compensation**

A person is entitled to be paid by the ACMA reasonable compensation for complying with a requirement covered by paragraph 521(2)(c) or 522(2)(c).

**524 Self-incrimination**

- (1) An individual is not excused from giving information or evidence or producing a document or a copy of a document under this Division on the ground that the information or evidence or the production of the document or copy might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
- (a) giving the information or evidence or producing the document or copy; or
  - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document or copy;
- is not admissible in evidence against the individual in:

- (c) criminal proceedings other than proceedings under, or arising out of, subsection 522(4) or section 525; or
- (d) proceedings under section 570 other than proceedings for recovery of a pecuniary penalty in relation to a contravention of section 521.

### **525 Giving false or misleading information or evidence**

A person must not, under section 521 or 522, give information or evidence that is false or misleading.

Penalty: Imprisonment for 12 months.

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

### **527 Copies of documents**

- (1) The ACMA may inspect a document or copy produced under this Division and may make and retain copies of, or take and retain extracts from, such a document.
- (2) The ACMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 521(2)(c) or 522(2)(c).

### **528 ACMA may retain documents**

- (1) The ACMA may take, and retain for as long as is necessary, possession of a document produced under this Division.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ACMA to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the ACMA must, at such times and places as the ACMA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person

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authorised by that person, to inspect and make copies of, or take extracts from, the document.

## **Division 3—Record-keeping rules**

### **529 ACMA may make record-keeping rules**

- (1) The ACMA may, by written instrument, make rules for and in relation to requiring one or more specified carriers or one or more specified carriage service providers to keep and retain records. Rules under this subsection are to be known as *record-keeping rules*.

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

- (2) The rules may specify the manner and form in which the records are to be kept.
- (2A) The rules may also require those carriers or carriage service providers to prepare reports consisting of information contained in those records.
- (2B) The rules may also require those carriers or carriage service providers to give any or all of the reports to the ACMA.
- (2C) The rules may specify the manner and form in which reports are to be prepared.
- (2D) The rules may provide for:
- (a) the preparation of reports as and when required by the ACMA; or
  - (b) the preparation of periodic reports relating to such regular intervals as are specified in the rules.
- (2E) The rules may require or permit a report prepared in accordance with the rules to be given to the ACMA, in accordance with specified software requirements and specified authentication requirements:
- (a) on a specified kind of data processing device; or
  - (b) by way of a specified kind of electronic transmission.

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- (2F) Subsections (2) to (2E) do not limit subsection (1).
- (3) If the rules apply to a particular carrier or carriage service provider, the ACMA must give the carrier or provider a copy of the rules.
- (4) The ACMA must not exercise its powers under this section so as to require the keeping or retention of records unless the records contain, or will contain, information that is relevant to:
- (a) the performance by the ACMA of any of the ACMA's telecommunications functions; or
  - (b) the exercise by the ACMA of any of the ACMA's telecommunications powers.
- Note: Under section 521, the ACMA may require a carrier or carriage service provider to produce a document (including a record kept in accordance with the record-keeping rules).
- (5) This section does not limit section 521 (which is about the general information-gathering powers of the ACMA).

### 530 Compliance with record-keeping rules

A carrier or carriage service provider must comply with any record-keeping rules that are applicable to the carrier or provider.

### 531 Incorrect records

- (1) A person must not, in purported compliance with a requirement imposed by the record-keeping rules, make a record of any matter or thing in such a way that it does not correctly record the matter or thing.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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



## **Part 28—Enforcement**

### **Division 1—Introduction**

#### **532 Simplified outline**

The following is a simplified outline of this Part:

- A person may be appointed as an inspector.
- Searches relating to offences against Part 21 (technical regulation) may be conducted:
  - (a) under the authority of a search warrant; or
  - (b) with the consent of the owner or occupier concerned; or
  - (c) in an emergency.
- Searches to monitor compliance with Part 21 (technical regulation) may be conducted with the consent of the occupier concerned.
- Searches relating to breaches of the *Spam Act 2003* may be conducted:
  - (a) under the authority of a search warrant; or
  - (b) with the consent of the owner or occupier concerned.
- Searches to monitor compliance with the *Spam Act 2003* may be conducted:
  - (a) under the authority of a monitoring warrant; or

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(b) with the consent of the occupier concerned.

- An inspector may require the production of a carrier licence.
- An inspector may require the giving of certain information, and the production of certain documents, relevant to compliance with the *Spam Act 2003* or Part 21 of this Act (technical regulation).
- A court may order forfeiture of goods used or otherwise involved in the commission of an offence against this Act.

**532A** References to the *Spam Act 2003*

In this Part:

*Spam Act 2003* includes regulations under the *Spam Act 2003*.

## Division 2—Inspectors and identity cards

### 533 Inspectors

- (1) A person is an *inspector* for the purposes of a particular provision of this Act if:
- (a) the person is an officer appointed by the ACMA, by written instrument, to be an inspector:
    - (i) for the purposes of this Act in general; or
    - (ii) for the purposes of that provision; or
  - (b) the person is an officer included in a class of officers appointed by the ACMA, by notice in the *Gazette*, to be inspectors:
    - (i) for the purposes of this Act in general; or
    - (ii) for the purposes of that provision; or
  - (c) if the person is a member (other than a special member) of the Australian Federal Police or of the police force of a Territory.

- (2) In this section:

***Commonwealth officer*** means:

- (a) a person who, whether on a full-time or a part-time basis, and whether in a permanent capacity or otherwise:
  - (i) is in the service or employment of the Commonwealth, the Administration of an external Territory or an authority of the Commonwealth; or
  - (ii) holds or performs the duties of any office or position established by or under a law of the Commonwealth or an external Territory; or
- (b) a member of the Defence Force.

***officer*** means:

- (a) a Commonwealth officer; or
- (b) a State officer.

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**State** includes:

- (a) the Australian Capital Territory; and
- (b) the Northern Territory.

**State officer** means a person who, whether on a full-time basis or a part-time basis and whether in a permanent capacity or otherwise:

- (a) is in the service or employment of a State or an authority of a State; or
  - (b) holds or performs the duties of any office or position established by or under a law of a State;
- and includes a member of a police force of a State.

### 534 Identity cards

- (1) The ACMA may issue an identity card to an inspector, other than a member of a police force, in a form approved, in writing, by the ACMA.
- (2) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the ACMA.
- (3) A person must not contravene subsection (2).

Penalty: 5 penalty units.

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

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (3) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

### **Division 3—Search warrants relating to breaches of the Spam Act 2003 or Part 21 of this Act**

#### **535 Magistrate may issue warrant**

- (1) If:
- (a) an information on oath is laid before a magistrate alleging that an inspector suspects on reasonable grounds that there may be on any land, or in or on any premises, vessel, aircraft or vehicle:
    - (i) anything in respect of which an offence against Part 21 has been committed; or
    - (ii) anything that may afford evidence about the commission of an offence against Part 21; or
    - (iii) anything that was used, or is intended to be used, for the purposes of committing an offence against Part 21; or
    - (iv) anything in respect of which a breach of the *Spam Act 2003* has happened; or
    - (v) anything that may afford evidence about a breach of the *Spam Act 2003*; or
    - (vi) anything that was used, or is intended to be used, for the purposes of breaching the *Spam Act 2003*; and
  - (b) the information sets out those grounds;  
the magistrate may issue a search warrant authorising the inspector named in the warrant, with such assistance, and by such force, as is necessary and reasonable, to enter the land, premises, vessel, aircraft or vehicle and exercise the powers referred to in paragraphs 542(2)(b), (c) and (d), in respect of the thing.
- (2) A reference in this section to an ***offence against Part 21*** includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to Part 21 of this Act.

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**536 Reasonable grounds for issuing warrant etc.**

A magistrate is not to issue a warrant under section 535 unless:

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

**537 Contents of warrant**

The following must be stated in a warrant issued under section 535:

- (a) the purpose for which the warrant is issued, and the nature of the offence or breach in relation to which the entry and search are authorised;
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things to be seized;
- (d) a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

**538 Warrants may be issued by telephone etc.**

If, because of circumstances of urgency, an inspector thinks it necessary to do so, the inspector may apply to a magistrate for a warrant under section 535 by telephone, telex, fax or other electronic means.

**539 Provisions relating to issue of warrant by telephone etc.**

- (1) Before applying under section 538 for a warrant, an inspector must prepare an information of a kind referred to in section 535 that sets out the grounds on which the issue of the warrant is being sought.

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However, the inspector may, if it is necessary to do so, make the application before the information has been sworn.

- (2) If the magistrate to whom an application under section 538 is made is satisfied:
  - (a) after having considered the terms of the information prepared under subsection (1); and
  - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign such a search warrant as the magistrate would issue under section 535 if the application had been made under that section.
- (3) If the magistrate signs a warrant under subsection (2):
  - (a) the magistrate must:
    - (i) inform the inspector of the terms of the warrant; and
    - (ii) inform the inspector of the day on which and the time at which the warrant was signed; and
    - (iii) inform the inspector of the day (not more than 7 days after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
    - (iv) record on the warrant the reasons for issuing the warrant; and
  - (b) the inspector must:
    - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
    - (ii) write on it the magistrate's name and the day on which and the time at which the warrant was signed.
- (4) The inspector must, not later than the day after the date of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
  - (a) the form of warrant completed by the inspector; and
  - (b) the information duly sworn in connection with the warrant.

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- (5) On receiving the documents referred to in subsection (4), the magistrate must:
- (a) attach to them the warrant signed by the magistrate; and
  - (b) deal with the documents in the way which the magistrate would have dealt with the information if the application for the warrant had been made under section 535.
- (6) A form of warrant duly completed by an inspector under subsection (3), if it is in accordance with the terms of the warrant signed by the magistrate, is authority for an entry, search, seizure or other exercise of a power that the warrant so signed authorises.

**540 Proceedings involving warrant issued by telephone etc.**

If:

- (a) it is material in any proceedings for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with section 539; and
- (b) a warrant signed by a magistrate under section 539 authorising the entry, search, seizure or other exercise of power is not produced in evidence;

the court is to assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant.



## **Division 4—Searches and seizures relating to breaches of the Spam Act 2003 or Part 21 of this Act**

### **541 When is a thing connected with an offence?**

For the purposes of this Division, a thing is *connected with* a particular offence if it is:

- (a) a thing in respect of which the offence has been committed; or
- (b) a thing that may afford evidence about the commission of the offence; or
- (c) a thing that was used, or is intended to be used, for the purposes of committing the offence.

### **541A When is a thing connected with a breach of the *Spam Act 2003*?**

For the purposes of this Part, a thing is *connected with* a breach of the *Spam Act 2003* if it is:

- (a) a thing in respect of which the breach has happened; or
- (b) a thing that may afford evidence about the breach; or
- (c) a thing that was used, or is intended to be used, for the purposes of the breach.

### **542 Searches and seizures**

- (1) This section applies if an inspector suspects on reasonable grounds that there is on any land, or on or in any premises, vessel, aircraft or vehicle anything connected with:
  - (a) a particular offence against Part 21 of this Act; or
  - (b) a particular breach of the *Spam Act 2003*.
- (2) The inspector may, with the consent of the owner or occupier of the land, premises, vessel, aircraft or vehicle, or in accordance with a warrant issued under Division 3:

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- (a) enter the land, premises, vessel, aircraft or vehicle; and
  - (b) search the land, premises, vessel, aircraft or vehicle; and
  - (c) break open and search a cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the inspector suspects on reasonable grounds there to be anything of a kind referred to in subsection (1); and
  - (d) examine and seize anything that the inspector suspects on reasonable grounds to be connected with the offence or breach.
- (3) If an inspector may enter a vessel, aircraft or vehicle under subsection (2), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (2)(b), (c) or (d), stop and detain the vessel, aircraft or vehicle.
- (4) A reference in this section to an ***offence against Part 21*** includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to Part 21 of this Act.

**543 Production of identity card etc.**

- (1) An inspector (other than a member of a police force who is in uniform) who proposes to enter land or premises under section 542 must:
- (a) in the case of a member of a police force—produce, for inspection by the owner or occupier of the land or premises written evidence of the fact that the inspector is a member of a police force; or
  - (b) in any other case—produce the inspector’s identity card for inspection by the owner or occupier;
- and, if the inspector fails to do so, he or she is not authorised to enter the land or premises.
- (2) If the entry is in accordance with a warrant issued under Division 3, the inspector is taken not to have complied with subsection (1) unless he or she also produces the warrant for inspection by the owner or occupier.

**544 Evidence of commission of other offences against Part 21 of this Act or other breaches of the *Spam Act 2003***

- (1) If:
- (a) in the course of searching, in accordance with a warrant issued under Division 3, for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes on reasonable grounds to be:
    - (i) a thing that is connected with the offence, although not the thing specified in the warrant; or
    - (ii) a thing that is connected with another offence against Part 21; and
  - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence;
- the warrant is taken to authorise the inspector to seize that thing.
- (1A) If:
- (a) in the course of searching, in accordance with a warrant issued under Division 3, for a particular thing in relation to a particular breach of the *Spam Act 2003*, an inspector finds a thing that the inspector believes on reasonable grounds to be:
    - (i) a thing that is connected with the breach, although not the thing specified in the warrant; or
    - (ii) a thing that is connected with another breach of the *Spam Act 2003*; and
  - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the breach or the other breach;
- the warrant is taken to authorise the inspector to seize that thing.
- (2) A reference in this section to an ***offence against Part 21*** includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to Part 21 of this Act.

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**545 Emergency entry, search and seizure**

- (1) If an inspector has reasonable grounds to believe:
- (a) that a person is carrying anything that is connected with an offence against Part 21; and
  - (b) that the exercise of the powers under this section is necessary to prevent the concealment, loss or destruction of a thing connected with a particular offence;
- the inspector may:
- (c) search the person, the person's clothing and any property in the person's immediate control; and
  - (d) seize any thing found in the course of the search;
- so long as those powers are exercised in circumstances of such seriousness and urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under Division 3.
- (2) If an inspector has reasonable grounds to believe:
- (a) that there is on any land or on or in any premises, vessel, aircraft or vehicle any thing that is connected with a particular offence against Part 21; and
  - (b) that the exercise of powers conferred under this section is necessary to prevent the concealment, loss or destruction of the thing;
- the inspector may, with such assistance as the inspector thinks fit, and if necessary by force:
- (c) enter the land, premises, vessel, aircraft or vehicle; and
  - (d) search for the thing; and
  - (e) seize any such thing found in the course of the search;
- so long as those powers are exercised in circumstances of such seriousness and urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under Division 3.
- (3) If an inspector may enter a vessel, aircraft or vehicle under subsection (2), the inspector may, for that purpose and for the

purpose of exercising a power referred to in paragraph (2)(d) or (e), stop and detain the vessel, aircraft or vehicle.

- (4) A reference in this section to an *offence against Part 21* includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to Part 21 of this Act.

### **546 Retention of things seized**

- (1) If an inspector seizes a thing under this Division, the inspector or the ACMA may retain it until:
- (a) the end of the period of 60 days after the seizure; or
  - (b) if either of the following proceedings are instituted within that period:
    - (i) proceedings for an offence against, or arising out of, this Act in respect of which the thing may afford evidence;
    - (ii) proceedings for a breach of the *Spam Act 2003* in respect of which the thing may afford evidence;the proceedings (including any appeal to a court in relation to those proceedings) are completed.
- (2) The ACMA may, by written instrument, authorise a thing seized under this Division to be released to the owner, or to the person from whom it was seized, either:
- (a) unconditionally; or
  - (b) on such conditions as the ACMA thinks fit, including conditions as to giving security for payment of its value if it is forfeited under section 551.
- (3) In this section:
- this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

## **Division 5—Searches to monitor compliance with Part 21**

### **547 Searches to monitor compliance with Part 21**

- (1) An inspector may, to the extent that it is reasonably necessary for the purpose of ascertaining whether Part 21 has been complied with, enter, at any time during the day or night, any premises that the inspector has reasonable cause to believe are premises to which this section applies and:
  - (a) search the premises; or
  - (b) inspect and take photographs, or make sketches, of the premises or any substance or thing at the premises; or
  - (c) inspect any document kept at the premises; or
  - (d) remove, or make copies of, any such document.This section has effect subject to subsections (2) and (3).
- (2) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.
- (3) An inspector is not entitled to exercise any powers under subsection (1) in relation to premises if:
  - (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
  - (b) the inspector fails to comply with the requirement.
- (4) This section applies to premises at which:
  - (a) activities that are the subject of regulation under Part 21 are engaged in; or
  - (b) records relating to any such activities are kept.

## **Division 5A—Searches to monitor compliance with the Spam Act 2003**

### **547A Powers available to inspectors for monitoring compliance**

- (1) For the purpose of finding out whether the *Spam Act 2003* has been complied with, an inspector may:
  - (a) enter any premises; and
  - (b) exercise the monitoring powers set out in section 547B.
- (2) An inspector is not authorised to enter premises under subsection (1) unless:
  - (a) the occupier of the premises has consented to the entry; or
  - (b) the entry is made under a warrant under section 547D.

#### *Consent*

- (3) Before obtaining the consent of a person for the purposes of paragraph (2)(a), the inspector must inform the person that he or she may refuse consent.
- (4) An entry of an inspector by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

### **547B Monitoring powers**

- (1) The monitoring powers that an inspector may exercise under paragraph 547A(1)(b) are as follows:
  - (a) to search the premises;
  - (b) to inspect and take photographs, or make sketches, of the premises or any substance or thing at the premises;
  - (c) to inspect any document kept at the premises;
  - (d) to remove, or make copies of, any such document;
  - (e) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;

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- (f) to secure a thing, until a warrant is obtained to seize it, if:
    - (i) the inspector finds the thing during the exercise of powers on the premises; and
    - (ii) the inspector believes on reasonable grounds that the thing is connected with a breach of the *Spam Act 2003*; and
    - (iii) the inspector believes on reasonable grounds that the thing would be lost, destroyed or tampered with before the warrant can be obtained;
  - (g) to secure a computer, until an order under section 547J is obtained in relation to it, if:
    - (i) the inspector finds the computer during the exercise of powers on the premises; and
    - (ii) there are reasonable grounds for suspecting that a thing connected with a breach of the *Spam Act 2003* is held in, or is accessible from, the computer; and
    - (iii) the inspector believes on reasonable grounds that the computer, or the thing mentioned in subparagraph (ii), would be lost, destroyed or tampered with before the order can be obtained.
- (2) The monitoring powers that an inspector may exercise under paragraph 547A(1)(b) include the power to operate equipment at premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is at the premises; and
    - (ii) can be used with the equipment or is associated with it;
- contains information that is relevant to determining whether there has been compliance with the *Spam Act 2003*.
- (3) If the inspector, after operating equipment at the premises, finds that the equipment, or that a tape, disk or other storage device at the premises, contains information mentioned in subsection (2), the inspector may:
- (a) operate facilities at the premises to put the information in documentary form and copy the document so produced; or
-



- (b) if the information can be transferred to a tape, disk or other storage device that:
- (i) is brought to the premises; or
  - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;
- operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.

Note: See also section 547J (order requiring person to assist with access to computer data).

### **547C Production of identity card etc.**

An inspector (other than a member of a police force who is in uniform) who proposes to enter premises under section 547A must:

- (a) in the case of a member of a police force—produce, for inspection by the occupier of the premises, written evidence of the fact that the inspector is a member of a police force; or
- (b) in any other case—produce the inspector’s identity card for inspection by the occupier;

and, if the inspector fails to do so, he or she is not authorised to enter the premises.

### **547D Monitoring warrants**

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.
- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purposes of finding out whether the *Spam Act 2003* has been complied with.
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate

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requires concerning the grounds on which the issue of the warrant is being sought.

- (4) If the premises are a residence, the magistrate must not issue the warrant unless:
- (a) all of the following conditions are satisfied:
    - (i) the Federal Court has found, in proceedings under the *Spam Act 2003*, that an individual has breached that Act;
    - (ii) the finding has not been overturned on appeal;
    - (iii) the individual ordinarily resides at the premises;
    - (iv) the breach involved the use of equipment that is or was on those premises;
    - (v) the warrant is issued within 10 years after the finding; or
  - (b) all of the following conditions are satisfied:
    - (i) an individual has given an undertaking for the purposes of section 38 of the *Spam Act 2003*;
    - (ii) the undertaking is in force;
    - (iii) the individual ordinarily resides at the premises;
    - (iv) the undertaking applies to the use of equipment that is on those premises.
- (5) The warrant must:
- (a) authorise one or more inspectors (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in section 547B in relation to the premises; and
  - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

**547E Details of warrant to be given to occupier etc.**

- (1) If:
  - (a) a warrant under section 547D in relation to premises is being executed by an inspector; and
  - (b) the occupier of the premises or another person who apparently represents the occupier is present at the premises; the inspector must make available to that person a copy of the warrant.
- (2) The inspector must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

**547F Announcement before entry**

- (1) An inspector must, before entering premises under a warrant under section 547D:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
  - (a) to ensure the safety of a person; or
  - (b) to ensure that the effective execution of the warrant is not frustrated.

**547G Compensation for damage to equipment**

- (1) This section applies if:
  - (a) as a result of equipment being operated as mentioned in section 547B:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or

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- (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
- (b) the damage or corruption occurs because:
  - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
  - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1):

*damage*, in relation to data, includes damage by erasure of data or addition of other data.

