



Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010

No. 140, 2010

**An Act to amend legislation relating to
telecommunications, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010

No. 140, 2010

An Act to amend legislation relating to telecommunications, and for other purposes

[Assented to 15 December 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Telecommunications Legislation
Amendment (Competition and Consumer Safeguards) Act 2010*.

Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010

No. 140, 2010 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1A. Schedule 1, Part 1A	The day after this Act receives the Royal Assent.	16 December 2010
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	15 December 2010
2. Schedule 1, Part 1, Division 1	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	start of 1 January 2011 (paragraph (b) applies)
3. Schedule 1, Part 1, Division 2	Immediately after a final functional separation undertaking comes into force under Part 9 of Schedule 1 to the <i>Telecommunications Act 1997</i> . The Minister must announce by notice in the <i>Gazette</i> the time when a final functional separation undertaking comes into force under Part 9 of Schedule 1 to the <i>Telecommunications Act 1997</i> .	
4. Schedule 1, Part 1, Division 3	Immediately after an undertaking comes into force under section 577A of the <i>Telecommunications Act 1997</i> . The Minister must announce by notice in the <i>Gazette</i> the time when an undertaking comes into force under section 577A of the <i>Telecommunications Act 1997</i> .	6 March 2012 (see <i>Gazette</i> 2012, No. S23)

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Schedule 1, Parts 2 and 3	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	start of 1 January 2011 (paragraph (b) applies)
6. Schedule 1, Part 4	The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.	15 March 2011
7. Schedule 1, Part 5	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	15 June 2011
8. Schedule 1, Part 5A	The day after this Act receives the Royal Assent.	16 December 2010
9. Schedule 1, Part 6	The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.	15 March 2011
10. Schedule 1, Part 7	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	start of 1 January 2011 (paragraph (b) applies)
11. Schedule 1, Part 8	The day after this Act receives the Royal Assent.	16 December 2010
12. Schedule 1, Part 9	The day after this Act receives the Royal Assent.	16 December 2010

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: On 1 January 2011, the short title of the *Trade Practices Act 1974* was changed to the *Competition and Consumer Act 2010* by the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*.

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Schedule 1—Amendments

Part 1A—Objects

Telecommunications Act 1997

1A At the end of subsection 3(1)

Add:

; and (c) the availability of accessible and affordable carriage services that enhance the welfare of Australians.

Part 1—Amendments relating to Telstra

Division 1—Amendments commencing on the day after this Act receives the Royal Assent

Radiocommunications Act 1992

1 After subsection 58(1)

Insert:

- (1A) Subsection (1) has effect subject to section 577J of the
Telecommunications Act 1997.

2 At the end of section 60

Add:

- (15) This section has effect subject to section 577J of the
Telecommunications Act 1997.

3 At the end of section 62

Add:

- (4) This section has effect subject to section 577J of the
Telecommunications Act 1997.

4 At the end of section 68

Add:

- (5) This section has effect subject to section 577K of the
Telecommunications Act 1997.

5 Subsection 85(1)

After “section 86”, substitute “of this Act and section 577L of the
Telecommunications Act 1997”.

Telecommunications Act 1997

6 Section 7

Insert:

designated part of the spectrum has the meaning given by section 577H.

7 Section 7

Insert:

draft functional separation undertaking means a draft functional separation undertaking under Division 2 of Part 9 of Schedule 1.

8 Section 7

Insert:

draft migration plan means a draft migration plan under Subdivision B of Division 2 of Part 33.

9 Section 7

Insert:

final functional separation undertaking means a final functional separation undertaking under Division 2 of Part 9 of Schedule 1.

10 Section 7

Insert:

final migration plan means a final migration plan under Subdivision B of Division 2 of Part 33.

11 Section 7

Insert:

hybrid fibre-coaxial network means a telecommunications network:

- (a) that is for use for the transmission of any broadcasting service; and
- (b) that is also capable of being used to supply an internet carriage service; and
- (c) the line component of which consists of optical fibre to connecting nodes, supplemented by coaxial cable connections from the nodes to the premises of end-users.

12 Section 7

Insert:

internet carriage service means a carriage service that enables end-users to access the internet.

13 Section 7

Insert:

radiocommunications device has the same meaning as in the *Radiocommunications Act 1992*.

14 Section 7

Insert:

spectrum has the same meaning as in the *Radiocommunications Act 1992*.

15 Section 7

Insert:

spectrum licence has the same meaning as in the *Radiocommunications Act 1992*.

16 Section 7

Insert:

subscription television broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

17 After subsection 69(5)

Insert:

(5A) Subsection (1) does not apply to a condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED.

Note: Sections 577AD, 577CD and 577ED deal with undertakings given by Telstra.

18 Before subsection 69(7)

Insert:

(6B) Subsection (1) does not apply to the condition set out in clause 84 of Schedule 1.

Note: Clause 84 of Schedule 1 deals with control by Telstra of certain spectrum licences.

19 After subsection 70(2)

Insert:

(2A) Subsection (1) does not apply to a condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED.

Note: Sections 577AD, 577CD and 577ED deal with undertakings given by Telstra.

20 After paragraph 70(5)(a)

Insert:

(aa) the condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED;

21 Before subsection 70(4)

Insert:

(3B) Subsection (1) does not apply to the condition set out in clause 84 of Schedule 1.

Note: Clause 84 of Schedule 1 deals with control by Telstra of certain spectrum licences.

22 After paragraph 564(3)(a)

Insert:

(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

23 Subsection 564(3) (after note 1)

Insert:

Note 1A: Sections 577AD, 577CD and 577ED deal with undertakings given by Telstra.

24 After paragraph 564(3)(b)

Insert:

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(ba) the carrier licence condition set out in clause 84 of Schedule 1; or

25 Subsection 564(3) (after note 2)

Insert:

Note 2A: Clause 84 of Schedule 1 deals with control by Telstra of certain spectrum licences.

26 After paragraph 571(3)(a)

Insert:

(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

27 Subsection 571(3) (after note 1)

Insert:

Note 1A: Sections 577AD, 577CD and 577ED deal with undertakings given by Telstra.

28 After paragraph 571(3)(b)

Insert:

(ba) the carrier licence condition set out in clause 84 of Schedule 1; or

29 Subsection 571(3) (after note 2)

Insert:

Note 2A: Clause 84 of Schedule 1 deals with control by Telstra of certain spectrum licences.

30 After Part 32

Insert:

Part 33—Voluntary undertakings 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 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.
- 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.

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

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- (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).
- (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).

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- (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;
 - (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

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- (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:

- (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:
- (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.

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 events within a specified period, the ACCC must, as soon as practicable after accepting the undertaking, publish the undertaking on its website.