**547H Occupier entitled to be present during search**

- (1) If:
  - (a) a warrant under section 547D in relation to premises is being executed; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;

the person is entitled to observe the search being conducted.

- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

## **Division 5B—Access to computer data that is relevant to the Spam Act 2003**

### **547J Access to computer data that is relevant to the *Spam Act 2003***

#### *Scope*

- (1) This section applies if:
  - (a) both:
    - (i) a warrant is in force under Division 3 authorising an inspector to enter particular premises; and
    - (ii) the warrant relates to the *Spam Act 2003*; or
  - (b) a warrant is in force under Division 5A authorising an inspector to enter particular premises.

#### *Application to magistrate for access order*

- (2) The inspector may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow the inspector to do one or more of the following:
  - (a) access data held in, or accessible from, a computer that is on those premises;
  - (b) copy the data to a data storage device;
  - (c) convert the data into documentary form.

#### *Grant of access order*

- (3) The magistrate may grant the order if the magistrate is satisfied that:
  - (a) there are reasonable grounds for suspecting that a thing connected with a breach of the *Spam Act 2003* is held in, or is accessible from, the computer; and
  - (b) the specified person is:
    - (i) reasonably suspected of having been involved in the breach; or

- (ii) the owner or lessee of the computer; or
- (iii) an employee of the owner or lessee of the computer; and
- (c) the specified person has relevant knowledge of:
  - (i) the computer or a computer network of which the computer forms a part; or
  - (ii) measures applied to protect data held in, or accessible from, the computer.

*Offence*

- (4) A person commits an offence if:
- (a) the person is subject to an order under this section; and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the order.

Penalty: Imprisonment for 6 months.

*Definitions*

- (5) In this section:

**data** includes:

- (a) information in any form; and
- (b) any program (or part of a program).

**data held in a computer** includes:

- (a) data held in any removable data storage device for the time being held in a computer; and
- (b) data held in a data storage device on a computer network of which the computer forms a part.

**data storage device** means a thing containing, or designed to contain, data for use by a computer.

- (6) This section does not, by implication, affect the meaning of the expression **data** when used in any other provision of this Act or the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

## Division 6—Other powers of inspectors

### 548 General powers of inspectors

- (1) An inspector may:
- (a) require a person whom he or she suspects on reasonable grounds of having done an act in respect of which the person is required to hold:
    - (i) a carrier licence; or
    - (ii) a connection permit; or
    - (iii) a cabling licence;to produce the licence or permit (as the case may be), or evidence of its existence and contents; and
  - (b) require a person to produce evidence of having applied a label in accordance with an obligation imposed on the person under section 407; and
  - (c) require a person who has been required under paragraph 408(5)(a) or (d) to:
    - (i) obtain a written statement from a certification body certifying that customer equipment or customer cabling complies with a specified section 376 standard; or
    - (ii) obtain a written statement from a competent body stating that reasonable efforts have been made to avoid a contravention of a specified section 376 standard;to produce the statement, or evidence of its existence and contents; and
  - (d) require a person who has been required under paragraph 408(5)(b) to have customer equipment or customer cabling tested by a recognised testing authority to produce evidence of the testing; and
  - (e) require a person who has been required under subsection 408(6) to retain:
    - (i) records; or
    - (ii) a declaration; or
    - (iii) a copy of a declaration;



for a particular period to produce those records, that declaration or that copy, so long as the inspector does not require the production of those records, that declaration or that copy after the end of that period.

- (2) A person must not contravene a requirement under this section.

Penalty: 20 penalty units.

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

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (2B) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) In this section:

***application***, in relation to a label, has the same meaning as in Division 7 of Part 21.

***certification body*** has the same meaning as in Division 7 of Part 21.

***competent body*** has the same meaning as in Division 7 of Part 21.

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

***recognised testing authority*** has the same meaning as in Division 7 of Part 21.

### **549 Power to require information etc.**

- (1) An inspector who has entered land, premises, a vessel, an aircraft or a vehicle under Division 4 or 5 may, to the extent that is

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reasonably necessary for the purpose of ascertaining whether Part 21 has been complied with, require the person to:

- (a) answer any questions put by the inspector; and
  - (b) produce any documents requested by the inspector.
- (1A) An inspector who has entered land, premises, a vessel, an aircraft or a vehicle under Division 4 or 5A may, to the extent that is reasonably necessary for the purpose of ascertaining whether the *Spam Act 2003* has been complied with, require the person to:
- (a) answer any questions put by the inspector; and
  - (b) produce any documents requested by the inspector.
- (2) An inspector is not entitled to make a requirement of a person under subsection (1) or (1A) unless:
- (a) the inspector produces his or her identity card for inspection by the person; or
  - (b) the inspector is a member of a police force and is wearing the uniform of that police force.
- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) or (1A); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 20 penalty units.

- (3A) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

- (4) An individual is excused from giving information or producing a document under this section if the information or the production of the document might tend to incriminate the individual or expose the individual to a penalty.
- (5) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

### **550 Retention of documents**

If:

- (a) an inspector removes a document from any land, premises, vessel, aircraft or vehicle under section 542, 547 or 547B; or
- (b) a person produces a document to an inspector in accordance with a requirement under subsection 549(1) or (1A);

then:

- (c) the inspector may retain possession of the document for such period as is necessary and reasonable for the purpose of ascertaining whether the *Spam Act 2003* or Part 21 of this Act has been complied with; and
- (d) during that period, the inspector must permit a person who would be entitled to inspect the document if it were not in the inspector's possession to inspect the document at all reasonable times.

## Division 7—Forfeiture

### 551 Court may order forfeiture

- (1) If a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of anything used or otherwise involved in the commission of the offence.
- (2) A reference in this section to an *offence against this Act* includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to this Act.
- (3) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

### 552 Forfeited goods may be sold

A thing forfeited under section 551:

- (a) may be sold or otherwise disposed of in accordance with the directions of the ACMA; and
- (b) pending such directions, must be kept in such custody as the ACMA directs.

## **Division 8—Future offences**

### **553 Offences that are going to be committed**

- (1) If:
  - (a) there are reasonable grounds for suspecting that an offence against this Act is going to be committed; and
  - (b) the commission of that offence would pose a threat to the safety of human life or cause substantial loss or damage;this Part applies in relation to the offence as if there were reasonable grounds for suspecting that it had been committed.
- (2) A reference in this section to an *offence against this Act* includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to this Act.
- (3) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

## Part 29—Review of decisions

### 554 Simplified outline

The following is a simplified outline of this Part:

- Certain decisions of the ACMA may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the ACMA.

### 555 Decisions that may be subject to reconsideration by the ACMA

An application may be made to the ACMA for reconsideration of a decision of a kind specified in Part 1 of Schedule 4.

### 556 Deadlines for reaching certain decisions

- (1) This section applies to a decision of a kind referred to in section 555, other than a decision of a kind specified in Part 2 of Schedule 4.
- (2) If this Act provides for a person to make an application to the ACMA for such a decision, the ACMA must make the decision:
  - (a) within 90 days after receiving the application; or
  - (b) if the ACMA has, within those 90 days, given the applicant a written request for further information about the application—within 90 days after receiving that further information.
- (3) The ACMA is taken, for the purposes of this Part, to have made a decision to refuse the application if it has not informed the applicant of its decision before the end of the relevant period of 90 days.

**557 Statements to accompany notification of decisions**

- (1) If the ACMA makes a decision of a kind referred to in section 555 and gives written notice of the decision to a person whose interests it affects, the notice must include:
  - (a) a statement to the effect that a person affected by the decision may, if he or she is dissatisfied with the decision, seek a reconsideration of the decision by the ACMA under subsection 558(1); and
  - (b) a statement to the effect that, if a person who has applied for a reconsideration is dissatisfied with the ACMA's decision on the reconsideration:
    - (i) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision on that reconsideration; and
    - (ii) the person may request a statement under section 28 of that Act in relation to the decision on that reconsideration.
- (2) Failure to comply with this section does not affect the validity of a decision.

**558 Applications for reconsideration of decisions**

- (1) A person affected by a decision of a kind referred to in section 555 who is dissatisfied with the decision may apply to the ACMA for the ACMA to reconsider the decision.
- (2) The application must:
  - (a) be in a form approved in writing by the ACMA; and
  - (b) set out the reasons for the application.
- (3) The application must be made within:
  - (a) 28 days after the applicant is informed of the decision; or
  - (b) if, either before or after the end of that period of 28 days, the ACMA extends the period within which the application may be made—the extended period for making the application.

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- (4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

### **559 Reconsideration by the ACMA**

- (1) Upon receiving such an application, the ACMA must:
  - (a) reconsider the decision; and
  - (b) affirm, vary or revoke the decision.
- (2) The ACMA's decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.
- (3) The ACMA must give to the applicant a notice stating its decision on the reconsideration together with a statement of its reasons for its decision.

### **560 Deadlines for reconsiderations**

- (1) The ACMA must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.
- (2) The ACMA is taken, for the purposes of this Part, to have made a decision affirming the original decision if it has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

### **561 Statements to accompany notification of decisions on reconsideration**

- (1) A notice under subsection 559(3) notifying the applicant that a decision has been affirmed or varied must include:
  - (a) a statement to the effect that a person affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision so affirmed or varied, apply to the Administrative Appeals Tribunal for review of the decision; and



- (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision so affirmed or varied.
- (2) Failure to comply with this section does not affect the validity of a decision.

### **562 Review by the Administrative Appeals Tribunal**

Applications may be made to the Administrative Appeals Tribunal to review a decision of a kind referred to in section 555 if the ACMA has affirmed or varied the decision under section 559.

## Part 30—Injunctions

### 563 Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions in relation to contraventions of:
  - (a) this Act; or
  - (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
  - (c) regulations under that Act.

### 564 Injunctions

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of this Act, the Federal Court may, on the application of the Minister, the ACMA, the ACCC or the Home Affairs Minister, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
  - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of this Act;

the Federal Court may, on the application of the Minister, the ACMA, the ACCC or the Home Affairs Minister, grant an injunction requiring the person to do that act or thing.

*Limit on standing of the ACMA*

- (3) Despite subsections (1) and (2), the ACMA is not entitled to apply for an injunction in relation to a contravention of:
- (aaa) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
  - (aab) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
    - (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369; or
    - (aa) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED; or
    - (b) a carrier licence condition set out in Part 3, 4 or 5 of Schedule 1; or
    - (ba) the carrier licence condition set out in clause 84 of Schedule 1; or
    - (bb) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
    - (c) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369; or
    - (d) the carrier licence condition set out in section 152AZ of the *Competition and Consumer Act 2010*; or
    - (e) the service provider rule set out in subsection 152BA(2) of the *Competition and Consumer Act 2010*; or
    - (f) the carrier licence condition set out in section 152BCO of the *Competition and Consumer Act 2010*; or
    - (g) the service provider rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*; or

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- (h) the carrier licence condition set out in section 152BDF of the *Competition and Consumer Act 2010*; or
- (i) the service provider rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*; or
- (j) the carrier licence condition set out in section 152BEC of the *Competition and Consumer Act 2010*; or
- (k) the service provider rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*; or
- (l) the carrier licence condition set out in section 152CJC of the *Competition and Consumer Act 2010*; or
- (m) the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*; or
- (n) the carrier licence condition set out in section 37 of the *National Broadband Network Companies Act 2011*; or
- (o) the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*; or
- (p) a carrier licence condition covered by section 41 of the *National Broadband Network Companies Act 2011*.

Note 1AA: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

Note 1: Section 369 deals with Rules of Conduct under section 367.

Note 1A: Sections 577AD, 577CD and 577ED deal with undertakings given, or originally given, by Telstra.

Note 2: Parts 3, 4 and 5 of Schedule 1 deal with access to network information and access to facilities.

Note 2A: Clause 84 of Schedule 1 deals with control by Telstra of certain spectrum licences.

Note 3: Section 152AZ of the *Competition and Consumer Act 2010* deals with standard access obligations.

Note 4: Subsection 152BA(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any standard access obligations, and certain ancillary obligations, that are applicable to the provider.

Note 5: Section 152BCO of the *Competition and Consumer Act 2010* deals with access determinations.

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- Note 6: Subsection 152BCP(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any access determinations that are applicable to the provider.
- Note 7: Section 152BDF of the *Competition and Consumer Act 2010* deals with binding rules of conduct.
- Note 8: Subsection 152BDG(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any binding rules of conduct that are applicable to the provider.
- Note 9: Section 152BEC of the *Competition and Consumer Act 2010* deals with access agreements.
- Note 10: Subsection 152BED(2) of the *Competition and Consumer Act 2010* deals with access agreements.
- Note 11: Section 152CJC of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 12: Subsection 152CJD(2) of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 13: Section 37 of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
  - (b) the investment of money by NBN corporations; and
  - (c) the functional separation of NBN corporations; and
  - (d) the divestment of assets by NBN corporations.
- Note 14: Subsection 38(2) of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
  - (b) the investment of money by NBN corporations; and
  - (c) the functional separation of NBN corporations; and
  - (d) the divestment of assets by NBN corporations.
- Note 15: Section 41 of the *National Broadband Network Companies Act 2011* deals with rules about the supply of services by NBN corporations.

*Injunctions relating to contraventions of section 151ZI*

- (3AA) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of section 151ZI, the Federal Court may, on the application of a carrier or a carriage service provider, grant an injunction:
- (a) restraining the person from engaging in the conduct; and

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(b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

(3AB) Subsection (3AA) does not, by implication, limit subsection (1).

*Limit on standing of the Home Affairs Minister*

(3A) Despite subsections (1) and (2), the Home Affairs Minister is not entitled to apply for an injunction unless the application relates to a contravention of:

- (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to subsection 313(1A), 314A(3), 315A(5), 315B(12) or 315C(3); or
- (b) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to subsection 313(1A) or (2A), 314A(3), 315A(5), 315B(12) or 315C(3).

*Definitions*

(4) In this section:

**this Act** includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

## 565 Interim injunctions

*Grant of interim injunction*

(1) If an application is made to the court for an injunction under section 564, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

*No undertakings as to damages*

(2) The court is not to require an applicant for an injunction under section 564, as a condition of granting an interim injunction, to give any undertakings as to damages.

**566 Discharge etc. of injunctions**

The court may discharge or vary an injunction granted under this Part.

**567 Certain limits on granting injunctions not to apply***Restraining injunctions*

- (1) The power of the court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

**568 Other powers of the court unaffected**

The powers conferred on the court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.



## **Part 31—Civil penalties**

### **569 Simplified outline**

The following is a simplified outline of this Part:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

### **570 Pecuniary penalties for contravention of civil penalty provisions**

- (1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the Court determines to be appropriate.
- (2) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.
- (3) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed:
  - (a) in the case of a contravention of subsection 68(1) or (2) or 101(1) or (2)—\$10 million for each contravention; or
  - (aa) in the case of a contravention of subsection 317ZA(1) or (2)—47,619 penalty units for each contravention; or
  - (ab) in the case of a contravention of subsection 581Y(1) or 581ZD(1)—10,000 penalty units for each contravention; or

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- (b) in any other case—\$250,000 for each contravention.
- (4) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed:
  - (a) in the case of a contravention of subsection 68(1) or (2) that relates to the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to subsection 97(1) or (1A) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*—10,000 penalty units for each contravention; or
  - (b) in any other case—\$50,000 for each contravention.
- (4A) Subsections (3) and (4) do not apply to a contravention of subsection 139(1) or (2).
- (4B) Section 25 of the *Do Not Call Register Act 2006* applies to a contravention of subsection 139(1) or (2) of this Act in a corresponding way to the way in which it applies to a contravention of subsection 12(1) or (2) of the *Do Not Call Register Act 2006*, subject to the following modifications:
  - (a) each reference in section 25 of the *Do Not Call Register Act 2006* to subsection 24(1) of that Act includes a reference to subsection (1) of this section;
  - (b) each reference in section 25 of the *Do Not Call Register Act 2006* to a civil penalty provision includes a reference to subsection 139(1) or (2) of this Act;
  - (c) each reference in section 25 of the *Do Not Call Register Act 2006* to a civil penalty order includes a reference to an order under subsection (1) of this section.
- (4C) Subsection (4) does not apply to a contravention of subsection 317ZA(1) or (2).
- (4D) The pecuniary penalty payable under subsection (1) by a person other than a body corporate for a contravention of subsection 317ZA(1) or (2) is not to exceed 238 penalty units for each contravention.

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- (5) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct. This subsection has effect subject to subsection (6).
- (6) If conduct constitutes a contravention of:
- (a) section 68 or 101; and
  - (b) one or more other civil penalty provisions;
- proceedings must not be instituted under this Act against the person in relation to the contravention of section 68 or 101, as the case may be.
- (7) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**571 Civil action for recovery of pecuniary penalties**

- (1) The Minister, the ACMA, the ACCC or the Home Affairs Minister may institute a proceeding in the Federal Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in section 570.
- (2) A proceeding under subsection (1) may be commenced within 6 years after the contravention.

*Limit on standing of the ACMA*

- (3) Despite subsection (1), the ACMA is not entitled to institute a proceeding for the recovery of a pecuniary penalty in respect of a contravention of:
- (aaa) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
  - (aab) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

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- (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369; or
  - (aa) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED; or
  - (b) a carrier licence condition set out in Part 3, 4 or 5 of Schedule 1; or
  - (ba) the carrier licence condition set out in clause 84 of Schedule 1; or
  - (bb) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
  - (c) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369; or
  - (d) the carrier licence condition set out in section 152AZ of the *Competition and Consumer Act 2010*; or
  - (e) the service provider rule set out in subsection 152BA(2) of the *Competition and Consumer Act 2010*; or
  - (f) the carrier licence condition set out in section 152BCO of the *Competition and Consumer Act 2010*; or
  - (g) the service provider rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*; or
  - (h) the carrier licence condition set out in section 152BDF of the *Competition and Consumer Act 2010*; or
  - (i) the service provider rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*; or
  - (j) the carrier licence condition set out in section 152BEC of the *Competition and Consumer Act 2010*; or
  - (k) the service provider rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*; or
  - (l) the carrier licence condition set out in section 152CJC of the *Competition and Consumer Act 2010*; or
  - (m) the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*; or
  - (n) the carrier licence condition set out in section 37 of the *National Broadband Network Companies Act 2011*; or
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- (o) the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*; or
- (p) a carrier licence condition covered by section 41 of the *National Broadband Network Companies Act 2011*.

Note 1AA: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

Note 1: Section 369 deals with Rules of Conduct under section 367.

Note 1A: Sections 577AD, 577CD and 577ED deal with undertakings given, or originally given, by Telstra.

Note 2: Parts 3, 4 and 5 of Schedule 1 deal with access to network information and access to facilities.

Note 2A: Clause 84 of Schedule 1 deals with control by Telstra of certain spectrum licences.

Note 3: Section 152AZ of the *Competition and Consumer Act 2010* deals with standard access obligations.

Note 4: Subsection 152BA(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any standard access obligations, and certain ancillary obligations, that are applicable to the provider.

Note 5: Section 152BCO of the *Competition and Consumer Act 2010* deals with access determinations.

Note 6: Subsection 152BCP(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any access determinations that are applicable to the provider.

Note 7: Section 152BDF of the *Competition and Consumer Act 2010* deals with binding rules of conduct.

Note 8: Subsection 152BDG(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any binding rules of conduct that are applicable to the provider.

Note 9: Section 152BEC of the *Competition and Consumer Act 2010* deals with access agreements.

Note 10: Subsection 152BED(2) of the *Competition and Consumer Act 2010* deals with access agreements.

Note 11: Section 152CJC of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.

Note 12: Subsection 152CJD(2) of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.

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- Note 13: Section 37 of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
  - (b) the investment of money by NBN corporations; and
  - (c) the functional separation of NBN corporations; and
  - (d) the divestment of assets by NBN corporations.
- Note 14: Subsection 38(2) of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
  - (b) the investment of money by NBN corporations; and
  - (c) the functional separation of NBN corporations; and
  - (d) the divestment of assets by NBN corporations.
- Note 15: Section 41 of the *National Broadband Network Companies Act 2011* deals with rules about the supply of services by NBN corporations.

*Limit on standing of the Home Affairs Minister*

- (4) Despite subsection (1), the Home Affairs Minister is not entitled to institute a proceeding for the recovery of a pecuniary penalty unless the proceeding relates to a contravention of:
- (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to subsection 313(1A), 314A(3), 315A(5), 315B(12) or 315C(3); or
  - (b) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to subsection 313(1A) or (2A), 314A(3), 315A(5), 315B(12) or 315C(3).

**572 Criminal proceedings not to be brought for contravention of civil penalty provisions**

Criminal proceedings do not lie against a person only because the person has contravened a civil penalty provision.

## **Part 31A—Enforceable undertakings**

### **572A Simplified outline**

The following is a simplified outline of this Part:

- A person may give the ACMA or the Home Affairs Minister an enforceable undertaking about compliance with this Act.

### **572B Acceptance of undertakings**

- (1) The ACMA or the Home Affairs Minister may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with this Act, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with this Act, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act, or is unlikely to contravene this Act, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the ACMA or the Home Affairs Minister.
- (4) The ACMA or the Home Affairs Minister may, by written notice given to the person, cancel the undertaking.
- (5) The ACMA may publish the undertaking on its website. The Home Affairs Minister may arrange for the publishing of the undertaking on the Home Affairs Department's website.

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- (5A) Despite subsection (1), the Home Affairs Minister is not entitled to accept an undertaking under this section unless the undertaking relates to compliance with:
- (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to subsection 313(1A), 314A(3), 315A(5), 315B(12) or 315C(3); or
  - (b) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to subsection 313(1A) or (2A), 314A(3), 315A(5), 315B(12) or 315C(3).
- (5B) The ACMA's powers under subsections (3) to (5) are only in relation to undertakings it has accepted. The Home Affairs Minister's powers under those subsections are only in relation to undertakings he or she has accepted.
- (6) In this section:
- this Act* includes:
- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
  - (b) the *Do Not Call Register Act 2006*.

**572C Enforcement of undertakings**

- (1) If:
- (a) a person has given an undertaking under section 572B; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the ACMA or the Home Affairs Minister considers that the person has breached the undertaking;
- the ACMA or the Home Affairs Minister may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the



- person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.
- (3) The ACMA's power under subsection (1) is only in relation to undertakings it has accepted. The Home Affairs Minister's power under that subsection is only in relation to undertakings he or she has accepted.

## Part 31B—Infringement notices for contraventions of civil penalty provisions

### 572D Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system of infringement notices for contraventions of civil penalty provisions as an alternative to the institution of court proceedings.

### 572E When an infringement notice can be given

- (1) If an authorised infringement notice officer has reasonable grounds to believe that a person has contravened a particular civil penalty provision, the authorised infringement notice officer may give to the person an infringement notice relating to the contravention.

Note: See also section 572M (guidelines).

#### *Time limit*

- (2) An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

#### *Carrier licence conditions and service provider rules*

- (3) If a person's conduct constitutes a contravention of:
  - (a) section 68 or 101; and
  - (b) one or more other civil penalty provisions;an infringement notice must not be given to the person in relation to the contravention of section 68 or 101, as the case may be.

- (4) If:
  - (a) a person's conduct constitutes a contravention of section 68 or 101; and

- (b) the contravention consists of a breach of:
- (i) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369; or
  - (ia) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED; or
  - (ii) a carrier licence condition set out in Part 3, 4 or 5 of Schedule 1; or
  - (iii) a carrier licence condition set out in Part 9 of Schedule 1; or
  - (iv) the carrier licence condition set out in clause 84 of Schedule 1; or
  - (v) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369; or
  - (vi) the carrier licence condition set out in section 152AZ of the *Competition and Consumer Act 2010*; or
  - (vii) the service provider rule set out in subsection 152BA(2) of the *Competition and Consumer Act 2010*; or
  - (viii) the carrier licence condition set out in section 152BCO of the *Competition and Consumer Act 2010*; or
  - (ix) the service provider rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*; or
  - (x) the carrier licence condition set out in section 152BDF of the *Competition and Consumer Act 2010*; or
  - (xi) the service provider rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*; or
  - (xii) the carrier licence condition set out in section 152BEC of the *Competition and Consumer Act 2010*; or
  - (xiii) the service provider rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*; or
  - (xiv) the carrier licence condition set out in section 152CJC of the *Competition and Consumer Act 2010*; or
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- (xv) the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*; or
  - (xvi) the carrier licence condition set out in section 37 of the *National Broadband Network Companies Act 2011*; or
  - (xvii) the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*; or
  - (xviii) a carrier licence condition covered by section 41 of the *National Broadband Network Companies Act 2011*;
- an infringement notice must not be given to the person in relation to the contravention of section 68 or 101, as the case may be.

(5) If:

- (a) a person's conduct constitutes a contravention of section 68 or 101; and
- (b) the contravention consists of a breach of:
  - (i) a carrier licence condition set out in a provision of this Act other than Part 1 of Schedule 1; or
  - (ii) a carrier licence condition set out in a provision of a declaration in force under section 63; or
  - (iii) a service provider rule set out in a provision of this Act other than Part 1 of Schedule 2; or
  - (iv) a service provider rule set out in a provision of a determination in force under section 99;

an infringement notice must not be given to the person in relation to the contravention of section 68 or 101, as the case may be, unless the provision mentioned in subparagraph (b)(i), (ii), (iii) or (iv), as the case may be:

- (c) is a listed infringement notice provision; and
- (d) has been a listed infringement notice provision for at least 3 months before the day on which the contravention is alleged to have taken place.

Note: For *listed infringement notice provision*, see subsection (7).

(6) If:

- (a) a person's conduct constitutes a contravention of section 68 or 101; and
- (b) the contravention consists of a breach of:
  - (i) the carrier licence condition set out in Part 1 of Schedule 1; or
  - (ii) the service provider rule set out in Part 1 of Schedule 2; and
- (c) the contravention consists of a breach of another provision of this Act (other than section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI);

an infringement notice must not be given to the person in relation to the contravention of section 68 or 101, as the case may be, unless:

- (d) the other provision is a listed infringement notice provision; and
- (e) the other provision has been a listed infringement notice provision for at least 3 months before the day on which the contravention is alleged to have taken place.

Note: For *listed infringement notice provision*, see subsection (7).

*Listed infringement notice provision*

- (7) The ACMA may, by legislative instrument, declare that:
  - (a) a specified provision of this Act; or
  - (b) a specified provision of a declaration in force under section 63; or
  - (c) a specified provision of a determination in force under section 99;

is a *listed infringement notice provision* for the purposes of this section.

*Consultation*

- (8) Before making or varying a declaration under subsection (7), the ACMA must:
  - (a) cause to be published on the ACMA's website a notice:

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- (i) setting out the draft declaration or variation; and
  - (ii) inviting persons to make submissions to the ACMA about the draft declaration or variation within 14 days after the notice is published; and
- (b) consider any submissions received within the 14-day period mentioned in paragraph (a).

*Definition*

- (9) In this section:

*this Act* includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) Chapter 5 of the *Telecommunications (Interception and Access) Act 1979*.

**572F Matters to be included in an infringement notice**

- (1) An infringement notice must:
- (a) set out the name of the person to whom the notice is given; and
  - (b) set out the name of the authorised infringement notice officer who gave the notice; and
  - (c) set out brief details of the alleged contravention; and
  - (ca) if the alleged contravention consists of a breach of:
    - (i) section 68, to the extent to which that section relates to the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

- (ii) section 101, to the extent to which that section relates to the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
- (iii) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI;  
contain a statement to the effect that the matter will not be dealt with by the Federal Court if the penalty specified in the notice is paid to the ACCC, on behalf of the Commonwealth, within:
  - (iv) 28 days after the notice is given; or
  - (v) if the ACCC allows a longer period—that longer period; and
- (d) if paragraph (ca) does not apply—contain a statement to the effect that the matter will not be dealt with by the Federal Court if the penalty specified in the notice is paid to the ACMA, on behalf of the Commonwealth, within:
  - (i) 28 days after the notice is given; or
  - (ii) if the ACMA allows a longer period—that longer period; and
- (e) give an explanation of how payment of the penalty is to be made; and
- (f) set out such other matters (if any) as are specified by the regulations.

Note: For the amount of penalty, see section 572G.

- (2) For the purposes of paragraph (1)(c), the brief details must include the following information in relation to the alleged contravention:
  - (a) the date of the alleged contravention;
  - (b) the civil penalty provision that was allegedly contravened.

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**572G Amount of penalty**

*Infringement notice given to a body corporate*

- (1) The penalty to be specified in an infringement notice given to a body corporate must be a pecuniary penalty equal to:
  - (a) if the alleged contravention is of a kind specified in a determination under subsection (2)—the number of penalty units specified in the determination in relation to that kind of contravention; or
  - (b) otherwise—60 penalty units.
- (2) For the purposes of paragraph (1)(a), the Minister may, by legislative instrument, make a determination that:
  - (a) sets out one or more kinds of contraventions of section 68 or 101; and
  - (b) for each kind of contravention set out in the determination, specifies a particular number of penalty units.
- (3) The number of penalty units specified in a determination for a particular kind of contravention must not exceed 18,000.

*Infringement notice given to a person other than a body corporate*

- (4) The penalty to be specified in an infringement notice given to a person other than a body corporate must be a pecuniary penalty equal to 12 penalty units.

**572H Withdrawal of an infringement notice**

*Scope*

- (1) This section applies if an infringement notice is given to a person.

*Withdrawal*

- (2) An authorised infringement notice officer may, by written notice (the ***withdrawal notice***) given to the person, withdraw the infringement notice.



- (3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

*Refund of penalty if infringement notice withdrawn*

- (4) If:
- (a) the penalty specified in the infringement notice is paid; and
  - (b) the infringement notice is withdrawn after the penalty is paid;
- the Commonwealth is liable to refund the penalty.

### **572J What happens if the penalty is paid**

*Scope*

- (1) This section applies if:
- (a) an infringement notice relating to an alleged contravention is given to a person; and
  - (b) the penalty is paid in accordance with the infringement notice; and
  - (c) the infringement notice is not withdrawn.

*What happens*

- (2) Any liability of the person for the alleged contravention is discharged.
- (3) Proceedings under Part 31 may not be brought against the person for the alleged contravention.

### **572K Effect of this Part on civil proceedings**

This Part does not:

- (a) require an infringement notice to be given in relation to an alleged contravention; or
- (b) affect the liability of a person to have proceedings under Part 31 brought against the person for an alleged contravention if:

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- (i) the person does not comply with an infringement notice relating to the contravention; or
  - (ii) an infringement notice relating to the contravention is not given to the person; or
  - (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit the Federal Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under Part 31 to have contravened a civil penalty provision.

**572L Appointment of authorised infringement notice officer**

- (1) The ACMA may, by writing, appoint a member of the staff of the ACMA as an authorised infringement notice officer for the purposes of this Part.
- (2) The ACMA must not appoint a person under subsection (1) unless the person:
- (a) is an SES employee or acting SES employee; or
  - (b) holds, or is acting in, an Executive Level 1 or 2 position or an equivalent position.

Note: *SES employee* is defined in the *Acts Interpretation Act 1901*.

- (3) The ACCC may, by writing, appoint a member of the staff of the ACCC as an authorised infringement notice officer for the purposes of this Part.
- (4) The ACCC must not appoint a person under subsection (3) unless the person:
- (a) is an SES employee or acting SES employee; or
  - (b) holds, or is acting in, an Executive Level 1 or 2 position or an equivalent position.

Note: *SES employee* is defined in the *Acts Interpretation Act 1901*.

- (5) An authorised infringement notice officer appointed under subsection (1) must not give or withdraw an infringement notice if the alleged contravention consists of a breach of:

- (a) section 68, to the extent to which that section relates to the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
  - (b) section 101, to the extent to which that section relates to the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
  - (c) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.
- (6) An authorised infringement notice officer appointed under subsection (3) must not give or withdraw an infringement notice unless the alleged contravention consists of a breach of:
- (a) section 68, to the extent to which that section relates to the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
  - (b) section 101, to the extent to which that section relates to the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
  - (c) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

### **572M Guidelines relating to infringement notices**

- (1) In exercising a power conferred on an authorised infringement notice officer by this Part, the officer must have regard to any relevant guidelines in force under subsection (2).

#### *Formulation of guidelines*

- (2) The ACMA may, by legislative instrument, formulate guidelines for the purposes of subsection (1).

Note: For consultation requirements, see section 17 (consultation) of the *Legislation Act 2003*.

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- (3) An authorised infringement notice officer must not give an infringement notice to a person unless guidelines are in force under subsection (2).

**572N Regulations**

The regulations may make further provision in relation to infringement notices.

## Part 32—Vicarious liability

### 573 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with the proof of matters that involve employees, agents etc.

### 574 Proceedings under this Act

A reference in this Part to a proceeding under this Act includes a reference to:

- (a) an action under this Act; and
- (b) a proceeding for an offence against:
  - (i) this Act; or
  - (ii) an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to this Act.

### 574A Definition

In this Part:

**this Act** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

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**575 Liability of corporations**

*State of mind*

- (1) If, in a proceeding under this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:
- (a) a director, employee or agent of the corporation engaged in that conduct; and
  - (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
  - (c) the director, employee or agent had that state of mind.

*Conduct*

- (2) If:
- (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
  - (b) the conduct is within the scope of his or her actual or apparent authority;
- the conduct is taken, for the purposes of a proceeding under this Act, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

*Extended meaning of state of mind*

- (3) A reference in subsection (1) to the **state of mind** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of director*

- (4) A reference in this section to a **director** of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

*Extended meaning of engaging in conduct*

- (5) A reference in this section to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

**576 Liability of persons other than corporations***This section does not apply to proceedings for certain offences*

- (1) This section does not apply to proceedings for:
- (a) an offence against section 42; or
  - (b) an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to section 42 of this Act.

*State of mind*

- (2) If, in proceedings under this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:
- (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) the employee or agent had that state of mind.

*Conduct*

- (3) If:
- (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and
  - (b) the conduct is within the employee's or agent's actual or apparent authority;

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the conduct is taken, for the purposes of a proceeding under this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

*Limitation on imprisonment*

- (4) Despite any other provision of this Act, if:
- (a) a person is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (2) and (3) had not been in force;
- the person is not liable to be punished by imprisonment for that offence.

*Extended meaning of **state of mind***

- (5) A reference in this section to the **state of mind** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of **engaging in conduct***

- (6) A reference in this section to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.



## **Part 33—Voluntary undertakings originally given by Telstra**

### **Division 1—Introduction**

#### **577 Simplified outline**

The following is a simplified outline of this Part:

- Telstra may give the following undertakings:
  - (a) an undertaking about structural separation;
  - (b) an undertaking about hybrid fibre-coaxial networks;
  - (c) an undertaking about subscription television broadcasting licences.
- An undertaking about structural separation applies to certain designated Telstra successor companies.
- An undertaking comes into force when it is accepted by the ACCC.
- The Minister may, by legislative instrument, determine that the excluded spectrum regime applies to Telstra. If the Minister does so, Telstra will not be allowed to supply services using a designated part of the spectrum unless all 3 undertakings given by Telstra are in force.

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- However, the Minister may exempt Telstra from the requirement to have an undertaking about hybrid fibre-coaxial networks or subscription television broadcasting licences if the Minister is satisfied that Telstra's undertaking about structural separation is sufficient to address concerns about the degree of Telstra's power in telecommunications markets.

Note: An undertaking under section 577A about structural separation came into force on 6 March 2012.

## **Division 2—Structural separation**

### **Subdivision A—Undertaking about structural separation**

#### **577A Acceptance of undertaking about structural separation**

- (1) The ACCC may accept a written undertaking given by Telstra that:
- (a) at all times after the designated day:
    - (i) Telstra will not supply fixed-line carriage services to retail customers in Australia using a telecommunications network over which Telstra is in a position to exercise control; and
    - (ii) Telstra will not be in a position to exercise control of a company that supplies fixed-line carriage services to retail customers in Australia using a telecommunications network over which Telstra is in a position to exercise control; and
  - (b) Telstra will, in connection with paragraph (a), take specified action and/or refrain from taking specified action.

Note 1: For when Telstra is in a position to exercise control of a network, see section 577Q.

Note 2: For control of a company, see section 577P.

#### *Transparency and equivalence*

- (2) For the purposes of paragraph (1)(b), a matter relating to transparency and equivalence in relation to the supply by Telstra of regulated services to:
- (a) Telstra's wholesale customers; and
  - (b) Telstra's retail business units;
- during the period:
- (c) beginning when the undertaking comes into force; and
  - (d) ending at the start of the designated day;
- is taken to be a matter that is in connection with paragraph (1)(a).

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- (3) The ACCC must not accept an undertaking under this section unless the ACCC is satisfied that:
- (a) the undertaking provides for transparency and equivalence in relation to the supply by Telstra of regulated services to:
    - (i) Telstra's wholesale customers; and
    - (ii) Telstra's retail business units;during the period:
    - (iii) beginning when the undertaking comes into force; and
    - (iv) ending at the start of the designated day; and
  - (b) the undertaking does so in an appropriate and effective manner.
- (4) In subsections (2) and (3), *equivalence*, *supply*, *regulated service* and *retail business unit* have the same meaning as in Part 9 of Schedule 1.

*Monitoring of compliance*

- (5) The ACCC must not accept an undertaking under this section unless the ACCC is satisfied that:
- (a) the undertaking provides for:
    - (i) the ACCC to monitor Telstra's compliance with the undertaking; and
    - (ii) Telstra to have systems, procedures and processes that promote and facilitate the ACCC's monitoring of Telstra's compliance with the undertaking; and
  - (b) the undertaking does so in an appropriate and effective manner.

*Matters to which ACCC must have regard*

- (6) In deciding whether to accept an undertaking under this section, the ACCC must have regard to:
- (a) the matters set out in an instrument in force under subsection (7); and
  - (aa) the national interest in structural reform of the telecommunications industry; and

- (ab) the impact of that structural reform on:
  - (i) consumers; and
  - (ii) competition in telecommunications markets; and
- (b) such other matters (if any) as the ACCC considers relevant.
- (7) The Minister may, by writing, set out matters for the purposes of paragraph (6)(a).
- (7A) Before making or varying an instrument under subsection (7), the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (8) The Minister must take all reasonable steps to ensure that an instrument comes into force under subsection (7) as soon as practicable after the commencement of this section.
- (9) Telstra is not entitled to give an undertaking under this section unless an instrument is in force under subsection (7).

*Designated day*

- (10) For the purposes of this section, the **designated day** is:
  - (a) 1 July 2018; or
  - (b) if the Minister, by written instrument, specifies another day—that other day.
- (11) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a power conferred on the Minister by paragraph (10)(b), but it applies with the following changes:
  - (a) an instrument made under paragraph (10)(b) cannot be varied;

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- (b) an instrument made under paragraph (10)(b) must not be revoked unless:
  - (i) a fresh instrument is made under that paragraph; and
  - (ii) the fresh instrument specifies a day that is later than the day specified in the revoked instrument.
- (12) If:
  - (a) the ACCC has accepted an undertaking given by Telstra under subsection (1); and
  - (b) when the undertaking was accepted, a particular day (the *relevant day*) was the designated day;the Minister must not make an instrument under paragraph (10)(b) specifying a day earlier than the relevant day.
- (13) Telstra may, before the designated day, request the Minister to:
  - (a) if no instrument is in force under paragraph (10)(b)—make an instrument under that paragraph specifying a particular day; or
  - (b) if an instrument is in force under paragraph (10)(b):
    - (i) revoke that instrument; and
    - (ii) make a fresh instrument under that paragraph specifying a particular day that is later than the day specified in the revoked instrument.
- (14) If Telstra gives the Minister a request under subsection (13), the Minister must consider the request.
- (15) However, the Minister is not required to consider the request if the Minister is satisfied that the request:
  - (a) is frivolous or vexatious; or
  - (b) was not made in good faith.

*General provisions*

- (16) An undertaking under this section must be expressed to be an undertaking under this section.

- (17) An undertaking under this section may not be withdrawn after it has been accepted by the ACCC.
- (18) If an undertaking under this section provides for the ACCC to perform functions or exercise powers in relation to the undertaking, the ACCC may perform those functions, and exercise those powers, in accordance with the undertaking.
- (19) Part 9 of Schedule 1 does not, by implication, limit the matters that may be included in an undertaking under this section.

Note: Part 9 of Schedule 1 deals with the functional separation of Telstra.

*Exemptions*

- (20) The Minister may, by legislative instrument, exempt a specified fixed-line carriage service from the scope of subsection (1) and the associated provisions, either:
- (a) unconditionally; or
  - (b) subject to such conditions or limitations as are specified in the instrument.
- (21) The Minister may, by legislative instrument, exempt a specified telecommunications network from the scope of subsection (1) and the associated provisions, either:
- (a) unconditionally; or
  - (b) subject to such conditions or limitations as are specified in the instrument.
- (22) The Minister must cause a copy of an instrument under subsection (7) or paragraph (10)(b) to be published on the Department's website.
- (23) An instrument under subsection (7) or paragraph (10)(b) is not a legislative instrument.

*Definitions*

- (24) In this section:
- associated provision*** means:

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- (a) subsection 577BA(11); or
- (b) subsection 577BC(2).

*fixed-line carriage service* means:

- (a) a carriage service that is supplied using a line to premises occupied or used by an end-user; or
- (b) a service that facilitates the supply of a carriage service covered by paragraph (a).

*telecommunications market* has the same meaning as in Part XIB of the *Competition and Consumer Act 2010*.

**577AA Acceptance of undertaking about structural separation may be subject to the occurrence of events**

(1) If:

- (a) Telstra has, in a document accompanying an undertaking under section 577A, nominated one or more events; and
- (b) the nomination is expressed to be a nomination under this subsection; and
- (c) each of those events is:
  - (i) the passage of a resolution covered by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*; or
  - (ii) an approval covered by paragraph 411(4)(b) of that Act; or
  - (iii) the passage of a resolution, where Telstra's members (within the meaning of that Act) were entitled to vote on the resolution; or
  - (iv) an approval covered by Chapter 11 of the ASX Listing Rules; or
  - (v) the granting of a waiver under rule 18.1 of the ASX Listing Rules; or
  - (vi) the approval of a draft migration plan by the ACCC under section 577BDA or 577BDC; or
  - (vii) the making of a declaration under subsection 577J(3); or



- (viii) the making of a declaration under subsection 577J(5); or
  - (ix) an event specified in an instrument in force under subsection (3); and
  - (d) the ACCC decides to accept the undertaking;  
the decision to accept the undertaking must be expressed to be subject to the occurrence of those events within a specified period after the undertaking is accepted.
- (2) A nomination under subsection (1) must not specify an event by reference to the timing of the event.
- (3) The Minister may, by writing, specify events for the purposes of subparagraph (1)(c)(ix).
- (4) A period specified by the ACCC under subsection (1) must be:
- (a) 6 months; or
  - (b) if another period is specified in an instrument under subsection (5)—that period.
- (5) The Minister may, by writing, specify a period for the purposes of paragraph (4)(b).