577AD Compliance with undertaking about structural separation

If an undertaking given by Telstra is in force under section 577A, Telstra must comply with the undertaking.

577B Variation of undertaking about structural separation

- (1) This section applies if an undertaking given by Telstra is in force under section 577A.
- (2) Telstra 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).
- (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 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*.
- (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

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- (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 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.

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(6) If Telstra 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 Telstra; and
- (b) the disposal of the asset by Telstra is required for the compliance by Telstra 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:

- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
- (b) Telstra 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; and
- (d) the entering into of the contract, arrangement or understanding by the NBN corporation; and
- (e) conduct engaged in by Telstra 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;

is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

(9) If:

- (a) an undertaking given by Telstra is in force under section 577A; and

- (b) Telstra 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 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) Telstra 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*.

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 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).

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.

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*.

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:

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- (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).

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.

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
 - (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:
 - (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:

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- (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:
 - (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 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.
- (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).
- (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.

577BF Variation of final migration plan

- (1) This section applies if a final migration plan is in force.
- (2) Telstra 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
 - (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.
- (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

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- (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
 - (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.

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

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(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
 - (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).

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- (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
- (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
 - (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

577G Enforcement of undertakings

- (1) If:
- (a) an undertaking given by Telstra is in force under section 577A, 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).

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- (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

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- (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:
 - (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:

- (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

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- (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:

- (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

- (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 is in a position to exercise control of a network

- (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
 - (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 (1) purely because of being an employee.
- (3) More than one person may be in a position to exercise control of a network.

31 At the end of Schedule 1

Add:

Part 9—Functional separation of Telstra

Division 1—Introduction

68 Simplified outline

The following is a simplified outline of this Part:

- Telstra must prepare a draft functional separation undertaking.
- A final functional separation undertaking is a draft functional separation undertaking that has been approved by the Minister.
- Telstra must comply with a final functional separation undertaking.
- However, Telstra is not required to prepare a draft functional separation undertaking if an undertaking about structural separation is in force under section 577A.

69 Definitions

In this Part:

business unit means a part of Telstra.

declared network service has the meaning given by clause 70.

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

equivalence means:

- (a) equivalence in relation to terms and conditions relating to price or a method of ascertaining price; and
- (b) equivalence in relation to other terms and conditions.

functional includes organisational.

functional separation principles means the principles set out in clause 74.

functional separation requirements determination means a determination under clause 75.

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

regulated service has the meaning given by clause 71.

retail business unit means a business unit by which Telstra deals with its retail customers.

supply, in relation to a service, includes supply by Telstra of the service to itself.

wholesale/network business unit means the business unit of Telstra:

- (a) that supplies the following:
 - (i) fault detection, handling and rectification;
 - (ii) service activation and provisioning;
 - (iii) declared network services;to Telstra's retail business units, and Telstra's wholesale customers, in relation to eligible services; and
- (b) by which Telstra deals with its wholesale customers.

70 Declared network services

For the purposes of this Part, a **declared network service** is a service specified in a legislative instrument made by the Minister for the purposes of this clause.

71 Regulated services

- (1) For the purposes of this Part, a **regulated service** is a declared service within the meaning of Part XIC of the *Competition and Consumer Act 2010*.
- (2) Subclause (1) has effect subject to subclause (3).

- (3) The Minister may, by legislative instrument, determine that a specified service is not a *regulated service* for the purposes of this Part.
- (4) The Minister may, by legislative instrument, determine that a specified eligible service is a *regulated service* for the purposes of this Part.

72 Notional contracts

For the purposes of this Part:

- (a) a notional contract (however described) between any of Telstra's business units is to be treated as if it were an actual contract; and
- (b) any terms and conditions (whether or not relating to price or a method of ascertaining price) in such a notional contract are to be treated as if they were actual terms and conditions.

Division 2—Functional separation undertaking

73 Contents of draft or final functional separation undertaking

- (1) A draft or final functional separation undertaking must:
 - (a) comply with the functional separation principles; and
 - (b) contain provisions requiring Telstra to establish and maintain a committee to be known as the Oversight and Equivalence Board; and
 - (c) contain provisions requiring Telstra to require the Oversight and Equivalence Board:
 - (i) within a specified period after the end of each quarter during which a final functional separation undertaking is in force, to prepare a report about the extent (if any) to which Telstra complied with the undertaking during that quarter; and
 - (ii) to give a copy of the report to the ACCC and to Telstra's board of directors; and
 - (d) comply with such requirements (if any) as are specified in a functional separation requirements determination.

Note 1: For the functional separation principles, see clause 74.

Note 2: For the functional separation requirements determination, see clause 75.

- (2) For the purposes of subparagraph (1)(c)(i), if a final functional separation undertaking is in force throughout a part, but not the whole, of a particular quarter, that part is taken to be a quarter in its own right.
- (3) If a final functional separation 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.

74 Functional separation principles

- (1) The *functional separation principles* are as follows:
 - (a) the principle that there should be equivalence in relation to the supply by Telstra of regulated services to:
 - (i) Telstra's wholesale customers; and
 - (ii) Telstra's retail business units;
 - (b) the principle that Telstra should maintain:
 - (i) one or more retail business units; and
 - (ii) a wholesale/network business unit;
 - (c) the principle that Telstra should maintain arm's length functional separation between:
 - (i) its wholesale/network business unit; and
 - (ii) its retail business units;
 - (d) the principle that Telstra should have systems, procedures and practices that relate to:
 - (i) compliance with a final functional separation undertaking; and
 - (ii) monitoring of, and reporting on, compliance with a final functional separation undertaking; and
 - (iii) the development of performance measures relating to compliance with a final functional separation undertaking; and
 - (iv) independent audit, and other checks, of compliance with a final functional separation undertaking;
 - (e) the principle that Telstra's wholesale/network business unit should not consult Telstra's retail business units about:

- (i) proposed services to be supplied by Telstra's wholesale/network business unit; or
 - (ii) proposed developments in connection with services supplied by Telstra's wholesale/network business unit; unless Telstra's wholesale/network business unit also consults Telstra's wholesale customers at the same time and in the same manner.
- (2) In determining the principle of equivalence covered by paragraph (1)(a), regard must be had to whether:
 - (a) the terms and conditions relating to price or a method of ascertaining price; and
 - (b) other terms and conditions; on which Telstra supplies regulated services to its wholesale customers are no less favourable than the terms and conditions on which Telstra supplies those services to its retail business units.
- (3) Subclause (2) does not limit the matters to which regard may be had.
- (4) To avoid doubt, this clause does not affect the meaning of anything in Part 33.

75 Functional separation requirements determination

- (1) The Minister may make a written determination (a *functional separation requirements determination*) specifying requirements to be complied with by a draft or final functional separation undertaking.
- (2) A functional separation requirements determination may deal with the manner in which the functional separation principles are to be implemented.
- (3) A functional separation requirements determination may deal with the manner in which a requirement set out in paragraph 73(1)(b) or (c) is to be met.
 - Note: Clause 73 deals with the contents of a draft or final functional separation undertaking.
- (4) Subclauses (2) and (3) do not limit subclause (1).

- (4A) Before making or varying a functional separation requirements determination, the Minister must:
- (a) cause to be published on the Department's website a notice:
 - (i) setting out the determination or variation; and
 - (ii) inviting persons to make submissions to the Minister about the determination or variation within 14 days after the notice is published; and
 - (b) give the ACCC a copy of the notice; and
 - (c) consider any submissions received within the 14-day period mentioned in paragraph (a); and
 - (d) ask the ACCC to give advice to the Minister, within 28 days after the publication of the notice, about the determination or variation; and
 - (e) have regard to any advice given by the ACCC.
- (4B) Subclause (4A) does not, by implication, prevent the Minister from asking the ACCC to give the Minister additional advice about a matter arising under this clause.
- (5) The Minister must ensure that a functional separation requirements determination comes into force within 90 days after the commencement of this clause.
- (5A) Subclause (5) does not apply if, before the end of the period applicable under subclause (5):
- (a) the following conditions are satisfied:
 - (i) an undertaking given by Telstra is in force under section 577A;
 - (ii) the undertaking requires Telstra to give the ACCC a draft migration plan;
 - (iii) in accordance with the undertaking, Telstra has given the ACCC a draft migration plan;
 - (iv) the ACCC has approved the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC; or
 - (b) both:
 - (i) an undertaking given by Telstra is in force under section 577A; and
 - (ii) the undertaking does not require Telstra to give the ACCC a draft migration plan.

Note: Section 577A deals with undertakings about structural separation.

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- (5B) The Minister may, by writing, extend or further extend the 90-day period referred to in subclause (5) so long as the extension, or the total of the extensions, does not exceed 18 months.
- (5C) The Minister must not make an instrument under subclause (5B) unless:
- (a) Telstra satisfies the Minister that Telstra is preparing an undertaking under section 577A; or
 - (b) both:
 - (i) Telstra has given the ACCC an undertaking under section 577A; and
 - (ii) the ACCC has not decided whether to accept the undertaking; or
 - (c) the following conditions are satisfied:
 - (i) Telstra has given the ACCC an undertaking under section 577A;
 - (ii) the ACCC has decided to accept the undertaking;
 - (iii) that decision is expressed to be subject to the occurrence of one or more specified events within a specified period;
 - (iv) the undertaking is not in force;
 - (v) that period has not ended; or
 - (d) the following conditions are satisfied:
 - (i) an undertaking given by Telstra is in force under section 577A;
 - (ii) the undertaking requires Telstra to give the ACCC a draft migration plan;
 - (iii) Telstra satisfies the Minister that Telstra is preparing a draft migration plan to be given to the ACCC in accordance with the undertaking; or
 - (e) the following conditions are satisfied:
 - (i) an undertaking given by Telstra is in force under section 577A;
 - (ii) the undertaking requires Telstra to give the ACCC a draft migration plan;
 - (iii) Telstra has given the ACCC a draft migration plan in accordance with the undertaking;

- (iv) the ACCC has not decided whether to approve the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC.

Note: Section 577A deals with undertakings about structural separation.

- (5D) The Minister must cause a copy of an instrument under subclause (5B) to be tabled in each House of the Parliament within 15 sitting days of that House after making the instrument.

(5E) If:

- (a) before the end of the period applicable under subclause (5), the ACCC accepts an undertaking given by Telstra under section 577A; and
- (b) the decision to accept the undertaking is expressed to be subject to the occurrence of one of more specified events within a specified period (the *post-acceptance period*) after the undertaking is accepted; and
- (c) the post-acceptance period ends after the end of the period applicable under subclause (5); and
- (d) the undertaking does not come into force before the end of the post-acceptance period;

then:

- (e) subclause (5) does not apply; and
- (f) the Minister must ensure that a functional separation requirements determination comes into force within 90 days after the end of the post-acceptance period.

Note: Section 577A deals with undertakings about structural separation.

(5EA) If:

- (a) before the end of the period applicable under subclause (5), the ACCC accepts an undertaking given by Telstra under section 577A; and
- (b) the decision to accept the undertaking is expressed to be subject to the occurrence of one of more specified events within a specified period (the *post-acceptance period*) after the undertaking is accepted; and
- (c) the post-acceptance period ends after the end of the period applicable under subclause (5); and
- (d) the undertaking comes into force before the end of the post-acceptance period; and

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- (e) the undertaking requires Telstra to give the ACCC a draft migration plan; and
- (f) a final migration plan does not come into force before the end of the post-acceptance period;

then:

- (g) subclause (5) does not apply; and
- (h) the Minister must ensure that a functional separation requirements determination comes into force within 90 days after the end of the post-acceptance period.

Note: Section 577A deals with undertakings about structural separation.

(5EB) Subclause (5) does not apply if:

- (a) before the end of the period applicable under subclause (5), the ACCC accepts an undertaking given by Telstra under section 577A; and
- (b) the decision to accept the undertaking is expressed to be subject to the occurrence of one of more specified events within a specified period (the *post-acceptance period*) after the undertaking is accepted; and
- (c) the post-acceptance period ends after the end of the period applicable under subclause (5); and
- (d) the undertaking comes into force before the end of the post-acceptance period; and
- (e) the undertaking does not require Telstra to give the ACCC a draft migration plan.

Note: Section 577A deals with undertakings about structural separation.

(5EC) Subclause (5) does not apply if:

- (a) before the end of the period applicable under subclause (5), the ACCC accepts an undertaking given by Telstra under section 577A; and
 - (b) the decision to accept the undertaking is expressed to be subject to the occurrence of one of more specified events within a specified period (the *post-acceptance period*) after the undertaking is accepted; and
 - (c) the post-acceptance period ends after the end of the period applicable under subclause (5); and
 - (d) the undertaking comes into force before the end of the post-acceptance period; and
-

- (e) the undertaking requires Telstra to give the ACCC a draft migration plan; and
- (f) a final migration plan has come into force before the end of the post-acceptance period.

Note: Section 577A deals with undertakings about structural separation.

- (5F) The Minister is not required to observe any requirements of procedural fairness in relation to the making of an instrument under subclause (5B).
- (5G) The Minister does not have a duty to consider whether to make an instrument under subclause (5B), whether at the request of a person or in any other circumstances.
- (6) A determination under subclause (1) is not a legislative instrument.
- (7) An instrument under subclause (5B) is not a legislative instrument.