*Notification requirement*

- (6) If:
- (a) a decision to accept an undertaking under section 577A is expressed to be subject to the occurrence of one or more specified events within a specified period; and
  - (b) such an event occurs within that period;
- Telstra must notify the ACCC in writing of the occurrence of the event as soon as practicable after the occurrence.
- (6A) Subsection (6) does not apply to an event mentioned in subparagraph (1)(c)(vi).

*If event does not occur*

- (7) If:
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- (a) a decision to accept an undertaking under section 577A is expressed to be subject to the occurrence of a single specified event within a specified period; and
  - (b) the event does not occur within that period;
- this Act (other than subclause 76(4) of Schedule 1) has effect as if the undertaking had never been accepted by the ACCC.
- (8) If:
- (a) a decision to accept an undertaking under section 577A is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (b) one or more of those events do not occur within that period;
- this Act (other than subclause 76(4) of Schedule 1) has effect as if the undertaking had never been accepted by the ACCC.

*Publication requirement*

- (9) The Minister must cause a copy of an instrument under subsection (3) or (5) to be published on the Department's website.

*Instruments are not legislative instruments*

- (10) An instrument under subsection (3) or (5) is not a legislative instrument.

**577AB When undertaking about structural separation comes into force**

An undertaking under section 577A comes into force:

- (a) if:
  - (i) the decision to accept the undertaking is expressed to be subject to the occurrence of a single specified event within a specified period; and
  - (ii) the event occurs within that period; when the event occurs; or
- (b) if:

- (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at the same time; and
  - (iii) that time occurs within that period; at that time; or
- (c) if:
- (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at different times; and
  - (iii) each of those times occur within that period; at the last of those times; or
- (d) if the decision to accept the undertaking is not expressed to be subject to the occurrence of one or more specified events within a specified period—when the undertaking is accepted by the ACCC.

Note: An undertaking under section 577A about structural separation came into force on 6 March 2012.

### **577AC Publication requirements for undertaking about structural separation**

- (1) If a decision to accept an undertaking under section 577A is expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must:
  - (a) as soon as practicable after making the decision, publish on its website:
    - (i) the undertaking; and
    - (ii) the terms of the decision; and
  - (b) as soon as practicable after the ACCC becomes aware that the undertaking has come into force, publish on its website a notice announcing that the undertaking has come into force.
- (2) If a decision to accept an undertaking under section 577A is not expressed to be subject to the occurrence of one or more specified

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events within a specified period, the ACCC must, as soon as practicable after accepting the undertaking, publish the undertaking on its website.

**577ACA Repointing of undertaking about structural undertaking to certain designated Telstra successor companies**

- (1) If an undertaking is in force under section 577A, the undertaking has effect as if:
  - (a) each obligation imposed on Telstra by the undertaking were imposed instead on each of the following designated Telstra successor companies:
    - (i) Telstra Infraco Limited;
    - (ii) Telstra Limited;
    - (iii) a designated Telstra successor company specified in an instrument under subsection (2); and
  - (b) each prohibition applicable to Telstra under the undertaking were applicable instead to each of the following designated Telstra successor companies:
    - (i) Telstra Infraco Limited;
    - (ii) Telstra Limited;
    - (iii) a designated Telstra successor company specified in an instrument under subsection (2).
- Note: See also section 581U (transitional—references in legislation to Telstra Infraco Limited).
- (2) The Minister may, by legislative instrument, specify one or more designated Telstra successor companies for the purposes of subparagraphs (1)(a)(iii) and (b)(iii).
- (3) Subsection (1) has effect subject to subsection (4).
- (4) The Minister may, by legislative instrument, determine either or both of the following:
  - (a) that paragraph (1)(a) does not result in the imposition of one or more specified obligations on one or more specified designated Telstra successor companies;

- (b) that paragraph (1)(b) does not result in one or more specified prohibitions being applicable to one or more specified designated Telstra successor companies.

**577ACB Directions—facilitation of undertaking about structural separation**

- (1) If:
  - (a) an undertaking is in force under section 577A; and
  - (b) the Minister is satisfied that a designated Telstra successor company (the *first designated Telstra successor company*) has failed, is failing, or is likely to fail, to fulfil an obligation imposed on it by the undertaking;the Minister may give:
  - (c) another designated Telstra successor company; or
  - (d) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;a written direction to take specified action.
- (2) The Minister must not give a direction to a body corporate under subsection (1) unless:
  - (a) the Minister is satisfied that the action specified in the direction will assist the first designated Telstra successor company to fulfil its obligations under the undertaking; and
  - (b) the Minister is satisfied that the body corporate:
    - (i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
    - (ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
  - (c) the body corporate:
    - (i) is a constitutional corporation; or
    - (ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

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*Compliance with requirement*

- (3) A body corporate must comply with a direction under subsection (1).

*Civil penalty*

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Consultation*

- (5) Before giving or varying a direction under subsection (1), the Minister must:
- (a) make a copy of the draft direction or variation available on the Minister's website; and
  - (b) publish a notice on the Minister's website:
    - (i) stating that the Minister has prepared the draft; and
    - (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.
- (6) Subject to subsection (7), the period specified in the notice must run for at least 30 days after the publication of the notice.
- (7) The period specified in the notice may be shorter than 30 days if the Minister is satisfied that the shorter period is necessary due to urgent circumstances.
- (8) If interested persons have given comments in accordance with a notice under subsection (5), the Minister must have due regard to those comments in giving or varying the direction.

**577AD Compliance with undertaking about structural separation**

If an undertaking is in force under section 577A and imposes obligations or prohibitions on a designated Telstra successor

company, the designated Telstra successor company must comply with the undertaking.

**577B Variation of undertaking about structural separation**

- (1) This section applies if an undertaking is in force under section 577A.
- (2) If the undertaking imposes obligations or prohibitions on a designated Telstra successor company, the designated Telstra successor company may give the ACCC a variation of the undertaking, in so far as the undertaking:
  - (a) is covered by paragraph 577A(1)(b); and
  - (b) does not consist of provisions of a final migration plan.

Note: For variation of a final migration plan, see section 577BF.
- (3) After considering the variation, the ACCC must decide to:
  - (a) accept the variation; or
  - (b) reject the variation.
- (4) In deciding whether to accept the variation, the ACCC must have regard to:
  - (a) the matters (if any) set out in an instrument in force under subsection (5); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (5) The Minister may, by writing, set out matters for the purposes of paragraph (4)(a).
- (5A) Before making or varying an instrument under subsection (5), the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).

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- (6) The variation takes effect when it is accepted by the ACCC.
- (7) As soon as practicable after the variation takes effect, the ACCC must publish the variation on its website.
- (8) The Minister must cause a copy of an instrument under subsection (5) to be published on the Department's website.
- (9) An instrument under subsection (5) is not a legislative instrument.

**577BA Authorised conduct—subsection 51(1) of the *Competition and Consumer Act 2010***

*Object*

- (1) The object of this section is to promote the national interest in structural reform of the telecommunications industry by authorising, for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, certain conduct engaged in by:
  - (a) Telstra; and
  - (b) NBN corporations; and
  - (c) certain other persons.

Note: If conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the conduct is disregarded in deciding whether a person has contravened Part IV of that Act.

*Authorised conduct*

- (2) The giving by Telstra, before the commencement of section 577ACA, of:
  - (a) an undertaking under section 577A; or
  - (b) a variation of an undertaking in force under section 577A; or
  - (c) a draft migration plan in accordance with an undertaking in force under section 577A; or
  - (d) a variation of a final migration plan;is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.



(2A) The giving by a designated Telstra successor company of:  
(a) a variation of an undertaking in force under section 577A; or  
(b) a variation of a final migration plan;  
is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

(3) If:

- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
- (b) when the contract, arrangement or understanding is entered into, no undertaking is in force under section 577A; and
- (c) the operative provisions of the contract, arrangement or understanding are subject to a condition precedent, namely, the coming into force of an undertaking under section 577A;

then:

- (d) the entering into of the contract, arrangement or understanding by Telstra is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
- (e) the entering into of the contract, arrangement or understanding by the NBN corporation is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
- (f) if:
  - (i) the undertaking under section 577A comes into force; and
  - (ii) if the contract, arrangement or understanding was in writing—before the undertaking was accepted by the ACCC, Telstra or the NBN corporation gave the ACCC a copy of the contract, arrangement or understanding; and
  - (iii) if the contract, arrangement or understanding was not in writing—before the undertaking was accepted by the ACCC, the contract, arrangement or understanding was reduced to writing and Telstra or the NBN corporation

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gave the ACCC a copy of the contract, arrangement or understanding;

then:

- (iv) conduct engaged in by Telstra or the NBN corporation after the undertaking comes into force in order to give effect to a provision of the contract, arrangement or understanding is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
- (v) conduct engaged in by another NBN corporation after the undertaking comes into force in order to facilitate the first-mentioned NBN corporation giving effect to a provision of the contract, arrangement or understanding is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

(4) If:

- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
- (b) the contract, arrangement or understanding contains a migration provision; and
- (c) when the contract, arrangement or understanding is entered into, no undertaking is in force under section 577A;

then:

- (d) the entering into of the contract, arrangement or understanding by Telstra is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, to the extent to which the contract, arrangement or understanding contains the migration provision; and
- (e) the entering into of the contract, arrangement or understanding by the NBN corporation is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, to the extent to which the contract, arrangement or understanding contains the migration provision.

(5) If:

- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
  - (b) the contract, arrangement or understanding contains a migration provision; and
  - (c) Telstra or the NBN corporation engages in conduct in order to give effect to the migration provision; and
  - (d) when the conduct is engaged in, no undertaking is in force under section 577A;
- the conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010* unless, before the conduct was engaged in:
- (e) the ACCC refused to accept the most recent undertaking given by Telstra under section 577A; or
  - (f) as a result of subsection 577AA(7) or (8), this Act (other than subclause 76(4) of Schedule 1) had effect as if the most recent undertaking given by Telstra under section 577A had never been accepted by the ACCC; or
  - (g) a final functional separation undertaking came into force.
- (6) If a designated Telstra successor company is required to engage in conduct in order to comply with an undertaking in force under section 577A, the conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.
- (7) If:
- (a) a person directly or indirectly acquires an asset from a designated Telstra successor company; and
  - (b) the disposal of the asset by the designated Telstra successor company is required for the compliance by the designated Telstra successor company with an undertaking in force under section 577A; and
  - (c) the person is identified in the undertaking as the person by whom the asset is to be directly or indirectly acquired;
- the acquisition of the asset is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.
- (8) If:

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- (a) Telstra or a designated Telstra successor company enters into a contract, arrangement or understanding with an NBN corporation; and
- (b) Telstra or the designated Telstra successor company enters into the contract, arrangement or understanding in order to comply with an undertaking in force under section 577A;

then:

- (c) the entering into of the contract, arrangement or understanding by Telstra or the designated Telstra successor company; and
- (d) the entering into of the contract, arrangement or understanding by the NBN corporation; and
- (e) conduct engaged in by Telstra or a designated Telstra successor company or the NBN corporation in order to give effect to a provision of the contract, arrangement or understanding; and
- (f) conduct engaged in by another NBN corporation in order to facilitate the first-mentioned NBN corporation giving effect to a provision of the contract, arrangement or understanding; and
- (g) conduct engaged in by a designated Telstra successor company in order to facilitate Telstra or a designated Telstra successor company giving effect to a provision of the contract, arrangement or understanding;

is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

- (9) If:
  - (a) an undertaking is in force under section 577A; and
  - (b) Telstra or a designated Telstra successor company enters into a contract, arrangement or understanding with an NBN corporation;

the Minister may, by legislative instrument, determine that subsection (8) applies, and is taken to have always applied, as if Telstra or the designated Telstra successor company had entered into the contract, arrangement or understanding in order to comply with the undertaking.

(10) If:

- (a) a final migration plan is in force; and
- (b) the final migration plan sets out a method for determining a timetable for the taking of the action specified in the plan in accordance with paragraph 577BC(2)(a); and
- (c) a designated Telstra successor company or an NBN corporation engages in conduct for the purposes of determining the timetable; and
- (d) the conduct is consistent with the method;

the conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

(10A) If:

- (a) a body corporate enters into a contract, arrangement or understanding; and
- (b) the body corporate enters into the contract, arrangement or understanding in order to comply with a direction under subsection 577BAA(1);

then:

- (c) the entering into of the contract, arrangement or understanding by the body corporate; and
- (d) conduct engaged in by the body corporate in order to give effect to a provision of the contract, arrangement or understanding;

is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

(10B) If a body corporate is subject to a direction under subsection 577BAA(1), conduct engaged in by the body corporate in order to comply with the direction is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

(10C) If:

- (a) a contract, arrangement or understanding (the ***first contract, arrangement or understanding***) is covered by another subsection of this section; and

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- (b) the first contract, arrangement or understanding was in force immediately before the commencement of this subsection; and
- (c) one or more designated Telstra successor companies and one or more NBN corporations enter into to another contract, arrangement or understanding; and
- (d) the sole purpose of the other contract, arrangement or understanding is to do any or all of the following:
  - (i) provide that an obligation imposed on Telstra under the first contract, arrangement or understanding extends to one or more designated Telstra successor companies;
  - (ii) provide that a right conferred on Telstra under the first contract, arrangement or understanding extends to one or more designated Telstra successor companies;
  - (iii) provide that an obligation that an NBN corporation owes to Telstra under the first contract, arrangement or understanding extends so that the obligation is also owed to one or more designated Telstra successor companies;
  - (iv) provide that a right that an NBN corporation has against Telstra under the first contract, arrangement or understanding extends so that the right is also against one or more designated Telstra successor companies;

then:

- (d) the entering into of the other contract, arrangement or understanding; and
- (e) conduct engaged in by:
  - (i) a designated Telstra successor company; or
  - (ii) an NBN corporation; or
  - (iii) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of a designated Telstra successor company; or
  - (iv) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of an NBN corporation;

in order to give effect to the other contract, arrangement or understanding;  
is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

*Migration provisions*

- (11) If:
- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
  - (b) the contract, arrangement or understanding contains one or more provisions for:
    - (i) Telstra to cease to supply fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control; or
    - (ii) Telstra to cease to supply one or more types of fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control; or
    - (iii) Telstra to cease to supply, in particular circumstances, one or more types of fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control; or
    - (iv) Telstra to commence to supply fixed-line carriage services to customers using the national broadband network;
- then:
- (c) each of the provisions mentioned in paragraph (b) is a ***migration provision***; and
  - (d) if the contract, arrangement or understanding contains one or more provisions for Telstra to supply services to an NBN corporation in connection with any or all of the matters mentioned in paragraph (b)—each of those provisions is a ***migration provision***; and
  - (e) if the contract, arrangement or understanding contains one or more provisions for an NBN corporation to supply services to Telstra in connection with any or all of the matters
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mentioned in paragraph (b)—each of those provisions is a **migration provision**; and

- (f) if the contract, arrangement or understanding contains one or more provisions for Telstra to give information to an NBN corporation in connection with any or all of the matters mentioned in paragraph (b)—each of those provisions is a **migration provision**; and
- (g) if the contract, arrangement or understanding contains one or more provisions for an NBN corporation to give information to Telstra in connection with any or all of the matters mentioned in paragraph (b)—each of those provisions is a **migration provision**.

*Definitions*

(12) In this section:

**asset** means:

- (a) any legal or equitable estate or interest in real or personal property, including a contingent or prospective one; and
- (b) any right, privilege or immunity, including a contingent or prospective one.

**enter into**:

- (a) when used in relation to an arrangement—includes make; or
- (b) when used in relation to an understanding—includes arrive at or reach.

**fixed-line carriage service** means:

- (a) a carriage service that is supplied using a line to premises occupied or used by an end-user; or
- (b) a service that facilitates the supply of a carriage service covered by paragraph (a).

**give effect to**, in relation to a provision of a contract, arrangement or understanding, has the same meaning as in the *Competition and Consumer Act 2010*.

**migration provision** has the meaning given by subsection (11).

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***national broadband network*** means a telecommunications network for the high-speed carriage of communications, where an NBN corporation has been, is, or is to be, involved in the creation or development of the network. To avoid doubt, it is immaterial whether the creation or development of the network is, to any extent, attributable to:

- (a) the acquisition of assets that were used, or for use, in connection with another telecommunications network; or
- (b) the obtaining of access to assets that are also used, or for use, in connection with another telecommunications network.

***NBN Co*** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

***NBN corporation*** means:

- (a) NBN Co; or
- (b) NBN Tasmania; or
- (c) a company that is a related body corporate of NBN Co.

***NBN Tasmania*** means NBN Tasmania Limited (ACN 138 338 271), as the company exists from time to time (even if its name is later changed).

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

**577BAA Directions—facilitation of contract or agreement**

- (1) If:
  - (a) a contract or agreement:
    - (i) is covered by a subsection of section 577BA; and
    - (ii) was in force at the commencement of this section; and
  - (b) a designated Telstra successor company (the ***first designated Telstra successor company***) is a party to the contract or agreement; and

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- (c) the Minister is satisfied that the first designated Telstra successor company has failed, is failing, or is likely to fail, to fulfil its obligations under the contract or agreement;
- the Minister may give:
- (d) another designated Telstra successor company; or
  - (e) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;
- a written direction to take specified action.
- (2) The Minister must not give a direction to a body corporate under subsection (1) unless:
- (a) the Minister is satisfied that the action specified in the direction will facilitate the first designated Telstra successor company fulfilling its obligations under the contract or agreement; and
  - (b) the Minister is satisfied that the body corporate:
    - (i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
    - (ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
  - (c) the body corporate:
    - (i) is a constitutional corporation; or
    - (ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

*Compliance with requirement*

- (3) A body corporate must comply with a direction under subsection (1).

*Civil penalty*

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

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Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Consultation—public*

- (5) Before the Minister gives or varies a direction under subsection (1), the Minister must consult the ACCC.
- (6) Subject to subsection (9), before giving or varying a direction under subsection (1), the Minister must:
  - (a) make a copy of the draft direction or variation available on the Minister's website; and
  - (b) publish a notice on the Minister's website:
    - (i) stating that the Minister has prepared the draft; and
    - (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.
- (7) The period specified in the notice must run for at least 30 days after the publication of the notice.
- (8) If interested persons have given comments in accordance with a notice under subsection (6), the Minister must have due regard to those comments in giving or varying the direction.

*Consultation—affected companies*

- (9) If the Minister is satisfied that compliance with subsection (6) in relation to giving or varying a direction could reasonably be expected to prejudice the commercial interests of a person:
  - (a) subsection (6) does not apply to giving or varying the direction; and
  - (b) before giving or varying the direction, the Minister must give each affected company:
    - (i) a copy of the draft direction or variation; and
    - (ii) a notice inviting the affected company to give written comments about the draft to the Minister within the period specified in the notice.

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- (10) The period specified in the notice must run for at least 30 days after the giving of the notice.
- (11) If affected companies have given comments in accordance with a notice under subsection (9), the Minister must have due regard to those comments in making or varying the direction.
- (12) For the purposes of the application of this section to a direction that relates to a contract or agreement or to a variation of such a direction, each of the following is an *affected company*:
  - (a) a body corporate that is a party to the contract or agreement;
  - (b) a body corporate that is, or will be, subject to the direction.

### Subdivision B—Migration plan

#### 577BB Migration plan principles

- (1) The Minister may, by writing, determine that specified principles are *migration plan principles* for the purposes of this Act.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

#### *Consultation*

- (2) Before making or varying a determination under subsection (1), the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft determination or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft determination or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).

#### *Publication requirement*

- (3) The Minister must cause a copy of a determination under subsection (1) to be published on the Department's website.

*Determination is not a legislative instrument*

- (4) A determination under subsection (1) is not a legislative instrument.

**577BC Migration plan**

- (1) The specified action first mentioned in paragraph 577A(1)(b) may include giving the ACCC a draft migration plan after the relevant undertaking has come into force.
- (2) A draft or final migration plan must:
- (a) specify the action to be taken by Telstra to:
    - (i) cease to supply fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control; and
    - (ii) commence to supply fixed-line carriage services to customers using the national broadband network; and
  - (b) either:
    - (i) set out a timetable for the taking of that action; or
    - (ii) set out a method for determining a timetable for the taking of that action.
- (3) A draft or final migration plan may contain provisions dealing with such other matters (if any) as are specified in a written instrument made by the Minister.
- (4) A draft or final migration plan must not contain provisions dealing with such matters (if any) as are specified in a written instrument made by the Minister.

*Migration plan principles*

- (5) A draft migration plan must not be given to the ACCC unless a determination is in force under subsection 577BB(1).

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*Publication requirement*

- (6) The Minister must cause a copy of an instrument under subsection (3) or (4) to be published on the Department's website.

*Instrument is not a legislative instrument*

- (7) An instrument under subsection (3) or (4) is not a legislative instrument.