76 Draft functional separation undertaking to be given to Minister

- (1) Telstra must give the Minister a draft functional separation undertaking:
 - (a) within 90 days after the first functional separation requirements determination comes into force; or
 - (b) if a longer period is specified in an instrument under subclause (3)—within that longer period.
- (2) However, subclause (1) does not apply if:
 - (a) the following conditions are satisfied:
 - (i) an undertaking given by Telstra is in force under section 577A;
 - (ii) the undertaking requires Telstra to give the ACCC a draft migration plan;
 - (iii) in accordance with the undertaking, Telstra has given the ACCC a draft migration plan;
 - (iv) the ACCC has approved the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC; or
 - (b) both:
 - (i) an undertaking given by Telstra is in force under section 577A; and

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- (ii) the undertaking does not require Telstra to give the ACCC a draft migration plan.

Note: Section 577A deals with undertakings about structural separation.

- (3) The Minister may, by writing, specify a period for the purposes of paragraph (1)(b).
- (4) The Minister must not specify a period under subclause (3) unless:
 - (a) Telstra satisfies the Minister that Telstra is preparing an undertaking under section 577A; or
 - (b) both:
 - (i) Telstra has given the ACCC an undertaking under section 577A; and
 - (ii) the ACCC has not decided whether to accept the undertaking; or
 - (c) the following conditions are satisfied:
 - (i) Telstra has given the ACCC an undertaking under section 577A;
 - (ii) the ACCC has decided to accept the undertaking;
 - (iii) that decision is expressed to be subject to the occurrence of one or more specified events within a specified period;
 - (iv) the undertaking is not in force;
 - (v) that period has not ended; or
 - (d) the following conditions are satisfied:
 - (i) an undertaking given by Telstra is in force under section 577A;
 - (ii) the undertaking requires Telstra to give the ACCC a draft migration plan;
 - (iii) Telstra satisfies the Minister that Telstra is preparing a draft migration plan to be given to the ACCC in accordance with the undertaking; or
 - (e) the following conditions are satisfied:
 - (i) an undertaking given by Telstra is in force under section 577A;
 - (ii) the undertaking requires Telstra to give the ACCC a draft migration plan;
 - (iii) Telstra has given the ACCC a draft migration plan in accordance with the undertaking;

- (iv) the ACCC has not decided whether to approve the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC.

Note: Section 577A deals with undertakings about structural separation.

- (5) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a power conferred on the Minister by subclause (3). However, the Minister must not revoke a subclause (3) instrument.
- (6) A period specified in a subclause (3) instrument may be a period ascertained wholly or partly by reference to the occurrence of a specified event.
- (6A) The Minister is not required to observe any requirements of procedural fairness in relation to the making of a subclause (3) instrument.
- (7) The Minister does not have a duty to consider whether to exercise the power to make a subclause (3) instrument, whether he or she is requested to do so by Telstra or by any other person, or in any other circumstances.
- (8) The Minister must cause a copy of an instrument under subclause (3) to be published on the Department's website.
- (9) An instrument under subclause (3) is not a legislative instrument.

77 Approval of draft functional separation undertaking by Minister

- (1) This clause applies if Telstra gives the Minister a draft functional separation undertaking (the *original undertaking*).
- (2) The Minister must, by writing:
- (a) approve the original undertaking; or
 - (b) both:
 - (i) vary the original undertaking; and
 - (ii) approve the original undertaking as varied; or
 - (c) both:
 - (i) determine that Telstra is taken to have given the Minister another draft functional separation undertaking (the *replacement undertaking*) in the terms specified in

- the determination, instead of the original undertaking;
and
- (ii) approve the replacement undertaking.

Consultation

- (3) Before making a decision under subclause (2), the Minister must:
 - (a) cause to be published on the Department's website a notice:
 - (i) setting out the original undertaking; and
 - (ii) inviting persons to make submissions to the Minister about the original undertaking within 14 days after the notice is published; and
 - (b) give the ACCC a copy of the notice; and
 - (c) cause to be published on the Department's website a copy of each submission received within the 14-day period mentioned in paragraph (a); and
 - (d) consider any submissions received within the 14-day period mentioned in paragraph (a); and
 - (e) ask the ACCC to give advice to the Minister, within 44 days after the notice is published, about the original undertaking; and
 - (f) have regard to any advice given by the ACCC.

Consultation—variation of original undertaking

- (4) Before making a decision under paragraph (2)(b) to approve the original undertaking as varied, the Minister must:
 - (a) give Telstra a notice:
 - (i) setting out the original undertaking as proposed to be varied; and
 - (ii) inviting Telstra to make submissions to the Minister, within 14 days after the notice is given, about the original undertaking as proposed to be varied; and
 - (b) consider any submissions received from Telstra within the 14-day period mentioned in paragraph (a).

Consultation—replacement undertaking

- (5) Before making a decision under paragraph (2)(c) to approve the replacement undertaking, the Minister must:
-

- (a) give Telstra a notice:
 - (i) setting out the proposed replacement undertaking; and
 - (ii) inviting Telstra to make submissions to the Minister about the proposed replacement undertaking within 14 days after the notice is given; and
- (b) consider any submissions received from Telstra within the 14-day period mentioned in paragraph (a).

Advice by the ACCC

- (6) Subclause (3) does not, by implication, prevent the Minister from asking the ACCC to give the Minister additional advice about a matter arising under this clause.

Notification of decision

- (7) As soon as practicable after making a decision under subclause (2), the Minister must notify Telstra in writing of the decision.

Instrument is not a legislative instrument

- (8) An instrument made under subclause (2) is not a legislative instrument.

78 Time limit for making an approval decision

- (1) This clause applies if Telstra gives the Minister a draft functional separation undertaking (the *original undertaking*).
- (2) The Minister must use his or her best endeavours to make a decision under subclause 77(2) in relation to the original undertaking within 6 months after the original undertaking was given to the Minister.

79 Effect of approval

- (1) If the Minister approves a draft functional separation undertaking under subclause 77(2), the undertaking becomes a final functional separation undertaking.
- (2) A final functional separation undertaking comes into force on the day after notice of the relevant decision is given to Telstra in accordance with subclause 77(7).

- (3) A final functional separation undertaking may not be withdrawn.

Undertaking is not a legislative instrument

- (4) A final functional separation undertaking is not a legislative instrument.

80 Variation of final functional separation undertaking

- (1) This clause applies if a final functional separation undertaking is in force.