*Definitions*

- (8) In this section:

***fixed-line carriage service*** means:

- (a) a carriage service that is supplied using a line to premises occupied or used by an end-user; or
- (b) a service that facilitates the supply of a carriage service covered by paragraph (a).

***national broadband network*** means a telecommunications network for the high-speed carriage of communications, where an NBN corporation has been, is, or is to be, involved in the creation or development of the network. To avoid doubt, it is immaterial whether the creation or development of the network is, to any extent, attributable to:

- (a) the acquisition of assets that were used, or for use, in connection with another telecommunications network; or
- (b) the obtaining of access to assets that are also used, or for use, in connection with another telecommunications network.

***NBN Co*** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

***NBN corporation*** means:

- (a) NBN Co; or
- (b) NBN Tasmania; or
- (c) a company that is a related body corporate of NBN Co.

**NBN Tasmania** means NBN Tasmania Limited (ACN 138 338 271), as the company exists from time to time (even if its name is later changed).

**related body corporate** has the same meaning as in the *Corporations Act 2001*.

**577BD Approval of draft migration plan by the ACCC—plan given after undertaking about structural separation comes into force**

*Scope*

- (1) This section applies if Telstra gives the ACCC a draft migration plan (the **original plan**) in accordance with an undertaking in force under section 577A.

*Decision*

- (2) The ACCC must:
- (a) if the ACCC is satisfied that the original plan complies with the migration plan principles—approve the original plan; or
  - (b) otherwise:
    - (i) refuse to approve the original plan; and
    - (ii) by written notice given to Telstra, direct Telstra to give the ACCC, within 30 days after the notice is given, a replacement draft migration plan that complies with the migration plan principles.

Note: For migration plan principles, see section 577BB.

*Consultation*

- (3) Before making a decision under subsection (2), the ACCC must:
- (a) cause to be published on the ACCC's website a notice:
    - (i) setting out the original plan; and
    - (ii) inviting persons to make submissions to the ACCC about the original plan within 28 days after the notice is published; and

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- (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
- (c) consider any submissions received within the 28-day period mentioned in paragraph (a).

*Compliance with direction*

- (4) Telstra must comply with a direction under subparagraph (2)(b)(ii).

Note: The ACCC will make a decision about the plan under section 577BDB.

*Replacement plan to be treated as if it had been given in accordance with the undertaking*

- (5) A draft migration plan given by Telstra in compliance with a direction under subparagraph (2)(b)(ii) is taken, for the purposes of this Act (other than this section and section 577BDB), to be given in accordance with the undertaking.

*Notification of decision*

- (6) As soon as practicable after making a decision under subsection (2), the ACCC must notify Telstra in writing of the decision.

**577BDA Approval of draft migration plan by the ACCC—plan given before undertaking about structural separation comes into force**

- (1) If:
  - (a) Telstra gives the ACCC an undertaking under section 577A; and
  - (b) the specified action first mentioned in paragraph 577A(1)(b) consists of, or includes, giving the ACCC a draft migration plan after the undertaking has come into force; and
  - (c) the following conditions are satisfied:



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- (i) Telstra has, in a document accompanying the undertaking, nominated the event mentioned in subparagraph 577AA(1)(c)(vi);
- (ii) the nomination meets the requirements of paragraph 577AA(1)(b) and subsection 577AA(2);

Telstra may give the ACCC a draft migration plan (the ***original plan***) during the period:

- (d) beginning when Telstra gives the ACCC the undertaking; and
  - (e) ending when the undertaking comes into force;
- as if the undertaking had come into force.

*Decision*

- (2) The ACCC must:
  - (a) if the ACCC is satisfied that the original plan complies with the migration plan principles—approve the original plan; or
  - (b) otherwise:
    - (i) refuse to approve the original plan; and
    - (ii) by written notice given to Telstra, request Telstra to give the ACCC, within 30 days after the notice is given, a replacement draft migration plan that complies with the migration plan principles.

Note 1: For migration plan principles, see section 577BB.

Note 2: If Telstra gives the ACCC a replacement draft migration plan in response to the request, the ACCC will make a decision about the plan under section 577BDC.

- (3) The ACCC must not make a decision under subsection (2) before it accepts the undertaking.
- (4) After the undertaking comes into force, this Act (other than section 577BD and this section) has effect as if the original plan had been given to the ACCC in accordance with the undertaking.

*Consultation*

- (5) Before making a decision under subsection (2), the ACCC must:

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- (a) cause to be published on the ACCC's website a notice:
  - (i) setting out the original plan; and
  - (ii) inviting persons to make submissions to the ACCC about the original plan within 28 days after the notice is published; and
- (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
- (c) consider any submissions received within the 28-day period mentioned in paragraph (a).

*Replacement plan to be treated as if it had been given in accordance with the undertaking*

- (6) A draft migration plan given by Telstra in response to a request under subparagraph (2)(b)(ii) is taken, for the purposes of this Act (other than sections 577BD, 577BDB and 577BDC and this section), to be given in accordance with the undertaking.

*Notification of decision*

- (7) As soon as practicable after making a decision under subsection (2), the ACCC must notify Telstra in writing of the decision.

**577BDB Approval of draft migration plan by the ACCC—plan given in compliance with a direction**

*Scope*

- (1) This section applies if:
  - (a) Telstra has given the ACCC an undertaking under section 577A; and
  - (b) Telstra gives the ACCC a draft migration plan (the ***original plan***) in compliance with a direction under:
    - (i) subparagraph 577BD(2)(b)(ii); or
    - (ii) subparagraph (2)(b)(ii) of this section.

*Decision*

- (2) The ACCC must:
- (a) if the ACCC is satisfied that the original plan complies with the migration plan principles—approve the original plan; or
  - (b) otherwise:
    - (i) refuse to approve the original plan; and
    - (ii) by written notice given to Telstra, direct Telstra to give the ACCC, within 30 days after the notice is given, a replacement draft migration plan that complies with the migration plan principles.

Note: For migration plan principles, see section 577BB.

*Consultation*

- (3) Before making a decision under subsection (2), the ACCC must:
- (a) cause to be published on the ACCC's website a notice:
    - (i) setting out the original plan; and
    - (ii) inviting persons to make submissions to the ACCC about the original plan within 28 days after the notice is published; and
  - (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
  - (c) consider any submissions received within the 28-day period mentioned in paragraph (a).

*Compliance with direction*

- (4) Telstra must comply with a direction under subparagraph (2)(b)(ii).

Note: The ACCC will make a decision about the plan under subsection (2).

*Replacement plan to be treated as if it had been given in accordance with the undertaking*

- (5) A draft migration plan given by Telstra in compliance with a direction under subparagraph (2)(b)(ii) is taken, for the purposes of

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this Act (other than sections 577BD, 577BDA and 577BDC and this section), to be given in accordance with the undertaking.

*Notification of decision*

- (6) As soon as practicable after making a decision under subsection (2), the ACCC must notify Telstra in writing of the decision.

**577BDC Approval of draft migration plan by the ACCC—plan given in response to a request**

*Scope*

- (1) This section applies if:
- (a) Telstra gives the ACCC an undertaking under section 577A; and
  - (b) Telstra gives the ACCC a draft migration plan (the ***original plan***) in response to a request under:
    - (i) subparagraph 577BDA(2)(b)(ii); or
    - (ii) subparagraph (2)(b)(ii) of this section.

*Decision*

- (2) The ACCC must:
- (a) if the ACCC is satisfied that the original plan complies with the migration plan principles—approve the original plan; or
  - (b) otherwise:
    - (i) refuse to approve the original plan; and
    - (ii) by written notice given to Telstra, request Telstra to give the ACCC, within 30 days after the notice is given, a replacement draft migration plan that complies with the migration plan principles.

Note 1: For migration plan principles, see section 577BB.

Note 2: If Telstra gives the ACCC a replacement draft migration plan in response to the request, the ACCC will make a decision about the plan under this section.

*Consultation*

- (3) Before making a decision under subsection (2), the ACCC must:
- (a) cause to be published on the ACCC's website a notice:
    - (i) setting out the original plan; and
    - (ii) inviting persons to make submissions to the ACCC about the original plan within 28 days after the notice is published; and
  - (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
  - (c) consider any submissions received within the 28-day period mentioned in paragraph (a).

*Plan to be treated as if it had been given in accordance with the undertaking*

- (4) A draft migration plan given by Telstra in response to a request under subparagraph (2)(b)(ii) is taken, for the purposes of this Act (other than sections 577BD, 577BDA and 577BDB and this section), to be given in accordance with the undertaking.

*Notification of decision*

- (5) As soon as practicable after making a decision under subsection (2), the ACCC must notify Telstra in writing of the decision.

**577BE Effect of approval of draft migration plan**

- (1) If the ACCC approves a draft migration plan, the plan becomes a final migration plan.

Note: A final migration plan came into force on 7 March 2012.

- (2) If the ACCC approves a draft migration plan under subsection 577BD(2), the plan comes into force at the start of the day after notice of the decision to approve the plan is given to Telstra in accordance with subsection 577BD(6).

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- (3) If the ACCC approves a draft migration plan under subsection 577BDA(2), 577BDB(2) or 577BDC(2), the plan comes into force at the later of:
- (a) the start of the day after notice of the decision to approve the plan is given to Telstra in accordance with subsection 577BDA(7), 577BDB(6) or 577BDC(5), as the case requires; or
  - (b) when the relevant undertaking under section 577A comes into force.
- (4) A final migration plan may not be withdrawn.
- (5) When a final migration plan comes into force, the relevant undertaking under section 577A has effect as if the provisions of the plan were provisions of the undertaking.

*Publication requirement*

- (6) As soon as practicable after a final migration plan comes into force, the ACCC must publish a copy of the plan on the ACCC's website.

*ACCC's functions and powers*

- (7) If a final migration plan provides for the ACCC to perform functions or exercise powers in relation to the plan, the ACCC may perform those functions, and exercise those powers, in accordance with the plan.

*Plan is not a legislative instrument*

- (8) A final migration plan is not a legislative instrument.

**577BEA Repointing of final migration plan to certain designated Telstra successor companies**

- (1) If a final migration plan is in force, the final migration plan has effect as if:

- (a) each obligation imposed on Telstra by the final migration plan were imposed instead on each of the following designated Telstra successor companies:
  - (i) Telstra Infraco Limited;
  - (ii) Telstra Limited;
  - (iii) a designated Telstra successor company specified in an instrument under subsection (2); and
- (b) each prohibition applicable to Telstra under the final migration plan were applicable instead to each of the following designated Telstra successor companies:
  - (i) Telstra Infraco Limited;
  - (ii) Telstra Limited;
  - (iii) a designated Telstra successor company specified in an instrument under subsection (2).

Note: See also section 581U (transitional—references in legislation to Telstra Infraco Limited).

- (2) The Minister may, by legislative instrument, specify one or more designated Telstra successor companies for the purposes of subparagraphs (1)(a)(iii) and (b)(iii).
- (3) Subsection (1) has effect subject to subsection (4).
- (4) The Minister may, by legislative instrument, determine either or both of the following:
  - (a) that paragraph (1)(a) does not result in the imposition of one or more specified obligations on one or more specified designated Telstra successor companies;
  - (b) that paragraph (1)(b) does not result in one or more specified prohibitions being applicable to one or more specified designated Telstra successor companies.

### **577BEB Directions—facilitation of final migration plan**

- (1) If:
  - (a) a final migration plan is in force; and

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- (b) the Minister is satisfied that a designated Telstra successor company (the *first designated Telstra successor company*) has failed, is failing, or is likely to fail, to fulfil an obligation imposed on it by the plan;  
the Minister may give:
    - (c) another designated Telstra successor company; or
    - (d) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;a written direction to take specified action.
- (2) The Minister must not give a direction to a body corporate under subsection (1) unless:
- (a) the Minister is satisfied that the action specified in the direction will assist the first designated Telstra successor company to fulfil its obligations under the final migration plan; and
  - (b) the Minister is satisfied that the body corporate:
    - (i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
    - (ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
  - (c) the body corporate:
    - (i) is a constitutional corporation; or
    - (ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

*Compliance with requirement*

- (3) A body corporate must comply with a direction under subsection (1).

*Civil penalty*

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



Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Consultation*

- (5) Before giving or varying a direction under subsection (1), the Minister must:
  - (a) make a copy of the draft direction or variation available on the Minister's website; and
  - (b) publish a notice on the Minister's website:
    - (i) stating that the Minister has prepared the draft; and
    - (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.
- (6) Subject to subsection (7), the period specified in the notice must run for at least 30 days after the publication of the notice.
- (7) The period specified in the notice may be shorter than 30 days if the Minister is satisfied that the shorter period is necessary due to urgent circumstances.
- (8) If interested persons have given comments in accordance with a notice under subsection (5), the Minister must have due regard to those comments in giving or varying the direction.

**577BF Variation of final migration plan**

- (1) This section applies if a final migration plan is in force.
- (2) If the final migration plan imposes obligations or prohibitions on a designated Telstra successor company, the designated Telstra successor company may give the ACCC a variation of the final migration plan.
- (3) The ACCC must:
  - (a) if the ACCC is satisfied that the final migration plan as varied complies with the migration plan principles—approve the variation; or

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- (b) otherwise—refuse to approve the variation.

*Consultation*

- (4) Before making a decision under subsection (3), the ACCC must:
- (a) cause to be published on the ACCC's website a notice:
    - (i) setting out the variation; and
    - (ii) inviting persons to make submissions to the ACCC about the variation within 28 days after the notice is published; and
  - (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
  - (c) consider any submissions received within the 28-day period mentioned in paragraph (a).
- (5) Subsection (4) does not apply to a variation if the variation is of a minor nature.

*When variation takes effect*

- (6) The variation takes effect when it is approved by the ACCC.
- (7) When the variation takes effect, the relevant undertaking under section 577A has effect as if the provisions of the final migration plan as varied were provisions of the undertaking.
- (8) As soon as practicable after the variation takes effect, the ACCC must publish a copy of the variation on the ACCC's website.

## **Division 3—Hybrid fibre-coaxial networks**

### **577C Acceptance of undertaking about hybrid fibre-coaxial networks**

- (1) The ACCC may accept a written undertaking given by Telstra that:
- (a) at all times after the end of the period specified in the undertaking, Telstra will not be in a position to exercise control of a hybrid fibre-coaxial network in Australia; and
  - (b) Telstra will, in connection with paragraph (a), take specified action and/or refrain from taking specified action.

Note: For when Telstra is in a position to exercise control of a network, see section 577Q.

- (1A) In deciding whether to accept an undertaking under subsection (1), the ACCC must have regard to:
- (a) the matters (if any) set out in an instrument in force under subsection (1B); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (1B) The Minister may, by writing, set out matters for the purposes of paragraph (1A)(a).
- (1C) Before making or varying an instrument under subsection (1B), the Minister must:
- (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (2) The period specified in the undertaking as mentioned in paragraph (1)(a) must not be longer than 12 months.

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- (3) The undertaking must be expressed to be an undertaking under this section.
- (4) The undertaking may not be withdrawn after it has been accepted by the ACCC.
- (5) If the undertaking provides for the ACCC to perform functions or exercise powers in relation to the undertaking, the ACCC may perform those functions, and exercise those powers, in accordance with the undertaking.
- (6) The Minister must cause a copy of an instrument under subsection (1B) to be published on the Department's website.
- (7) An instrument under subsection (1B) is not a legislative instrument.

**577CA Acceptance of undertaking about hybrid fibre-coaxial networks may be subject to the occurrence of events**

- (1) If:
  - (a) Telstra has, in a document accompanying an undertaking under section 577C, nominated one or more events; and
  - (b) the nomination is expressed to be a nomination under this subsection; and
  - (c) each of those events is:
    - (i) the passage of a resolution covered by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*; or
    - (ii) an approval covered by paragraph 411(4)(b) of that Act; or
    - (iii) the passage of a resolution, where Telstra's members (within the meaning of that Act) were entitled to vote on the resolution; or
    - (iv) an approval covered by Chapter 11 of the ASX Listing Rules; or
    - (v) the granting of a waiver under rule 18.1 of the ASX Listing Rules; or

- (vi) the making of a declaration under subsection 577J(5); or
  - (vii) an event specified in an instrument in force under subsection (3); and
  - (d) the ACCC decides to accept the undertaking;  
the decision to accept the undertaking must be expressed to be subject to the occurrence of those events within a specified period after the undertaking is accepted.
- (2) A nomination under subsection (1) must not specify an event by reference to the timing of the event.
- (3) The Minister may, by writing, specify events for the purposes of subparagraph (1)(c)(vii).
- (4) A period specified by the ACCC under subsection (1) must be:
- (a) 6 months; or
  - (b) if another period is specified in an instrument under subsection (5)—that period.
- (5) The Minister may, by writing, specify a period for the purposes of paragraph (4)(b).

*Notification requirement*

- (6) If:
- (a) a decision to accept an undertaking under section 577C is expressed to be subject to the occurrence of one or more specified events within a specified period; and
  - (b) such an event occurs within that period;
- Telstra must notify the ACCC in writing of the occurrence of the event as soon as practicable after the occurrence.

*If event does not occur*

- (7) If:
- (a) a decision to accept an undertaking under section 577C is expressed to be subject to the occurrence of a single specified event within a specified period; and

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(b) the event does not occur within that period;  
this Act has effect as if the undertaking had never been accepted by the ACCC.

(8) If:

(a) a decision to accept an undertaking under section 577C is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and

(b) one or more of those events do not occur within that period;  
this Act has effect as if the undertaking had never been accepted by the ACCC.

*Publication requirement*

(9) The Minister must cause a copy of an instrument under subsection (3) or (5) to be published on the Department's website.

*Instruments are not legislative instruments*

(10) An instrument under subsection (3) or (5) is not a legislative instrument.

**577CB When undertaking about hybrid fibre-coaxial networks comes into force**

An undertaking under section 577C comes into force:

(a) if:

(i) the decision to accept the undertaking is expressed to be subject to the occurrence of a single specified event within a specified period; and

(ii) the event occurs within that period;  
when the event occurs; or

(b) if:

(i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and

(ii) each of those events occur at the same time; and

- (iii) that time occurs within that period;  
at that time; or
- (c) if:
  - (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at different times; and
  - (iii) each of those times occur within that period;  
at the last of those times; or
- (d) if the decision to accept the undertaking is not expressed to be subject to the occurrence of one or more specified events within a specified period—when the undertaking is accepted by the ACCC.

**577CC Publication requirements for undertaking about hybrid fibre-coaxial networks**

- (1) If a decision to accept an undertaking under section 577C is expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must:
  - (a) as soon as practicable after making the decision, publish on its website:
    - (i) the undertaking; and
    - (ii) the terms of the decision; and
  - (b) as soon as practicable after the ACCC becomes aware that the undertaking has come into force, publish on its website a notice announcing that the undertaking has come into force.
- (2) If a decision to accept an undertaking under section 577C is not expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must, as soon as practicable after accepting the undertaking, publish the undertaking on its website.

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**577CD Compliance with undertaking about hybrid fibre-coaxial networks**

If an undertaking given by Telstra is in force under section 577C, Telstra must comply with the undertaking.

**577D Variation of undertaking about hybrid fibre-coaxial networks**

- (1) This section applies if an undertaking given by Telstra is in force under section 577C.
- (2) Telstra may give the ACCC a variation of the undertaking in so far as the undertaking is covered by paragraph 577C(1)(b).
- (3) After considering the variation, the ACCC must decide to:
  - (a) accept the variation; or
  - (b) reject the variation.
- (3A) In deciding whether to accept the variation, the ACCC must have regard to:
  - (a) the matters (if any) set out in an instrument in force under subsection (3B); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (3B) The Minister may, by writing, set out matters for the purposes of paragraph (3A)(a).
- (3C) Before making or varying an instrument under subsection (3B), the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (4) The variation takes effect when it is accepted by the ACCC.



- (5) As soon as practicable after the variation takes effect, the ACCC must publish the variation on its website.
- (6) The Minister must cause a copy of an instrument under subsection (3B) to be published on the Department's website.
- (7) An instrument under subsection (3B) is not a legislative instrument.

## Division 4—Subscription television broadcasting licences

### 577E Acceptance of undertaking about subscription television broadcasting licences

- (1) The ACCC may accept a written undertaking given by Telstra that:
- (a) at all times after the end of the period specified in the undertaking, Telstra will not be in a position to exercise control of a subscription television broadcasting licence; and
  - (b) Telstra will, in connection with paragraph (a), take specified action and/or refrain from taking specified action.

Note: For when Telstra is in a position to exercise control of a subscription television broadcasting licence, see subsection (7).

- (1A) In deciding whether to accept an undertaking under subsection (1), the ACCC must have regard to:
- (a) the matters (if any) set out in an instrument in force under subsection (1B); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (1B) The Minister may, by writing, set out matters for the purposes of paragraph (1A)(a).
- (1C) Before making or varying an instrument under subsection (1B), the Minister must:
- (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (2) The period specified in the undertaking as mentioned in paragraph (1)(a) must not be longer than 12 months.

- (3) The undertaking must be expressed to be an undertaking under this section.
- (4) The undertaking may not be withdrawn after it has been accepted by the ACCC.
- (5) If the undertaking provides for the ACCC to perform functions or exercise powers in relation to the undertaking, the ACCC may perform those functions, and exercise those powers, in accordance with the undertaking.
- (6) For the purposes of this section, the question of whether Telstra is in a position to exercise control of a subscription television broadcasting licence is to be determined under Schedule 1 to the *Broadcasting Services Act 1992*.
- (7) The Minister must cause a copy of an instrument under subsection (1B) to be published on the Department's website.
- (8) An instrument under subsection (1B) is not a legislative instrument.

**577EA Acceptance of undertaking about subscription television broadcasting licences may be subject to the occurrence of events**

- (1) If:
  - (a) Telstra has, in a document accompanying an undertaking under section 577E, nominated one or more events; and
  - (b) the nomination is expressed to be a nomination under this subsection; and
  - (c) each of those events is:
    - (i) the passage of a resolution covered by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*; or
    - (ii) an approval covered by paragraph 411(4)(b) of that Act; or

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- (iii) the passage of a resolution, where Telstra's members (within the meaning of that Act) were entitled to vote on the resolution; or
  - (iv) an approval covered by Chapter 11 of the ASX Listing Rules; or
  - (v) the granting of a waiver under rule 18.1 of the ASX Listing Rules; or
  - (vi) the making of a declaration under subsection 577J(3); or
  - (vii) an event specified in an instrument in force under subsection (3); and
- (d) the ACCC decides to accept the undertaking;  
the decision to accept the undertaking must be expressed to be subject to the occurrence of those events within a specified period after the undertaking is accepted.
- (2) A nomination under subsection (1) must not specify an event by reference to the timing of the event.
- (3) The Minister may, by writing, specify events for the purposes of subparagraph (1)(c)(vii).
- (4) A period specified by the ACCC under subsection (1) must be:
- (a) 6 months; or
  - (b) if another period is specified in an instrument under subsection (5)—that period.
- (5) The Minister may, by writing, specify a period for the purposes of paragraph (4)(b).

*Notification requirement*

- (6) If:
- (a) a decision to accept an undertaking under section 577E is expressed to be subject to the occurrence of one or more specified events within a specified period; and
  - (b) such an event occurs within that period;
- Telstra must notify the ACCC in writing of the occurrence of the event as soon as practicable after the occurrence.

*If event does not occur*

- (7) If:
- (a) a decision to accept an undertaking under section 577E is expressed to be subject to the occurrence of a single specified event within a specified period; and
  - (b) the event does not occur within that period;
- this Act has effect as if the undertaking had never been accepted by the ACCC.
- (8) If:
- (a) a decision to accept an undertaking under section 577E is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (b) one or more of those events do not occur within that period;
- this Act has effect as if the undertaking had never been accepted by the ACCC.

*Publication requirement*

- (9) The Minister must cause a copy of an instrument under subsection (3) or (5) to be published on the Department's website.

*Instruments are not legislative instruments*

- (10) An instrument under subsection (3) or (5) is not a legislative instrument.

**577EB When undertaking about subscription television broadcasting licences comes into force**

An undertaking under section 577E comes into force:

- (a) if:
- (i) the decision to accept the undertaking is expressed to be subject to the occurrence of a single specified event within a specified period; and
  - (ii) the event occurs within that period; when the event occurs; or

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- (b) if:
  - (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at the same time; and
  - (iii) that time occurs within that period;  
at that time; or
- (c) if:
  - (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at different times; and
  - (iii) each of those times occur within that period;  
at the last of those times; or
- (d) if the decision to accept the undertaking is not expressed to be subject to the occurrence of one or more specified events within a specified period—when the undertaking is accepted by the ACCC.

**577EC Publication requirements for undertaking about subscription television broadcasting licences**

- (1) If a decision to accept an undertaking under section 577E is expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must:
  - (a) as soon as practicable after making the decision, publish on its website:
    - (i) the undertaking; and
    - (ii) the terms of the decision; and
  - (b) as soon as practicable after the ACCC becomes aware that the undertaking has come into force, publish on its website a notice announcing that the undertaking has come into force.
- (2) If a decision to accept an undertaking under section 577E is not expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must, as soon as

practicable after accepting the undertaking, publish the undertaking on its website.

**577ED Compliance with undertaking about subscription television broadcasting licences**

If an undertaking given by Telstra is in force under section 577E, Telstra must comply with the undertaking.

**577F Variation of undertaking about subscription television broadcasting licences**

- (1) This section applies if an undertaking given by Telstra is in force under section 577E.
- (2) Telstra may give the ACCC a variation of the undertaking in so far as the undertaking is covered by paragraph 577E(1)(b).
- (3) After considering the variation, the ACCC must decide to:
  - (a) accept the variation; or
  - (b) reject the variation.
- (3A) In deciding whether to accept the variation, the ACCC must have regard to:
  - (a) the matters (if any) set out in an instrument in force under subsection (3B); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (3B) The Minister may, by writing, set out matters for the purposes of paragraph (3A)(a).
- (3C) Before making or varying an instrument under subsection (3B), the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and

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- (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (4) The variation takes effect when it is accepted by the ACCC.
- (5) As soon as practicable after the variation takes effect, the ACCC must publish the variation on its website.
- (6) The Minister must cause a copy of an instrument under subsection (3B) to be published on the Department's website.
- (7) An instrument under subsection (3B) is not a legislative instrument.



## **Division 5—Enforcement of undertakings**

### **577FA Enforcement of undertakings in force under section 577A**

- (1) If:
  - (a) an undertaking is in force under section 577A; and
  - (b) the ACCC considers that a designated Telstra successor company has breached the undertaking;the ACCC may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the designated Telstra successor company has breached the undertaking, the Court may make any or all of the following orders:
  - (a) an order directing the designated Telstra successor company to comply with the undertaking;
  - (b) an order directing the disposal of network units, shares or other assets;
  - (c) an order restraining the exercise of any rights attached to shares;
  - (d) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the designated Telstra successor company;
  - (e) an order that any exercise of rights attached to shares be disregarded;
  - (f) an order directing the designated Telstra successor company to pay to the Commonwealth an amount up to the amount of any financial benefit that the designated Telstra successor company has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (g) any order that the Court considers appropriate directing the designated Telstra successor company to compensate any other person who has suffered loss or damage as a result of the breach;
  - (h) any other order that the Court considers appropriate.

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- (3) In addition to the Federal Court's powers under subsection (2), the Court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.
- (4) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (5) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

**577G Enforcement of undertakings in force under section 577C or 577E**

- (1) If:
- (a) an undertaking given by Telstra is in force under section 577C or 577E; and
  - (b) the ACCC considers that Telstra has breached the undertaking;
- the ACCC may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that Telstra has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing Telstra to comply with the undertaking;
  - (b) an order directing the disposal of network units, shares or other assets;
  - (c) an order restraining the exercise of any rights attached to shares;

- (d) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by Telstra;
  - (e) an order that any exercise of rights attached to shares be disregarded;
  - (f) an order directing Telstra to pay to the Commonwealth an amount up to the amount of any financial benefit that Telstra has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (g) any order that the Court considers appropriate directing Telstra to compensate any other person who has suffered loss or damage as a result of the breach;
  - (h) any other order that the Court considers appropriate.
- (3) In addition to the Federal Court's powers under subsection (2), the court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (4) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (5) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

## Division 6—Limits on allocation of spectrum licences etc.

### 577GA Excluded spectrum regime

- (1) The Minister may, by legislative instrument, determine that the excluded spectrum regime applies to Telstra.
- (2) A determination under subsection (1) has effect for the purposes of:
  - (a) this Division; and
  - (b) Part 10 of Schedule 1.

### 577H Designated part of the spectrum

- (1) For the purposes of this Act, each of the following parts of the spectrum is a *designated part of the spectrum*:
  - (a) frequencies higher than 520 MHz, up to and including 820 MHz;
  - (b) frequencies higher than 2.5 GHz, up to and including 2.69 GHz.
- (2) Subsection (1) has effect subject to subsection (3).
- (3) The Minister may, by legislative instrument, determine that a specified part of the spectrum is not a *designated part of the spectrum* for the purposes of this Act.
- (4) The Minister may, by legislative instrument, determine that a specified part of the spectrum is a *designated part of the spectrum* for the purposes of this Act.

### 577J Limits on allocation of certain spectrum licences to Telstra

- (1) If the excluded spectrum regime applies to Telstra, the ACMA must not allocate a spectrum licence to Telstra if the licence relates to a designated part of the spectrum.

Note: For excluded spectrum regime, see section 577GA.

- (2) However, the rule in subsection (1) does not apply if:
- (a) both:
    - (i) an undertaking given by Telstra is in force under section 577A; and
    - (ii) the undertaking is covered by subsection (2A); and
  - (b) either:
    - (i) an undertaking given by Telstra is in force under section 577C; or
    - (ii) a declaration is in force under subsection (3); and
  - (c) either:
    - (i) an undertaking given by Telstra is in force under section 577E; or
    - (ii) a declaration is in force under subsection (5).

Note 1: Section 577A deals with undertakings about structural separation.

Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial networks.

Note 3: Section 577E deals with undertakings about subscription television broadcasting licences.

- (2A) This subsection covers a section 577A undertaking if:
- (a) the following conditions are satisfied:
    - (i) the undertaking requires Telstra to give the ACCC a draft migration plan;
    - (ii) in accordance with the undertaking, Telstra has given the ACCC a draft migration plan;
    - (iii) the ACCC has approved the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC; or
  - (b) the undertaking does not require Telstra to give the ACCC a draft migration plan.
- (3) The Minister may declare, in writing, that Telstra is exempt from the requirement to have an undertaking under section 577C.
- (4) The Minister must not make a declaration under subsection (3) unless the ACCC has made a decision to accept an undertaking given by Telstra under section 577A, and:

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- (a) if the undertaking is in force—the Minister is satisfied that the undertaking is sufficient to address concerns about the degree of Telstra’s power in telecommunications markets; or
  - (b) if the undertaking is not in force—the Minister is satisfied that, subject to the undertaking coming into force, the undertaking is sufficient to address concerns about the degree of Telstra’s power in telecommunications markets.
- (4A) A declaration under subsection (3) comes into force:
- (a) if paragraph (4)(a) applies—when the declaration is made; or
  - (b) if paragraph (4)(b) applies—when the undertaking comes into force.
- (4B) If:
- (a) paragraph (4)(b) applies to a declaration; and
  - (b) as a result of subsection 577AA(7) or (8), this Act (other than subclause 76(4) of Schedule 1) has effect as if the undertaking had never been accepted by the ACCC;
- this Act has effect as if the declaration had never been made by the Minister.
- (5) The Minister may declare, in writing, that Telstra is exempt from the requirement to have an undertaking under section 577E.
- (6) The Minister must not make a declaration under subsection (5) unless the ACCC has made a decision to accept an undertaking given by Telstra under section 577A, and:
- (a) if the undertaking is in force—the Minister is satisfied that the undertaking is sufficient to address concerns about the degree of Telstra’s power in telecommunications markets; or
  - (b) if the undertaking is not in force—the Minister is satisfied that, subject to the undertaking coming into force, the undertaking is sufficient to address concerns about the degree of Telstra’s power in telecommunications markets.
- (6A) A declaration under subsection (5) comes into force:
- (a) if paragraph (6)(a) applies—when the declaration is made; or

- (b) if paragraph (6)(b) applies—when the undertaking comes into force.
- (6B) If:
- (a) paragraph (6)(b) applies to a declaration; and
  - (b) as a result of subsection 577AA(7) or (8), this Act (other than subclause 76(4) of Schedule 1) has effect as if the undertaking had never been accepted by the ACCC;
- this Act has effect as if the declaration had never been made by the Minister.
- (6C) A declaration made under subsection (3) or (5) cannot be revoked.
- (7) A declaration made under subsection (3) or (5) is not a legislative instrument.
- (8) In this section:
- telecommunications market* has the same meaning as in Part XIB of the *Competition and Consumer Act 2010*.

### **577K Limits on use of certain spectrum licences by Telstra**

- (1) If:
- (a) the excluded spectrum regime applies to Telstra; and
  - (b) a spectrum licence relates to a designated part of the spectrum;
- the licensee of the spectrum licence must not authorise Telstra to operate radiocommunications devices under the licence.
- Note: For excluded spectrum regime, see section 577GA.
- (2) However, the rule in subsection (1) does not apply if:
- (a) both:
    - (i) an undertaking given by Telstra is in force under section 577A; and
    - (ii) the undertaking is covered by subsection (2A); and
  - (b) either:

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- (i) an undertaking given by Telstra is in force under section 577C; or
- (ii) a declaration is in force under subsection 577J(3); and
- (c) either:
  - (i) an undertaking given by Telstra is in force under section 577E; or
  - (ii) a declaration is in force under subsection 577J(5).

Note 1: Section 577A deals with undertakings about structural separation.

Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial networks.

Note 3: Section 577E deals with undertakings about subscription television broadcasting licences.

(2A) This subsection covers a section 577A undertaking if:

- (a) the following conditions are satisfied:
  - (i) the undertaking requires Telstra to give the ACCC a draft migration plan;
  - (ii) in accordance with the undertaking, Telstra has given the ACCC a draft migration plan;
  - (iii) the ACCC has approved the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC; or
- (b) the undertaking does not require Telstra to give the ACCC a draft migration plan.

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

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



Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**577L Limits on assignment of certain spectrum licences to Telstra etc.**

- (1) If:
- (a) the excluded spectrum regime applies to Telstra; and
  - (b) a spectrum licence relates to a designated part of the spectrum;
- the licensee of the spectrum licence must not:
- (c) assign the whole or a part of the licence to Telstra; or
  - (d) otherwise deal with Telstra in relation to the whole or a part of the licence.

Note: For excluded spectrum regime, see section 577GA.

- (2) However, the rule in subsection (1) does not apply if:
- (a) both:
    - (i) an undertaking given by Telstra is in force under section 577A; and
    - (ii) the undertaking is covered by subsection (2A); and
  - (b) either:
    - (i) an undertaking given by Telstra is in force under section 577C; or
    - (ii) a declaration is in force under subsection 577J(3); and
  - (c) either:
    - (i) an undertaking given by Telstra is in force under section 577E; or
    - (ii) a declaration is in force under subsection 577J(5).

Note 1: Section 577A deals with undertakings about structural separation.

Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial networks.

Note 3: Section 577E deals with undertakings about subscription television broadcasting licences.

- (2A) This subsection covers a section 577A undertaking if:
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- (a) the following conditions are satisfied:
    - (i) the undertaking requires Telstra to give the ACCC a draft migration plan;
    - (ii) in accordance with the undertaking, Telstra has given the ACCC a draft migration plan;
    - (iii) the ACCC has approved the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC; or
  - (b) the undertaking does not require Telstra to give the ACCC a draft migration plan.
- (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
  - (d) conspire with others to effect a contravention of subsection (1).
- (4) Subsections (1) and (3) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

## Division 7—Other provisions

### 577M Associate

(1A) For the purposes of this Part, an *associate* of a designated Telstra successor company in relation to control of:

- (a) a telecommunications network; or
- (b) a company;

is:

- (c) a partner of the designated Telstra successor company; or
- (d) if the designated Telstra successor company or another person who is an associate of the designated Telstra successor company under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
- (e) a person (whether a company or not) who:
  - (i) acts, or is accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with:

- (iii) the designated Telstra successor company; or
- (iv) the designated Telstra successor company and another person who is an associate of the designated Telstra successor company under another paragraph; or
- (f) another company if:
  - (i) the other company is a related body corporate of the designated Telstra successor company for the purposes of the *Corporations Act 2001*; or

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- (ii) the designated Telstra successor company, or the designated Telstra successor company and another person who is an associate of the designated Telstra successor company under another paragraph, are in a position to exercise control of the other company.
- (1) For the purposes of this Part, an *associate* of Telstra in relation to control of:
  - (a) a hybrid fibre-coaxial network; or
  - (b) another telecommunications network; or
  - (c) a company;is:
  - (d) a partner of Telstra; or
  - (e) if Telstra or another person who is an associate of Telstra under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
  - (f) a person (whether a company or not) who:
    - (i) acts, or is accustomed to act; or
    - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;in accordance with the directions, instructions or wishes of, or in concert with:
    - (iii) Telstra; or
    - (iv) Telstra and another person who is an associate of Telstra under another paragraph; or
  - (g) another company if:
    - (i) the other company is a related body corporate of Telstra for the purposes of the *Corporations Act 2001*; or
    - (ii) Telstra, or Telstra and another person who is an associate of Telstra under another paragraph, are in a position to exercise control of the other company.
- (2) However, persons are not associates of each other if the ACCC is satisfied that:

- (a) they do not act together in any relevant dealings relating to the network or company; and
- (b) neither of them is in a position to exert influence over the business dealings of the other in relation to the network or company.

### **577N Control**

In this Part, *control* includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

### **577P Control of a company**

- (1) For the purposes of this Part, the question of whether a person is in a position to exercise control of a company is to be determined under Schedule 1 to the *Broadcasting Services Act 1992*.
- (2) However, in determining that question:
  - (a) the definition of *associate* in subsection 6(1) of the *Broadcasting Services Act 1992* does not apply; and
  - (b) the definition of *associate* in section 577M of this Act applies instead.

### **577Q When Telstra or a designated Telstra successor company is in a position to exercise control of a network**

- (1A) For the purposes of this Part, a designated Telstra successor company is in a position to exercise control of:
  - (a) a hybrid fibre-coaxial network; or
  - (b) another telecommunications network;if:
  - (c) the designated Telstra successor company legally or beneficially owns the network (whether alone or together with one or more other persons); or

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- (d) the designated Telstra successor company is in a position, either alone or together with an associate of the designated Telstra successor company and whether directly or indirectly:
  - (i) to exercise control of the operation of all or part of the network; or
  - (ii) to exercise control of the selection of the kinds of services that are supplied using the network; or
  - (iii) to exercise control of the supply of services using the network; or
- (e) a company other than the designated Telstra successor company legally or beneficially owns the network (whether alone or together with one or more other persons), and:
  - (i) the designated Telstra successor company is in a position, either alone or together with an associate of the designated Telstra successor company, to exercise control of the company; or
  - (ii) the designated Telstra successor company, either alone or together with an associate of the designated Telstra successor company, is in a position to veto any action taken by the board of directors of the company; or
  - (iii) the designated Telstra successor company, either alone or together with an associate of the designated Telstra successor company, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
  - (iv) the designated Telstra successor company, either alone or together with an associate of the designated Telstra successor company, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
  - (v) the company or more than 50% of its directors act, or are accustomed to act in accordance with the directions, instructions or wishes of, or in concert with, the designated Telstra successor company or of the designated Telstra successor company and an associate of the designated Telstra successor company acting

together or of the directors of the designated Telstra successor company; or

- (vi) the company or more than 50% of its directors, under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act, in accordance with the directions, instructions or wishes of, or in concert with, the designated Telstra successor company or of the designated Telstra successor company and an associate of the designated Telstra successor company acting together or of the directors of the designated Telstra successor company.

- (1) For the purposes of this Part, Telstra is in a position to exercise control of:
  - (a) a hybrid fibre-coaxial network; or
  - (b) another telecommunications network;if:
  - (c) Telstra legally or beneficially owns the network (whether alone or together with one or more other persons); or
  - (d) Telstra is in a position, either alone or together with an associate of Telstra and whether directly or indirectly:
    - (i) to exercise control of the operation of all or part of the network; or
    - (ii) to exercise control of the selection of the kinds of services that are supplied using the network; or
    - (iii) to exercise control of the supply of services using the network; or
  - (e) a company other than Telstra legally or beneficially owns the network (whether alone or together with one or more other persons), and:
    - (i) Telstra is in a position, either alone or together with an associate of Telstra, to exercise control of the company; or
    - (ii) Telstra, either alone or together with an associate of Telstra, is in a position to veto any action taken by the board of directors of the company; or

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- (iii) Telstra, either alone or together with an associate of Telstra, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
  - (iv) Telstra, either alone or together with an associate of Telstra, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
  - (v) the company or more than 50% of its directors act, or are accustomed to act in accordance with the directions, instructions or wishes of, or in concert with, Telstra or of Telstra and an associate of Telstra acting together or of the directors of Telstra; or
  - (vi) the company or more than 50% of its directors, under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act, in accordance with the directions, instructions or wishes of, or in concert with, Telstra or of Telstra and an associate of Telstra acting together or of the directors of Telstra.
- (2) An employee is not, except through an association with another person, to be regarded as being in a position to exercise control of a network under subsection (1A) or (1) purely because of being an employee.
- (3) More than one person may be in a position to exercise control of a network.



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## **Part 34—Special provisions relating to conventions and directions**

### **579 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA is to have regard to certain international obligations when performing its telecommunications functions and exercising its telecommunications powers.
- The ACMA may give directions to a carrier or a service provider in connection with the ACMA's performance of its telecommunications functions or the exercise of its telecommunications powers.
- The eSafety Commissioner may give directions to a carrier or a service provider in connection with the Commissioner's performance of his or her functions or the exercise of his or her powers.