Variation

- (2) The Minister may, in writing, vary the final functional separation undertaking:
- (a) at the request of Telstra or another person; or
 - (b) on the Minister's own initiative.
- (3) The Minister does not have a duty to consider whether to exercise the power to vary a final functional separation undertaking, whether he or she is requested to do so by Telstra or by any other person, or in any other circumstances.

Consultation

- (4) Before varying a final functional separation undertaking, the Minister must:
- (a) cause to be published on the Department's website a notice:
 - (i) setting out the proposed variation; and
 - (ii) inviting persons to make submissions to the Minister about the proposed variation within 14 days after the notice is published; and
 - (b) give the ACCC a copy of the notice; and
 - (c) cause to be published on the Department's website a copy of each submission received within the 14-day period mentioned in paragraph (a); and
 - (d) consider any submissions received within the 14-day period mentioned in paragraph (a); and

- (e) ask the ACCC to give advice to the Minister, within 44 days after the notice is published, about the proposed variation;
and
- (f) have regard to any advice given by the ACCC.

Minor variation

- (5) Subclause (4) does not apply to a proposed variation if the variation is of a minor nature.
- (6) If the proposed variation:
 - (a) is of a minor nature; and
 - (b) is not made at the request of Telstra;then, before making the proposed variation, the Minister must:
 - (c) give Telstra a notice:
 - (i) setting out the proposed variation; and
 - (ii) inviting Telstra to make submissions to the Minister about the proposed variation within 14 days after the notice is given; and
 - (d) consider any submissions received from Telstra within that 14-day period.

Advice by the ACCC

- (7) Subclause (4) does not, by implication, prevent the Minister from asking the ACCC to give the Minister additional advice about a matter arising under this clause.

Notification of variation

- (8) As soon as practicable after varying a final functional separation undertaking, the Minister must notify Telstra in writing of the variation.

When variation comes into force

- (9) A variation of a final functional separation undertaking comes into force on the day after the notice of the variation is given to Telstra in accordance with subclause (8).

Variation is not a legislative instrument

- (10) A variation of a final functional separation undertaking is not a legislative instrument.

81 Publication of final functional separation undertaking

- (1) As soon as practicable after a final functional separation undertaking comes into force, Telstra must make a copy of the undertaking available on Telstra's website.
- (2) As soon as practicable after a variation of a final functional separation undertaking comes into force, Telstra must make a copy of the varied final functional separation undertaking available on Telstra's website.

82 Compliance with final functional separation undertaking

- (1) If a final functional separation undertaking is in force, Telstra must comply with the undertaking.
- (2) However, subclause (1) does not apply if an undertaking given by Telstra is in force under section 577A.

Note: Section 577A deals with undertakings about structural separation.

Part 10—Control and use by Telstra of certain spectrum licences

Division 1—Introduction

83 Simplified outline

The following is a simplified outline of this Part:

- If the excluded spectrum regime applies to Telstra, and a spectrum licence relates to a designated part of the spectrum, Telstra must not be in a position to exercise control of the licence unless the following undertakings given by Telstra are in force:
 - (a) an undertaking about structural separation;

- (b) an undertaking about hybrid fibre-coaxial networks;
 - (c) an undertaking about subscription television broadcasting licences.
- 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.

Division 2—Control and use by Telstra of certain spectrum licences

84 Control by Telstra of certain spectrum licences

- (1) If:
- (a) the excluded spectrum regime applies to Telstra; and
 - (b) a spectrum licence relates to a designated part of the spectrum;

Telstra must not be in a position to exercise control of the licence.

Note 1: For excluded spectrum regime, see section 577GA.

Note 2: For when Telstra is in a position to exercise control of a spectrum licence, see clause 88.

- (2) However, the rule in subclause (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 subclause (3); 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:

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Part 1 Amendments relating to Telstra

- (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.

- (3) This subclause 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.

85 Use by Telstra of certain spectrum licences

- (1) If:
 - (a) the excluded spectrum regime applies to Telstra; and
 - (b) a spectrum licence relates to a designated part of the spectrum;

Telstra must not supply a carriage service using a radiocommunications device the operation of which is authorised under the licence.

Note: For excluded spectrum regime, see section 577GA.

- (2) However, the rule in subclause (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 subclause (3); 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.

- (3) This subclause 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.

Division 3—Other provisions

86 Associate

- (1) In this Part, an *associate* of Telstra in relation to control of a spectrum licence is:
 - (a) a partner of Telstra; or
 - (b) 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
 - (c) 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
- (d) 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 spectrum licence; and
 - (b) neither of them is in a position to exert influence over the business dealings of the other in relation to the spectrum licence.

87 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.

88 When Telstra is in a position to exercise control of a spectrum licence

- (1) For the purposes of this Part, Telstra is in a position to exercise control of a spectrum licence if:
 - (a) Telstra is the licensee; or
 - (b) Telstra, either alone or together with an associate of Telstra, is in a position to exercise control of the spectrum licensee; or
 - (c) Telstra, either alone or together with an associate of Telstra, is in a position to exercise (whether directly or indirectly) control of the selection of radiocommunications devices authorised to operate under the licence; or
 - (d) Telstra, either alone or together with an associate of Telstra, is in a position to exercise (whether directly or indirectly)

control of a significant proportion of the operations of radiocommunications devices authorised to operate under the licence; or

- (e) Telstra, either alone or together with an associate of Telstra, is in a position to:
 - (i) veto any action taken by the board of directors of the licensee; or
 - (ii) appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the licensee; or
 - (iii) exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee; or
- (f) the licensee or more than 50% of its directors:
 - (i) act, or are accustomed to act; or
 - (ii) 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 of a licensee is not, except through an association with another person, to be regarded as being in a position to exercise control of a spectrum licence under subclause (1) purely because of being an employee.
- (3) More than one person may be in a position to exercise control of a spectrum licence.

Competition and Consumer Act 2010

32 Subsection 4(1)

Insert:

Telstra has the same meaning as in the *Telstra Corporation Act 1991*.

33 At the end of section 151AJ

Add:

- (9) Despite anything in subsection (2) or (3) of this section, a person does not engage in anti-competitive conduct if, under section 577BA of the *Telecommunications Act 1997*, the conduct is authorised for the purposes of subsection 51(1) of this Act.

34 Subsection 151BTA(13) (definition of *Telstra*)

Repeal the definition.

35 Section 151BUAAA

Repeal the section.

36 At the end of Part XIB

Add:

Division 15—Voluntary undertakings given by Telstra

151CQ Voluntary undertakings given by Telstra

Scope

- (1) This section applies if an undertaking given by Telstra is in force under section 577A, 577C or 577E of the *Telecommunications Act 1997*.

Note 1: Section 577A of the *Telecommunications Act 1997* deals with undertakings about structural separation.

Note 2: Section 577C of the *Telecommunications Act 1997* deals with undertakings about hybrid fibre-coaxial networks.

Note 3: Section 577E of the *Telecommunications Act 1997* deals with undertakings about subscription television broadcasting licences.

Commission must have regard to Telstra's conduct

- (2) If Telstra has engaged, or is required to engage, in conduct in order to comply with the undertaking, then, in performing a function, or exercising a power, under this Part in relation to Telstra, the Commission must have regard to the conduct to the extent that the conduct is relevant.

37 Section 152AC

Insert:

final migration plan has the same meaning as in the
Telecommunications Act 1997.

38 At the end of subsection 152AR(4)

Add:

- ; (e) preventing Telstra from complying with an undertaking in force under section 577A, 577C or 577E of the *Telecommunications Act 1997*; or
- (f) if a final migration plan is in force—requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.

39 At the end of Part XIC

Add:

152ER Voluntary undertakings given by Telstra

Scope

- (1) This section applies if an undertaking given by Telstra is in force under section 577A, 577C or 577E of the *Telecommunications Act 1997*.

Note 1: Section 577A of the *Telecommunications Act 1997* deals with undertakings about structural separation.

Note 2: Section 577C of the *Telecommunications Act 1997* deals with undertakings about hybrid fibre-coaxial networks.

Note 3: Section 577E of the *Telecommunications Act 1997* deals with undertakings about subscription television broadcasting licences.

Commission must have regard to Telstra's conduct

- (2) If Telstra has engaged, or is required to engage, in conduct in order to comply with the undertaking, then, in performing a function, or exercising a power, under this Part in relation to Telstra, the Commission must have regard to the conduct to the extent that the conduct is relevant.

Commission must not prevent Telstra from complying with the undertaking

- (3) The Commission must not perform a function, or exercise a power, under this Part so as to prevent Telstra from complying with the undertaking.

40 Transitional—continuity of special Telstra directions

The repeal of section 151BUAAA of the *Competition and Consumer Act 2010* effected by this Part does not affect the continuity of a special Telstra direction (within the meaning of that section) that was in force immediately before the commencement of this item.

Division 2—Amendments commencing immediately after a final functional separation undertaking comes into force

Telecommunications Act 1997

41 Subsection 61(1)

Omit “(1)”.

42 Subsections 61(2), (3) and (4)

Repeal the subsections.

43 Section 61A

Repeal the section.

44 After subsection 69(6)

Insert:

- (6A) Subsection (1) does not apply to a condition set out in Part 9 of Schedule 1.

Note: Part 9 of Schedule 1 deals with the functional separation of Telstra.

45 Subsection 69A(1)

Omit “Part 8”, substitute “Part 9”.

Note: The heading to section 69A is altered by omitting “operational” and substituting “functional”.

46 Section 69B

Repeal the section.

47 After subsection 70(3)

Insert:

(3A) Subsection (1) does not apply to a condition set out in Part 9 of Schedule 1.

Note: Part 9 of Schedule 1 deals with the functional separation of Telstra.

48 Paragraph 70(5)(ba)

Omit “Part 8”, substitute “Part 9”.

49 Subsection 70(6)

Repeal the subsection.

50 Section 104

After:

- | |
|---|
| <ul style="list-style-type: none">• The ACMA may be directed by the Minister to monitor, and report on, specified matters relating to the performance of carriers and carriage service providers. |
|---|

insert:

- | |
|--|
| <ul style="list-style-type: none">• The ACCC is to monitor, and report each year to the Minister on, the compliance by Telstra with a final functional separation undertaking. |
|--|

51 At the end of Part 5

Add:

105B Monitoring of compliance by Telstra with a final functional separation undertaking

- (1) The ACCC must monitor, and report each financial year to the Minister on, the compliance by Telstra with a final functional separation undertaking.

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- (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 Minister must cause a copy of a report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

52 After paragraph 564(3)(b)

Insert:

- (ba) a carrier licence condition set out in Part 9 of Schedule 1; or

53 Subsection 564(3) (after note 2)

Insert:

Note 2A: Part 9 of Schedule 1 deals with the functional separation of Telstra.

54 After paragraph 571(3)(b)

Insert:

- (ba) a carrier licence condition set out in Part 9 of Schedule 1; or

55 Subsection 571(3) (after note 2)

Insert:

Note 2A: Part 9 of Schedule 1 deals with the functional separation of Telstra.

56 Part 8 of Schedule 1

Repeal the Part.

Competition and Consumer Act 2010

57 Division 14 of Part XIB

Repeal the Division, substitute:

Division 14—Functional separation for Telstra

151CP Functional separation for Telstra

Scope

- (1) This section applies if a final functional separation undertaking given by Telstra is in force under Part 9 of Schedule 1 to the *Telecommunications Act 1997*.

Commission must have regard to Telstra's conduct

- (2) If Telstra has engaged, or is required to engage, in conduct in order to comply with the undertaking, then, in performing a function, or exercising a power, under this Part in relation to Telstra, the Commission must have regard to the conduct to the extent that the conduct is relevant.

Commission must not prevent Telstra from complying with the undertaking

- (3) The Commission must not perform a function, or exercise a power, under this Part so as to prevent Telstra from complying with the undertaking.

58 After section 152EP

Insert:

152EPA Assistance to independent telecommunications adjudicator

- (1) For the purposes of this section, the *independent telecommunications adjudicator* is a company that:
 - (a) is limited by guarantee; and
 - (b) is identified, in a final functional separation undertaking in force under Part 9 of Schedule 1 to the *Telecommunications Act 1997*, as the independent telecommunications adjudicator for the purpose of this section.
- (2) The Commission may assist the independent telecommunications adjudicator.
- (3) The assistance may include the following:

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- (a) the provision of information (including protected information within the meaning of section 155AAA);
- (b) the provision of advice;
- (c) the making available of resources and facilities (including secretariat services and clerical assistance).

59 Section 152EQ

Repeal the section, substitute:

152EQ Functional separation for Telstra

Scope

- (1) This section applies if a final functional separation undertaking given by Telstra is in force under Part 9 of Schedule 1 to the *Telecommunications Act 1997*.

Commission must have regard to Telstra's conduct

- (2) If Telstra has engaged, or is required to engage, in conduct in order to comply with the undertaking, then, in performing a function, or exercising a power, under this Part in relation to Telstra, the Commission must have regard to the conduct to the extent that the conduct is relevant.

Commission must not prevent Telstra from complying with the undertaking

- (3) The Commission must not perform a function, or exercise a power, under this Part so as to prevent Telstra from complying with the undertaking.

Division 3—Amendments commencing immediately after an undertaking about structural separation comes into force

Telecommunications Act 1997

60 Subsection 61(1)

Omit “(1)”.