### **580 ACMA must have regard to conventions**

- (1) In performing its telecommunications functions and exercising its telecommunications powers, the ACMA must have regard to Australia's obligations under any convention of which the Minister has notified the ACMA in writing.
- (2) In this section:  
*convention* means:
  - (a) a convention to which Australia is a party; or
  - (b) an agreement or arrangement between Australia and a foreign country;

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and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

**581 Power to give directions to carriers and service providers**

- (1) The ACMA may give written directions to:
- (a) a carrier; or
  - (b) a service provider;
- in connection with performing any of the ACMA's telecommunications functions or exercising any of the ACMA's telecommunications powers.
- (2) This section is not limited by any other provision of a law that:
- (a) confers a function or power on the ACMA; or
  - (b) prescribes the mode in which the ACMA is to perform a function or exercise a power; or
  - (c) prescribes conditions or restrictions which must be observed in relation to the performance by the ACMA of a function or the exercise by the ACMA of a power.
- (2A) The eSafety Commissioner may give written directions to:
- (a) a carrier; or
  - (b) a service provider;
- in connection with performing any of the Commissioner's functions or exercising any of the Commissioner's powers.
- (2B) This section is not limited by any other provision of a law that:
- (a) confers a function or power on the eSafety Commissioner; or
  - (b) prescribes the mode in which the eSafety Commissioner is to perform a function or exercise a power; or
  - (c) prescribes conditions or restrictions which must be observed in relation to the performance by the eSafety Commissioner of a function or the exercise by the eSafety Commissioner of a power.

- (4) A person must comply with a direction given to the person under subsection (1).
- (4A) A person must comply with a direction given to the person under subsection (2A).

## **Part 34A—Telstra successor companies and designated Telstra successor companies**

### **Division 1—Introduction**

#### **581A Simplified outline of this Part**

- This Part sets out a mechanism for identifying Telstra successor companies and designated Telstra successor companies.
- If a Telstra successor company or a designated Telstra successor company transfers the whole or part of a telecommunications business, the company must notify the ACMA of the transfer.
- If a Telstra successor company or a designated Telstra successor company proposes to transfer the whole or part of a prescribed business and the transferee is not a constitutional corporation, the company must notify the ACMA of the proposed transfer.
- If a Telstra successor company or a designated Telstra successor company transfers a telecommunications asset, the company must notify the ACMA of the transfer.
- If a Telstra successor company or a designated Telstra successor company proposes to transfer a prescribed asset and the transferee is not a constitutional corporation, the company must notify the ACMA of the proposed transfer.

Note: Certain telecommunications laws impose obligations on, or in relation to, Telstra successor companies or designated Telstra successor companies.

### **581B Object of this Part**

The object of this Part, when read together with various other provisions of telecommunications laws that refer to a Telstra successor company or a designated Telstra successor company, is to achieve regulatory equivalence between:

- (a) Telstra as it stood at the end of July 2021; and
- (b) companies that are the successors (whether immediate or otherwise) of Telstra.

### **581C Company**

For the purposes of this Part, *company* means a body corporate.

### **581D Telecommunications law**

For the purposes of this Part, *telecommunications law* means:

- (a) this Act; or
- (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
- (c) Part XIB of the *Competition and Consumer Act 2010*; or
- (d) Part XIC of the *Competition and Consumer Act 2010*; or
- (e) the *Telstra Corporation Act 1991*; or
- (f) an instrument made under or for the purposes of:
  - (i) this Act; or
  - (ii) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
  - (iii) Part XIB of the *Competition and Consumer Act 2010*; or
  - (iv) Part XIC of the *Competition and Consumer Act 2010*; or
  - (v) the *Telstra Corporation Act 1991*.

### **581E Prescribed telecommunications law**

For the purposes of this Part, *prescribed telecommunications law* means:

- (a) the *Telstra Corporation Act 1991*; or

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- (b) this Part; or
- (c) an instrument made under or for the purposes of:
  - (i) the *Telstra Corporation Act 1991*; or
  - (ii) this Part.

## **Division 2—Telstra successor company and designated Telstra successor company**

### **581F Telstra successor company**

- (1) For the purposes of each prescribed telecommunications law,  
*Telstra successor company* means a demerged Telstra company.

Note: For *demerged Telstra company*, see section 581J.

- (2) Subsection (1) has effect subject to subsections (6), (7) and (8).

*Declarations—extended meaning of Telstra successor company*

- (3) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a Telstra successor company for the purposes of each prescribed telecommunications law.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (4) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a Telstra successor company for the purposes of one or more specified prescribed telecommunications laws.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (5) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a Telstra successor company for the purposes of one or more specified provisions of one or more prescribed telecommunications laws.

Note 1: For criteria, see section 581H.

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Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

*Declarations—excluded company*

- (6) The Minister may, by legislative instrument, declare that a specified company is not a Telstra successor company for the purposes of each prescribed telecommunications law.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (7) The Minister may, by legislative instrument, declare that a specified company is a not a Telstra successor company for the purposes of one or more specified prescribed telecommunications laws.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (8) The Minister may, by legislative instrument, declare that a specified company is a not a Telstra successor company for the purposes of one or more specified provisions of one or more prescribed telecommunications laws.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

*Declaration is irrevocable*

- (9) A declaration under subsection (6), (7) or (8) is irrevocable.
- (10) Subsection (9) does not prevent a declaration from being disallowed under the *Legislation Act 2003*.

*Declarations may be unconditional or conditional*

- (11) A declaration under this section may be unconditional or subject to such conditions (if any) as are specified in the declaration.



### **581G Designated Telstra successor company**

- (1) For the purposes of each telecommunications law, ***designated Telstra successor company*** means a demerged Telstra company.

Note: For ***demerged Telstra company***, see section 581J.

- (2) Subsection (1) has effect subject to subsections (6), (7) and (8).

*Declarations—extended meaning of designated Telstra successor company*

- (3) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a designated Telstra successor company for the purposes of each telecommunications law.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (4) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a designated Telstra successor company for the purposes of one or more specified telecommunications laws.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (5) The Minister may, by legislative instrument, declare that a specified company (other than a demerged Telstra company) is a designated Telstra successor company for the purposes of one or more specified provisions of one or more telecommunications laws.

Note 1: For criteria, see section 581H.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

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*Declarations—excluded company*

- (6) The Minister may, by legislative instrument, declare that a specified company is not a designated Telstra successor company for the purposes of each telecommunications law.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (7) The Minister may, by legislative instrument, declare that a specified company is not a designated Telstra successor company for the purposes of one or more specified telecommunications laws.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (8) The Minister may, by legislative instrument, declare that a specified company is not a designated Telstra successor company for the purposes of one or more specified provisions of one or more telecommunications laws.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

*Declaration is irrevocable*

- (9) A declaration under subsection (6), (7) or (8) is irrevocable.
- (10) Subsection (9) does not prevent a declaration from being disallowed under the *Legislation Act 2003*.

*Declarations may be unconditional or conditional*

- (11) A declaration under this section may be unconditional or subject to such conditions (if any) as are specified in the declaration.

**581H Declarations—criteria**

- (1) In deciding whether to specify a company (the *relevant company*) in a declaration under subsection 581F(3), (4) or (5) or 581G(3), (4) or (5), the Minister must have regard to the following matters:

- (a) the object set out in section 581B;
  - (b) the compliance burden (if any) that would result for the relevant company if the declaration were made;
  - (c) whether a Telstra successor company or a designated Telstra successor company has transferred the whole or a part of a telecommunications business to the relevant company;
  - (d) whether a Telstra successor company or a designated Telstra successor company has transferred a telecommunications asset to the relevant company;
  - (e) such other matters (if any) as the Minister considers relevant.
- (2) The Minister must not specify a company in a declaration under subsection 581F(3), (4) or (5) or 581G(3), (4) or (5) unless the company:
- (a) is a constitutional corporation; or
  - (b) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

### **581J Demerged Telstra company**

For the purposes of this Act, each of the following companies is a *demerged Telstra company*:

- (a) Telstra Group Limited (ACN 650 620 303), as the company exists from time to time (even if its name is later changed);
- (b) Telstra Infraco Limited (ACN 051 775 556), as the company exists from time to time (even if its name is later changed);
- (c) Amplitel Pty Ltd (ACN 648 133 073), as the company exists from time to time (even if its name is later changed);
- (d) Telstra Limited (ACN 086 174 781), as the company exists from time to time (even if its name is later changed).

Note: See also section 581U (transitional—references in legislation to Telstra Infraco Limited).

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**581K ACMA to maintain register of Telstra successor companies and designated Telstra successor companies etc.**

- (1) The ACMA is to maintain a Register in which the ACMA includes:
- (a) for each company that is a Telstra successor company for the purposes of each prescribed telecommunications law because of subsection 581F(1)—the name and ACN of that company; and
  - (b) for each company that is a Telstra successor company for the purposes of each prescribed telecommunications law because of a declaration under subsection 581F(3):
    - (i) the name and ACN of that company; and
    - (ii) the details of the declaration; and
  - (c) for each company that is a Telstra successor company for the purposes of one or more prescribed telecommunications laws because of a declaration under subsection 581F(4):
    - (i) the name and ACN of that company; and
    - (ii) the details of the declaration; and
  - (d) for each company that is a Telstra successor company for the purposes of one or more provisions of one or more prescribed telecommunications laws because of a declaration under subsection 581F(5):
    - (i) the name and ACN of that company; and
    - (ii) the details of the declaration; and
  - (e) for each company that is covered by a declaration under subsection 581F(6), (7) or (8):
    - (i) the name and ACN of that company; and
    - (ii) the details of the declaration; and
  - (f) for each company that is a designated Telstra successor company for the purposes of each telecommunications law because of subsection 581G(1)—the name and ACN of that company; and
  - (g) for each company that is a designated Telstra successor company for the purposes of each telecommunications law because of a declaration under subsection 581G(3):

- (i) the name and ACN of that company; and
    - (ii) the details of the declaration; and
  - (h) for each company that is a designated Telstra successor company for the purposes of one or more telecommunications laws because of a declaration under subsection 581G(4):
    - (i) the name and ACN of that company; and
    - (ii) the details of the declaration; and
  - (i) for each company that is a designated Telstra successor company for the purposes of one or more provisions of one or more telecommunications laws because of a declaration under subsection 581G(5):
    - (i) the name and ACN of that company; and
    - (ii) the details of the declaration; and
  - (j) for each company that is covered by a declaration under subsection 581G(6), (7) or (8):
    - (i) the name and ACN of that company; and
    - (ii) the details of the declaration.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the ACMA's website.
- (4) The Register is not a legislative instrument.

## Division 3—Transfer of business

### 581L Telecommunications business

- (1) For the purposes of this Part, *telecommunications business* means:
- (a) a business that consists of or includes the supply of a listed carriage service; or
  - (b) a business that consists of or includes the supply of a service that facilitates the supply of a listed carriage service; or
  - (c) a business that consists of or includes installing, maintaining, operating or providing access to:
    - (i) a telecommunications network; or
    - (ii) a facility;  
used to supply a listed carriage service; or
  - (d) a business that is covered by a declaration under subsection (2);
- but does not include a business that is covered by a declaration under subsection (3).

- (2) The Minister may, by legislative instrument, declare that a specified business is a telecommunications business for the purposes of this Part.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (3) The Minister may, by legislative instrument, declare that a specified business is not a telecommunications business for the purposes of this Part.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

### 581M Notification of transfer of telecommunications business

- (1) If:
- (a) after the commencement of Schedule 2 to the *Telstra Corporation and Other Legislation Amendment Act 2021*, a

- Telstra successor company or a designated Telstra successor company transfers the whole or a part of a telecommunications business; and
- (b) the transfer is not covered by a declaration under subsection (2); and
  - (c) the telecommunications business is not covered by a declaration under subsection (3); and
  - (d) the conditions (if any) declared under subsection (4) have been satisfied; and
  - (e) a declaration is in force under subsection (5);
- the company must:
- (f) notify the ACMA in writing of the transfer; and
  - (g) do so within 5 business days after the transfer.
- (2) The Minister may, by legislative instrument, declare that a specified transfer is exempt from subsection (1).
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (3) The Minister may, by legislative instrument, declare that a specified telecommunications business is exempt from subsection (1).
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (4) The Minister may, by legislative instrument, declare one or more conditions for the purposes of paragraph (1)(d).
- (5) The Minister may, by legislative instrument, declare that subsection (1) is active.
- (6) Subsection (1) is a civil penalty provision.
- Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.
- (7) If the ACMA receives a notification under subsection (1), the ACMA must give a copy of the notification to the Minister.

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**581MA Notification of proposed transfer of prescribed business**

- (1) If:
- (a) a company is:
    - (i) a Telstra successor company or a designated Telstra successor company; and
    - (ii) a constitutional corporation; and
  - (b) the company proposes to transfer the whole or a part of a prescribed business after the commencement of Schedule 2 to the *Telstra Corporation and Other Legislation Amendment Act 2021*; and
  - (c) the proposed transferee is a not a constitutional corporation; the company must:
    - (d) notify the ACMA in writing of the proposed transfer; and
    - (e) do so at least 30 days before the proposed transfer date.
- (2) Subsection (1) is a civil penalty provision.
- Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.
- (3) If the ACMA receives a notification under subsection (1), the ACMA must give a copy of the notification to the Minister.
- (4) For the purposes of this section, **prescribed business** means a business in a prescribed class of businesses.
- (5) The Minister may, by legislative instrument, declare that one or more specified classes of businesses are prescribed classes of businesses for the purpose of subsection (4).



## **Division 4—Transfer of assets**

### **581N Telecommunications asset**

- (1) For the purposes of this Part, *telecommunications asset* means:
- (a) a telecommunications network used, or to be used, to supply a listed carriage service; or
  - (b) a facility used, or to be used, to supply a listed carriage service; or
  - (c) an asset covered by a declaration under subsection (2);
- but does not include an asset that is covered by a declaration under subsection (3).
- (2) The Minister may, by legislative instrument, declare that a specified asset is a telecommunications asset for the purposes of this Part.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (3) The Minister may, by legislative instrument, declare that a specified asset is not a telecommunications asset for the purposes of this Part.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

### **581P Notification of transfer of telecommunications asset**

- (1) If:
- (a) after the commencement of Schedule 2 to the *Telstra Corporation and Other Legislation Amendment Act 2021*, a Telstra successor company or a designated Telstra successor company transfers a telecommunications asset; and
  - (b) the transfer is not covered by a declaration under subsection (2); and
  - (c) the telecommunications asset is not covered by a declaration under subsection (3); and

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- (d) the conditions (if any) declared under subsection (4) have been satisfied; and
  - (e) a declaration is in force under subsection (5);
- the company must:
- (f) notify the ACMA in writing of the transfer; and
  - (g) do so within 5 business days after the transfer.
- (2) The Minister may, by legislative instrument, declare that a specified transfer is exempt from subsection (1).
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (3) The Minister may, by legislative instrument, declare that a specified telecommunications asset is exempt from subsection (1).
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (4) The Minister may, by legislative instrument, declare one or more conditions for the purposes of paragraph (1)(d).
- (5) The Minister may, by legislative instrument, declare that subsection (1) is active.
- (6) Subsection (1) is a civil penalty provision.
- Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.
- (7) If the ACMA receives a notification under subsection (1), the ACMA must give a copy of the notification to the Minister.

**581PA Notification of proposed transfer of prescribed asset**

- (1) If:
- (a) a company is:
    - (i) a Telstra successor company or a designated Telstra successor company; and
    - (ii) a constitutional corporation; and

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- (b) the company proposes to transfer a prescribed asset after the commencement of Schedule 2 to the *Telstra Corporation and Other Legislation Amendment Act 2021*; and
  - (c) the proposed transferee is a not a constitutional corporation; the company must:
  - (d) notify the ACMA in writing of the proposed transfer; and
  - (e) do so at least 30 days before the proposed transfer date.
- (2) Subsection (1) is a civil penalty provision.
- Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.
- (3) If the ACMA receives a notification under subsection (1), the ACMA must give a copy of the notification to the Minister.
- (4) For the purposes of this section, **prescribed asset** means an asset in a prescribed class of assets.
- (5) The Minister may, by legislative instrument, declare that one or more specified classes of assets are prescribed classes of assets for the purpose of subsection (4).
- (6) The Minister must not specify a class of assets under subsection (5) unless each asset in the class is, or was, used by a Telstra successor company or a designated Telstra successor company:
- (a) in connection with the fulfillment of any of the obligations imposed on the company by or under a telecommunications law; or
  - (b) in order to maintain the company's capability (including the technical, operational or organisational capability) to comply with obligations imposed on the company by or under a telecommunications law.

### 581Q Transfer of an asset

For the purposes of this Part, a transfer of an asset occurs if:

- (a) the legal ownership of the asset is transferred in whole or in part; or

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- (b) the beneficial ownership of the asset is transferred in whole or in part (whether by way of a declaration of trust or in any other way); or
- (c) if the asset is the subject of a lease—the lease is transferred.

## **Division 5—Consultation relating to declarations**

### **581R Consultation relating to declarations**

- (1) Before making or varying a declaration under this Part (other than Division 2), the Minister must:
  - (a) make a copy of the draft declaration or variation available on the Department's website; and
  - (b) publish a notice on the Department's website:
    - (i) stating that the Minister has prepared the draft; and
    - (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.
- (2) The period specified in the notice must run for at least 30 days after the publication of the notice.
- (3) If interested persons have given comments in accordance with a notice under subsection (1), the Minister must have due regard to those comments in making or varying the declaration.

## Division 6—Directions

### 581TA Facilitation of compliance with a direction given by the ACMA

- (1) If:
- (a) a designated Telstra successor company (the *first designated Telstra successor company*) is subject to a direction (the *first direction*) given by the ACMA under this Act or the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
  - (b) the ACMA is satisfied that the first designated Telstra successor company has failed, is failing, or is likely to fail, to comply with the first direction;
- the ACMA may give:
- (c) another designated Telstra successor company; or
  - (d) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;
- a written direction to take specified action.
- (2) The ACMA must not give a direction to a body corporate under subsection (1) unless:
- (a) the ACMA is satisfied that the action specified in the direction will facilitate the first designated Telstra successor company complying with the first direction; and
  - (b) the ACMA is satisfied that the body corporate:
    - (i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
    - (ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
  - (c) the body corporate:
    - (i) is a constitutional corporation; or

- (ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).

*Compliance with requirement*

- (3) A body corporate must comply with a direction under subsection (1).

*Civil penalty*

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Consultation*

- (5) Before the ACMA gives or varies a direction under subsection (1), the ACMA must consult the ACCC.
- (6) Before giving or varying a direction under subsection (1), the ACMA must:
- (a) make a copy of the draft direction or variation available on the ACMA's website; and
  - (b) publish a notice on the ACMA's website:
    - (i) stating that the ACMA has prepared the draft; and
    - (ii) inviting interested persons to give written comments about the draft to the ACMA within the period specified in the notice.
- (7) The period specified in the notice must run for at least 30 days after the publication of the notice.
- (8) If interested persons have given comments in accordance with a notice under subsection (6), the ACMA must have due regard to those comments in giving or varying the direction.

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**581TB Facilitation of obligations imposed on a named designated Telstra successor company**

- (1) If:
- (a) an obligation (the *relevant obligation*) is imposed on a named designated Telstra successor company (the *first designated Telstra successor company*) by or under a telecommunication law; and
  - (b) the Minister is satisfied that the first designated Telstra successor company has failed, is failing, or is likely to fail, to fulfil the relevant obligation;
- the Minister may give:
- (c) another designated Telstra successor company; or
  - (d) a body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first designated Telstra successor company;
- a written direction to take specified action.
- (2) The Minister must not give a direction to a body corporate under subsection (1) unless:
- (a) the Minister is satisfied that the action specified in the direction will assist the first designated Telstra successor company to fulfil the relevant obligation; and
  - (b) the Minister is satisfied that the body corporate:
    - (i) has the capability (including the technical, operational and organisational capability) to comply with the direction; or
    - (ii) could reasonably acquire the capability (including the technical, operational and organisational capability) to comply with the direction; and
  - (c) the body corporate:
    - (i) is a constitutional corporation; or
    - (ii) carries on a telecommunications business covered by paragraph 581L(1)(a), (b) or (c).



*Compliance with requirement*

- (3) A body corporate must comply with a direction under subsection (1).

*Civil penalty*

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Consultation*

- (5) Before giving or varying a direction under subsection (1), the Minister must:
- (a) make a copy of the draft direction or variation available on the Minister's website; and
  - (b) publish a notice on the Minister's website:
    - (i) stating that the Minister has prepared the draft; and
    - (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.
- (6) Subject to subsection (7), the period specified in the notice must run for at least 30 days after the publication of the notice.
- (7) The period specified in the notice may be shorter than 30 days if the Minister is satisfied that the shorter period is necessary due to urgent circumstances.
- (8) If interested persons have given comments in accordance with a notice under subsection (5), the Minister must have due regard to those comments in giving or varying the direction.

## **Division 7—Transitional**

### **581U Transitional—references in legislation to Telstra Infraco Limited**

#### *Scope*

- (1) This section applies if, as at the commencement of this section, the name of Telstra Corporation Limited (ACN 051 775 556) had not been changed to Telstra Infraco Limited.

#### *Transitional*

- (2) Until the name of Telstra Corporation Limited (ACN 051 775 556) is changed to Telstra Infraco Limited, a reference to Telstra Infraco Limited in a telecommunications law is to be read as a reference to Telstra Corporation Limited.

## **Part 34B—Access to supplementary facilities and telecommunications transmission towers**

### **Division 1—Introduction**

#### **581V Simplified outline of this Part**

- If a group of companies includes a carrier, a company (other than a carrier) that is in the group must:
  - (a) provide carriers with access to facilities; and
  - (b) provide carriers with access to telecommunications transmission towers.