61 Subsections 61(2), (3) and (4)

Repeal the subsections.

62 Sections 61A, 69A and 69B

Repeal the sections.

63 Paragraph 70(5)(ba)

Repeal the paragraph.

64 Subsection 70(6)

Repeal the subsection.

64A Section 104

After:

- | |
|---|
| <ul style="list-style-type: none">• The ACMA may be directed by the Minister to monitor, and report on, specified matters relating to the performance of carriers and carriage service providers. |
|---|

insert:

- | |
|---|
| <ul style="list-style-type: none">• The ACCC is to monitor, and report each financial year to the Minister on, breaches by Telstra of an undertaking about structural separation. |
|---|

64B At the end of Part 5

Add:

105C Monitoring of breaches by Telstra of an undertaking about structural separation

Monitoring

- (1) The ACCC must monitor, and report each financial year to the Minister on, breaches by Telstra of an undertaking in force under section 577A.

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Report

- (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 Minister must cause a copy of a report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

65 Part 8 of Schedule 1

Repeal the Part.

Competition and Consumer Act 2010

66 Division 14 of Part XIB

Repeal the Division.

67 Section 152EQ

Repeal the section, substitute:

152EQ Assistance to independent telecommunications adjudicator

- (1) For the purposes of this section, the *independent telecommunications adjudicator* is a company that:
 - (a) is limited by guarantee; and
 - (b) is identified, in an undertaking in force under section 577A of the *Telecommunications Act 1997*, as the independent telecommunications adjudicator for the purpose of this section.
- (2) The Commission may assist the independent telecommunications adjudicator.
- (3) The assistance may include the following:
 - (a) the provision of information (including protected information within the meaning of section 155AAA);
 - (b) the provision of advice;
 - (c) the making available of resources and facilities (including secretariat services and clerical assistance).

Part 2—Telecommunications access regime

Division 1—Amendments

National Transmission Network Sale Act 1998

68 Section 3 (paragraphs (a) and (b) of the definition of *telecommunications access regime*)

After “Competition and Consumer Act”, insert “(as in force immediately before the commencement of Division 1 of Part 2 of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*)”.

69 At the end of section 16

Add:

- (6) A reference in this section to the *Competition and Consumer Act* is a reference to that Act as in force immediately before the commencement of Division 1 of Part 2 of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*.

Telecommunications Act 1997

70 After section 62

Insert:

62A Condition of carrier licence set out in section 152BCO of the *Competition and Consumer Act 2010*

A carrier licence is subject to the condition set out in section 152BCO of the *Competition and Consumer Act 2010*.

Note: Section 152BCO of the *Competition and Consumer Act 2010* deals with access determinations.

62B Condition of carrier licence set out in section 152BDF of the *Competition and Consumer Act 2010*

A carrier licence is subject to the condition set out in section 152BDF of the *Competition and Consumer Act 2010*.

Note: Section 152BDF of the *Competition and Consumer Act 2010* deals with binding rules of conduct.

62C Condition of carrier licence set out in section 152BEC of the *Competition and Consumer Act 2010*

A carrier licence is subject to the condition set out in section 152BEC of the *Competition and Consumer Act 2010*.

Note: Section 152BEC of the *Competition and Consumer Act 2010* deals with access agreements.

71 Subsection 69(6)

Omit “or 4”, substitute “, 4 or 5”.

72 Subsection 69(6) (note)

Repeal the note, substitute:

Note: Parts 3, 4 and 5 of Schedule 1 deal with access to network information and access to facilities.

73 After subsection 69(7)

Insert:

(7A) Subsection (1) does not apply to the condition set out in section 152BCO of the *Competition and Consumer Act 2010*.

Note: Section 152BCO of the *Competition and Consumer Act 2010* deals with access determinations.

(7B) Subsection (1) does not apply to the condition set out in section 152BDF of the *Competition and Consumer Act 2010*.

Note: Section 152BDF of the *Competition and Consumer Act 2010* deals with binding rules of conduct.

(7C) Subsection (1) does not apply to the condition set out in section 152BEC of the *Competition and Consumer Act 2010*.

Note: Section 152BEC of the *Competition and Consumer Act 2010* deals with access agreements.

74 After section 69

Insert:

69AA Remedial directions—breach of conditions relating to access

Scope

- (1) This section applies if:
- (a) a carrier has contravened, or is contravening, a condition of the carrier licence held by the carrier; and
 - (b) the condition is set out in Part 3, 4 or 5 of Schedule 1.

Note: Parts 3, 4 and 5 of Schedule 1 deal with access to network information and access to facilities.

Direction

- (2) The ACCC may give the carrier a written direction requiring the carrier to take specified action directed towards ensuring that the carrier does not contravene the condition, or is unlikely to contravene the condition, in the future.
- (3) The following are examples of the kinds of direction that may be given to a carrier under subsection (2):
- (a) a direction that the carrier implement effective administrative systems for monitoring compliance with the condition;
 - (b) a direction that the carrier implement a system designed to give the carrier's employees, agents and contractors a reasonable knowledge and understanding of the requirements of the condition, in so far as those requirements affect the employees, agents or contractors concerned.
- (4) The ACCC must not give a direction under subsection (2) if the direction would have the effect of:
- (a) preventing Telstra from complying with an undertaking in force under section 577A, 577C or 577E; or
 - (b) if a final migration plan is in force—requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.
- (5) A carrier must not contravene a direction under subsection (2).
- (6) A direction under subsection (2) is not a legislative instrument.

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Part 2 Telecommunications access regime

75 Subsection 70(3)

Omit “or 4”, substitute “, 4 or 5”.

76 Subsection 70(3) (note)

Repeal the note, substitute:

Note: Parts 3, 4 and 5 of Schedule 1 deal with access to network information and access to facilities.

77 After subsection 70(4)

Insert:

(4A) Subsection (1) does not apply to the condition set out in section 152BCO of the *Competition and Consumer Act 2010*.

Note: Section 152BCO of the *Competition and Consumer Act 2010* deals with access determinations.

(4B) Subsection (1) does not apply to the condition set out in section 152BDF of the *Competition and Consumer Act 2010*.

Note: Section 152BDF of the *Competition and Consumer Act 2010* deals with binding rules of conduct.

(4C) Subsection (1) does not apply to the condition set out in section 152BEC of the *Competition and Consumer Act 2010*.

Note: Section 152BEC of the *Competition and Consumer Act 2010* deals with access agreements.

78 Paragraph 70(5)(b)

Omit “or 4”, substitute “, 4 or 5”.

79 At the end of subsection 70(5)

Add:

- ; (d) the condition set out in section 152BCO of the *Competition and Consumer Act 2010*;
- (e) the condition set out in section 152BDF of the *Competition and Consumer Act 2010*;
- (f) the condition set out in section 152BEC of the *Competition and Consumer Act 2010*.