#### **581W Carrier company group**

- (1) For the purposes of this Part, *carrier company group* means a group of 2 or more bodies corporate, where:
  - (a) at least one of those bodies corporate is a carrier; and
  - (b) each of those bodies corporate are related to each other.
- (2) For the purposes of this section, the question of whether bodies corporate are related to each other is to be determined in accordance with section 50 of the *Corporations Act 2001*.
- (3) The Minister may, by legislative instrument, determine that, for the purposes of this section, each reference in section 46 of the *Corporations Act 2001* to one-half is taken to be a reference to the percentage specified in the determination.
- (4) If no determination is in force under subsection (3), then, for the purposes of this section, assume that each reference in section 46 of the *Corporations Act 2001* to one-half were a reference to 15%.

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*Consultation*

- (5) Before making or varying a determination under subsection (3), the Minister must:
- (a) make a copy of the draft determination or variation available on the Department's website; and
  - (b) publish a notice on the Department's website:
    - (i) stating that the Minister has prepared the draft; and
    - (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.
- (6) The period specified in the notice must run for at least 30 days after the publication of the notice.
- (7) If interested persons have given comments in accordance with a notice under subsection (5), the Minister must have due regard to those comments in making or varying the determination.

**581X Eligible company**

For the purposes of this Part, *eligible company* means a body corporate that:

- (a) is in a carrier company group; and
- (b) is not a carrier.

**581XA Deemed bodies corporate**

- (1) The Minister may, by legislative instrument, determine that, if:
- (a) a specified person is an individual or a partnership; and
  - (b) the person owns or operates:
    - (i) a facility; or
    - (ii) a telecommunications transmission tower (within the meaning of Division 3);

this Part has effect as if the person were a body corporate that is related to one or more specified bodies corporate.

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- (2) The Minister may, by legislative instrument, determine that, if:
- (a) a person is the trustee of a specified trust; and
  - (b) the person (in the capacity of trustee of the trust) owns or operates:
    - (i) a facility; or
    - (ii) a telecommunications transmission tower (within the meaning of Division 3);

this Part has effect as if the person (in the capacity of trustee of the trust) were a body corporate that is related to one or more specified bodies corporate.

- (3) The Minister may, by legislative instrument, determine that, if:
- (a) 2 or more persons are the trustees of a specified trust; and
  - (b) the persons (in their capacity of trustees of the trust) own or operate:
    - (i) a facility; or
    - (ii) a telecommunications transmission tower (within the meaning of Division 3);

this Part has effect as if the persons (in their capacity of trustees of the trust) were a body corporate that is related to one or more specified bodies corporate.

## **Division 2—Access to supplementary facilities**

### **581Y Access to supplementary facilities**

- (1) An eligible company must, if requested to do so by a carrier, give the carrier access to facilities owned or operated by the eligible company.

Note 1: See also subsection (10) (when carrier is entitled to make a request).

Note 2: See also clause 17 of Schedule 1.

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

- (3) The eligible company is not required to comply with subsection (1) unless:

- (a) the access is provided for the sole purpose of enabling the carrier:
- (i) to provide facilities and carriage services; or
  - (ii) to establish its own facilities; and
- (b) the carrier's request is reasonable; and
- (c) the carrier gives the eligible company reasonable notice that the carrier requires the access; and
- (d) in a case where the facilities do not consist of customer cabling or customer equipment—the facilities:
- (i) were in place on 30 June 1991; or
  - (ii) were not in place on 30 June 1991, and were not obtained after that date by the eligible company solely by means of commercial negotiation.

- (4) Subsection (1) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have any of the following effects:

- (a) depriving any person of a right under a contract that was in force at the time the request was made;

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- (b) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A;
  - (c) preventing Telstra from complying with an undertaking in force under section 577C or 577E;
  - (d) if a final migration plan is in force—requiring a designated Telstra successor company to engage in conduct in connection with matters covered by the final migration plan.
- (5) If, at the time the request was made:
- (a) one or more provisions (the *contingent provisions*) of a contract have not come into force because:
    - (i) the contingent provisions are subject to a condition precedent; and
    - (ii) the condition precedent has not been satisfied; and
  - (b) there is a possibility that the condition precedent could become satisfied; and
  - (c) assuming that the condition precedent had been satisfied:
    - (i) the contingent provisions would come into force; and
    - (ii) the person would have a right under the contingent provisions;
- paragraph (4)(a) has effect, in relation to the contract, as if, at the time the request was made:
- (d) the contract was in force; and
  - (e) the person had the right under the contract.
- (6) For the purposes of this section, in determining whether the carrier's request is reasonable, regard must be had to the question whether compliance with the request will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services. That question is to be determined in the same manner as it is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.
- (7) Subsection (6) is intended to limit the matters to which regard may be had.
- (8) For the purposes of subsection (1), if:
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- (a) there is an agreement in force between Telstra or a designated Telstra successor company and an NBN corporation; and
  - (b) the agreement relates to the NBN corporation's access to facilities owned or operated by Telstra or the designated Telstra successor company; and
  - (c) apart from this section, the agreement would result in the NBN corporation being the operator of the facilities; the NBN corporation is taken not to be the operator of the facilities.
- (9) A reference in this section to a *facility* is a reference to:
- (a) a facility as defined by section 7; or
  - (b) land on which a facility mentioned in paragraph (a) is located; or
  - (c) a building or structure on land referred to in paragraph (b); or
  - (d) customer equipment, or customer cabling, connected to a telecommunications network owned or operated by a carrier.
- (10) A carrier is not entitled to make a request under subsection (1) of this section before the end of the 60-day period beginning on the day after the day specified in the instrument made under subsection 581ZH(3).
- (11) In this section:
- NBN corporation* has the same meaning as in section 577BA.

**581Z Terms and conditions of access**

- (1) An eligible company must comply with subsection 581Y(1) on such terms and conditions as are:
- (a) agreed between the following parties:
    - (i) the eligible company;
    - (ii) the carrier concerned; or
  - (b) failing agreement, determined by an arbitrator appointed by the parties.



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

- (2) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (3) 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.
- (4) Subsection (3) does not, by implication, limit subsection (2).
- (5) A determination made in an arbitration under this section must not be inconsistent with a Ministerial pricing determination in force under section 581ZA.
- (6) An arbitrator must not make a determination under this section if the determination would have the effect of:
  - (a) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A; or
  - (b) preventing Telstra from complying with an undertaking in force under section 577C or 577E; or
  - (c) if a final migration plan is in force—requiring a designated Telstra successor company to engage in conduct in connection with matters covered by the final migration plan.
- (7) If:
  - (a) an agreement mentioned in paragraph (1)(a) is in force; and
  - (b) the agreement is in writing;a determination under this section has no effect to the extent to which it is inconsistent with the agreement.

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**581ZA Ministerial pricing determinations**

(1) The Minister may, by legislative instrument, make a determination setting out principles dealing with price-related terms and conditions relating to the obligations imposed by subsection 581Y(1). The determination is to be known as a *Ministerial pricing determination*.

(2) In this section:

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

## **Division 3—Access to telecommunications transmission towers**

### **581ZB Definitions**

In this Division:

*NBN corporation* has the same meaning as in section 577BA.

*telecommunications transmission tower* has the meaning given by section 581ZBA.

### **581ZBA Telecommunications transmission tower**

- (1) For the purposes of this Division, *telecommunications transmission tower* means a tower, pole, mast or similar structure that:
  - (a) is used to supply a carriage service by means of radiocommunications; and
  - (b) satisfies either of the following requirements:
    - (i) the carriage service is supplied by a carrier or carriage service provider;
    - (ii) the tower, pole, mast or structure is in a class specified in a determination under subsection (2); and
  - (c) is not covered by a determination under subsection (3).
- (2) For the purposes of subparagraph (1)(b)(ii), the Minister may, by legislative instrument, make a determination specifying one or more classes of towers, poles, masts or structures used to supply a carriage service by means of radiocommunications.
- (3) For the purposes of paragraph (1)(c), the Minister may, by legislative instrument, make a determination declaring that a specified tower, pole, mast or structure is not a telecommunications transmission tower for the purposes of this Division.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

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**581ZC Extended meaning of *access***

For the purposes of this Division, ***giving access*** to a tower includes replacing the tower with another tower located on the same site and giving access to the replacement tower.

**581ZD Access to telecommunications transmission towers**

- (1) An eligible company must, if requested to do so by a carrier, give the carrier access to a telecommunications transmission tower owned or operated by the eligible company.

Note 1: See also subsection (11) (when carrier is entitled to make a request).

Note 2: See also clause 33 of Schedule 1.

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

- (3) The eligible company is not required to comply with subsection (1) unless:

- (a) the access is provided for the sole purpose of enabling the carrier to install a facility used, or for use, in connection with the supply of a carriage service by means of radiocommunications; and
- (b) the carrier gives the eligible company reasonable notice that the carrier requires the access.

- (4) The eligible company is not required to comply with subsection (1) in relation to a particular telecommunications transmission tower if there is in force a written certificate issued by the ACCC stating that, in the ACCC's opinion, compliance with subsection (1) in relation to that tower is not technically feasible.

- (5) In determining whether compliance with subsection (1) in relation to a tower is technically feasible, the ACCC must have regard to:

- (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
  - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the tower; and
  - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
    - (i) changing the configuration or operating parameters of a facility situated on the tower; and
    - (ii) making alterations to the tower; and
  - (d) such other matters (if any) as the ACCC considers relevant.
- (6) Before issuing a certificate under subsection (4), the ACCC may consult the ACMA.
- (7) If the ACCC receives a request to make a decision about the issue of a certificate under subsection (4), the ACCC must use its best endeavours to make that decision within 10 business days after the request was made.
- (8) Subsection (1) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have any of the following effects:
- (a) depriving any person of a right under a contract that was in force at the time the request was made;
  - (b) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A;
  - (c) preventing Telstra from complying with an undertaking in force under section 577C or 577E;
  - (d) if a final migration plan is in force—requiring a designated Telstra successor company to engage in conduct in connection with matters covered by the final migration plan.
- (9) If, at the time the request was made:
- (a) one or more provisions (the *contingent provisions*) of a contract have not come into force because:

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- (i) the contingent provisions are subject to a condition precedent; and
  - (ii) the condition precedent has not been satisfied; and
  - (b) there is a possibility that the condition precedent could become satisfied; and
  - (c) assuming that the condition precedent had been satisfied:
    - (i) the contingent provisions would come into force; and
    - (ii) the person would have a right under the contingent provisions;
- paragraph (8)(a) has effect, in relation to the contract, as if, at the time the request was made:
- (d) the contract was in force; and
  - (e) the person had the right under the contract.
- (10) For the purposes of subsection (1), if:
- (a) there is an agreement in force between Telstra or a designated Telstra successor company and an NBN corporation; and
  - (b) the agreement relates to the NBN corporation's access to a telecommunications transmission tower owned or operated by Telstra or the designated Telstra successor company; and
  - (c) apart from this section, the agreement would result in the NBN corporation being the operator of the telecommunications transmission tower;
- the NBN corporation is taken not to be the operator of the telecommunications transmission tower.
- (11) A carrier is not entitled to make a request under subsection (1) of this section before the end of the 60-day period beginning on the day after the day specified in the instrument made under subsection 581ZH(3).

**581ZE Terms and conditions of access**

- (1) An eligible company must comply with subsection 581ZD(1) on such terms and conditions as are:

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- (a) agreed between the following parties:
  - (i) the eligible company;
  - (ii) the carrier concerned; 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.

- (2) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (3) 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.
- (4) Subsection (3) does not, by implication, limit subsection (2).
- (5) An arbitrator must not make a determination under this section if the determination would have the effect of:
  - (a) preventing a designated Telstra successor company from complying with an undertaking in force under section 577A; or
  - (b) preventing Telstra from complying with an undertaking in force under section 577C or 577E; or
  - (c) if a final migration plan is in force—requiring a designated Telstra successor company to engage in conduct in connection with matters covered by the final migration plan.
- (6) If:
  - (a) an agreement mentioned in paragraph (1)(a) is in force; and
  - (b) the agreement is in writing;a determination under this section has no effect to the extent to which it is inconsistent with the agreement.

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**581ZF Code relating to access**

- (1) The ACCC may, by legislative instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Division.
- (2) An eligible company must comply with the Code.
- (3) This section does not, by implication, limit a power conferred by or under this Act to make an instrument.
- (4) This section does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.
- (5) Subsections (3) and (4) do not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.

**581ZG This Division does not limit Division 2**

This Division does not, by implication, limit Division 2.



## **Division 4—Review of corporate control percentage**

### **581ZH Review of corporate control percentage**

- (1) Within 6 months after the commencement of this section, the ACCC must conduct a review of whether a determination should be made under subsection 581W(3) and, if so, the percentage that should be specified in the determination.
- (2) The ACCC must:
  - (a) prepare a written report of the review; and
  - (b) give the report to the Minister.
- (3) The ACCC must, by notifiable instrument, specify the day on which the report was given to the Minister.
- (4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.

## Part 35—Miscellaneous

### 582 Simplified outline

The following is a simplified outline of this Part:

- Provision is made in relation to continuing offences.
- Partnerships are to be treated as persons for the purposes of this Act, the *Spam Act 2003*, regulations under the *Spam Act 2003*, the *Do Not Call Register Act 2006*, regulations under the *Do Not Call Register Act 2006*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.
- Provision is made in relation to the service of documents.
- Instruments under this Act, the *Spam Act 2003*, the *Do Not Call Register Act 2006* or the *Telecommunications (Consumer Protection and Service Standards) Act 1999* may apply, adopt or incorporate certain other instruments.
- An arbitration under this Act or the *Telecommunications (Consumer Protection and Service Standards) Act 1999* must not result in the acquisition of property otherwise than on just terms.
- In order to provide a constitutional safety-net, compensation is payable in the event that the operation of this Act, the *Spam Act 2003*, regulations under the *Spam Act 2003*, the *Do Not Call Register Act 2006*, regulations under the *Do Not Call Register Act 2006*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or regulations under that Act results in the acquisition of property otherwise than on just terms.

- This Act, the *Spam Act 2003*, regulations under the *Spam Act 2003*, the *Do Not Call Register Act 2006*, regulations under the *Do Not Call Register Act 2006*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* do not affect the performance of State or Territory functions.
- The Minister may make grants of financial assistance to consumer bodies for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues.
- The Minister may make grants of financial assistance for purposes in connection with research into the social, economic, environmental or technological implications of developments relating to telecommunications.
- Losses incurred by Optus Networks before 1 February 1992 may not be claimed as deductions.
- The Governor-General may make regulations for the purposes of this Act.

### 583 Penalties for certain continuing offences

- (1) This section applies if an offence against this Act is a continuing offence (whether under this Act or because of section 4K of the *Crimes Act 1914*).
- (2) The maximum penalty for each day that the offence continues is 10% of the maximum penalty that could be imposed in respect of the principal offence.
- (3) In this section:

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*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**584 Procedure relating to certain continuing offences**

- (1) If section 43 applies to an offence against a provision of this Act, charges against the same person for any number of offences against that provision may be joined in the same information, complaint or summons if:
  - (a) those charges are founded on the same facts; or
  - (b) form, or are part of, a series of offences of the same or a similar character.
- (2) If a person is convicted of 2 or more offences against such a provision, the court may impose one penalty in respect of both or all of those offences, but that penalty must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each offence.

**585 Treatment of partnerships**

- (1) This Act applies to a partnership as if the partnership were a person, but it applies with the following changes:
  - (a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;
  - (b) any offence against this Act that would otherwise be committed by the partnership is taken to have been committed by each partner who:
    - (i) aided, abetted, counselled or procured the relevant act or omission; or
    - (ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).
- (2) In this section:

*civil penalty provision* includes:

- (a) a civil penalty provision within the meaning of the *Spam Act 2003*; and
- (b) a civil penalty provision within the meaning of the *Do Not Call Register Act 2006*.

**offence** includes a breach of a civil penalty provision.

**this Act** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

### **586 Giving of documents to partnerships**

- (1) For the purposes of this Act, if a document is given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.
- (2) In this section:

**this Act** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

### **587 Nomination of address for service of documents**

- (1) For the purposes of this Act, a person may nominate an address for service in:
  - (a) an application made by the person under this Act; or
  - (b) any other document given by the person to the ACCC or the ACMA.

The address must be in Australia.

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- (2) For the purposes of this Act, a document may be given to the person by leaving it at, or by sending it by pre-paid post to, the nominated address for service.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

- (4) In this section:

**this Act** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**588 Service of summons or process on foreign corporations—  
criminal proceedings**

- (1) This section applies to a summons or process in any criminal proceedings under this Act, where:
- (a) the summons or process is required to be served on a body corporate incorporated outside Australia; and
- (b) the body corporate does not have a registered office or a principal office in Australia; and
- (c) the body corporate has an agent in Australia.
- (2) Service of the summons or process may be effected by serving it on the agent.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

- (4) In this section:

***criminal proceeding*** includes a proceeding to determine whether a person should be tried for an offence.

***this Act*** includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**589 Instruments under this Act may provide for matters by reference to other instruments**

- (1) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act:
  - (a) as in force at a particular time; or
  - (b) as in force from time to time.
- (2) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing whatever:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time;even if the other instrument or writing does not yet exist when the instrument under this Act is made.
- (3) A reference in subsection (2) to any other instrument or writing includes a reference to an instrument or writing:
  - (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory, an officer or authority of the Commonwealth or of a State or Territory or an overseas entity); and
  - (b) whether of a legislative, administrative or other official nature or of any other nature; and
  - (c) whether or not having any legal force or effect;for example:
  - (d) regulations or rules under an Act; or
  - (e) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or

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- (f) an international technical standard or performance indicator;  
or
  - (g) a written agreement or arrangement or an instrument or writing made unilaterally.
- (4) Nothing in this section limits the generality of anything else in it.
- (5) Subsections (1) and (2) have effect despite anything in:
- (a) the *Acts Interpretation Act 1901*; or
  - (b) the *Legislation Act 2003*.
- (6) In this section:
- instrument under this Act*** means:
- (a) the regulations; or
  - (b) any other instrument made under this Act.
- this Act*** includes:
- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
  - (b) Parts XIB and XIC of the *Competition and Consumer Act 2010*; and
  - (c) the *Spam Act 2003*; and
  - (d) the *Do Not Call Register Act 2006*.

**590 Arbitration—acquisition of property**

- (1) This section applies to a provision of this Act that authorises the conduct of an arbitration (whether by the ACCC or another person).
- (2) The provision has no effect to the extent (if any) to which it purports to authorise the acquisition of property if that acquisition:
  - (a) is otherwise than on just terms; and
  - (b) would be invalid because of paragraph 51(xxxi) of the Constitution.



(3) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***this Act*** includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

### **591 Compensation—constitutional safety net**

(1) If:

(a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and

(b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***this Act*** includes:

(a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and

(b) the *Spam Act 2003* and regulations under that Act; and

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- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**592 Act not to affect performance of State or Territory functions**

- (1) A power conferred by this Act must not be exercised in such a way as to prevent the exercise of the powers, or the performance of the functions, of government of a State, the Northern Territory or the Australian Capital Territory.
- (2) In this section:
  - this Act* includes:
    - (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
    - (b) the *Spam Act 2003* and regulations under that Act; and
    - (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**593 Funding of consumer representation, and of research, in relation to telecommunications**

- (1) The Minister may, on behalf of the Commonwealth, make a grant of financial assistance to a consumer body for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues.
- (2) The Minister may, on behalf of the Commonwealth, make a grant of financial assistance to a person or body for purposes in connection with research into the social, economic, environmental or technological implications of developments relating to telecommunications.

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- (3) The terms and conditions on which financial assistance is to be granted under this section are to be set out in a written agreement between the Commonwealth and the person or body receiving the grant.
- (4) An agreement under subsection (3) may be entered into by the Minister on behalf of the Commonwealth.
- (5) The Minister must, as soon as practicable after the end of each financial year (and, in any event, within 6 months after the end of the financial year), cause to be prepared a report relating to the administration of this section during the financial year.
- (6) The Minister must cause copies of a report prepared under subsection (5) to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.
- (7) Grants under this section are to be paid out of money appropriated by the Parliament for the purposes of this section.
- (8) In this section:

**consumer body** means a body or association that represents the interests of consumers.

**telecommunications** means the carriage of communications by means of guided and/or unguided electromagnetic energy.

### 593A Removal of Optus Networks' tax losses

- (1) This section applies in relation to Optus Networks Pty Limited (ACN 008 570 330) (**Optus Networks**) (whether or not its name is changed).
- (2) Optus Networks cannot deduct from its assessable income for a year of income ending on or after 1 February 1992 a loss (or a part of a loss) incurred in a year of income ending on or before 1 February 1992.

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- (3) Subsection (2) has effect despite anything in the *Income Tax Assessment Act 1936*, in particular, sections 79E, 79F, 80, 80AAA and 80AA of that Act as in force before 14 September 2006.
- (4) Optus Networks cannot deduct from its assessable income for the 1997-98 income year, or a later income year, a tax loss (or a part of a tax loss) incurred in an income year ending on or before 1 February 1992.
- (5) Subsection (4) has effect despite anything in the *Income Tax Assessment Act 1997*, in particular Division 36 of that Act.
- (6) An expression has the same meaning in this section as it has in the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

**594 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.