80 At the end of section 98

Add:

- (3) In addition to the rules mentioned in subsection (1), the rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010* is a service provider rule for the purposes of this Act.

Note: 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.

- (4) In addition to the rules mentioned in subsection (1), the rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010* is a service provider rule for the purposes of this Act.

Note: 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.

- (5) In addition to the rules mentioned in subsection (1), the rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010* is a service provider rule for the purposes of this Act.

Note: Subsection 152BED(2) of the *Competition and Consumer Act 2010* deals with access agreements.

81 After subsection 102(6)

Insert:

- (6A) Subsection (1) does not apply to the rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*.

Note: 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.

- (6B) Subsection (1) does not apply to the rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*.

Note: 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.

- (6C) Subsection (1) does not apply to the rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*.

Note: Subsection 152BED(2) of the *Competition and Consumer Act 2010* deals with access agreements.

82 After subsection 103(3)

Insert:

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(3A) Subsection (1) does not apply to the rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*.

Note: 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.

(3B) Subsection (1) does not apply to the rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*.

Note: 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.

(3C) Subsection (1) does not apply to the rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*.

Note: Subsection 152BED(2) of the *Competition and Consumer Act 2010* deals with access agreements.

83 After subsection 103(4)

Insert:

(4A) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*.

(4B) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*.

(4C) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*.

84 After section 505

Insert:

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.
- (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.

85 Paragraph 564(3)(b)

Omit “or 4”, substitute “, 4 or 5”.

86 At the end of subsection 564(3) (before the notes)

Add:

- ; 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*.

87 Subsection 564(3) (note 2)

Repeal the note, substitute:

- Note 2: Parts 3, 4 and 5 of Schedule 1 deal with access to network information and access to facilities.

88 At the end of subsection 564(3) (after the notes)

Add:

- 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.

89 Paragraph 571(3)(b)

Omit “or 4”, substitute “, 4 or 5”.

90 At the end of subsection 571(3) (before the notes)

Add:

- ; 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*.

91 Subsection 571(3) (note 2)

Repeal the note, substitute:

- Note 2: Parts 3, 4 and 5 of Schedule 1 deal with access to network information and access to facilities.

92 At the end of subsection 571(3) (after the notes)

Add:

- 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.

93 After subclause 17(2) of Schedule 1

Insert:

- (2A) Subclause (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 Telstra from complying with an undertaking in force under section 577A, 577C or 577E;
 - (c) if a final migration plan is in force—requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.
- (2B) 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 (2A)(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.

94 After subclause 17(4) of Schedule 1

Insert:

- (4A) For the purposes of subclause (1), if:
- (a) there is an agreement in force between Telstra and an NBN corporation; and
 - (b) the agreement relates to the NBN corporation's access to facilities owned or operated by Telstra; and
 - (c) apart from this clause, 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.

95 At the end of clause 17 of Schedule 1

Add:

(6) In this clause:

NBN corporation has the same meaning as in section 577BA.

96 At the end of clause 18 of Schedule 1

Add:

(6) An arbitrator must not make a determination under this clause if the determination would have the effect of:

- (a) preventing Telstra from complying with an undertaking in force under section 577A, 577C or 577E; or
- (b) if a final migration plan is in force—requiring Telstra 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 clause has no effect to the extent to which it is inconsistent with the agreement.

97 Clause 31 of Schedule 1

Insert:

NBN corporation has the same meaning as in section 577BA.

98 Subclause 33(3) of Schedule 1

Omit “the ACMA stating that, in the ACMA’s opinion,”, substitute “the ACCC stating that, in the ACCC’s opinion,”.

99 Subclause 33(4) of Schedule 1

Omit “ACMA” (wherever occurring), substitute “ACCC”.

100 After subclause 33(4) of Schedule 1

Insert:

- (4A) Before issuing a certificate under subclause (3), the ACCC may consult the ACMA.

101 Subclause 33(5) of Schedule 1

Omit “ACMA” (wherever occurring), substitute “ACCC”.

102 At the end of clause 33 of Schedule 1

Add:

- (6) Subclause (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 Telstra from complying with an undertaking in force under section 577A, 577C or 577E;
 - (c) if a final migration plan is in force—requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.
- (7) 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 (6)(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.
- (8) For the purposes of subclause (1), if:
- (a) there is an agreement in force between Telstra 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; and
 - (c) apart from this clause, 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.

103 Subclause 34(3) of Schedule 1

Omit "the ACMA stating that, in the ACMA's opinion," substitute "the ACCC stating that, in the ACCC's opinion,".

104 Subclause 34(4) of Schedule 1

Omit "ACMA" (wherever occurring), substitute "ACCC".

105 After subclause 34(4) of Schedule 1

Insert:

- (4A) Before issuing a certificate under subclause (3), the ACCC may consult the ACMA.

106 Subclause 34(5) of Schedule 1

Omit "ACMA" (wherever occurring), substitute "ACCC".

107 At the end of clause 34 of Schedule 1

Add:

- (6) Subclause (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 Telstra from complying with an undertaking in force under section 577A, 577C or 577E;
 - (c) if a final migration plan is in force—requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.
- (7) 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 (6)(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.
- (8) For the purposes of subclause (1), if:
- (a) there is an agreement in force between Telstra and an NBN corporation; and
 - (b) the agreement relates to the NBN corporation's access to the site of a telecommunications transmission tower, where:
 - (i) the site is owned, operated or controlled by Telstra; or
 - (ii) Telstra has a right (whether conditional or unconditional) to use the site; and
 - (c) apart from this clause, the agreement would result in the NBN corporation:
 - (i) being the occupier or controller of the site; or
 - (ii) having a right (whether conditional or unconditional) to use the site;
- the NBN corporation is taken:
- (d) not to be the occupier or controller of the site; and
 - (e) not to have a right (whether conditional or unconditional) to use the site.

108 Subclause 35(3) of Schedule 1

Omit "the ACMA stating that, in the ACMA's opinion," substitute "the ACCC stating that, in the ACCC's opinion,".

109 Subclause 35(4) of Schedule 1

Omit “ACMA” (wherever occurring), substitute “ACCC”.

110 After subclause 35(4) of Schedule 1

Insert:

- (4A) Before issuing a certificate under subclause (3), the ACCC may consult the ACMA.

111 Subclause 35(5) of Schedule 1

Omit “ACMA” (wherever occurring), substitute “ACCC”.

112 At the end of clause 35 of Schedule 1

Add:

- (6) Subclause (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 Telstra from complying with an undertaking in force under section 577A, 577C or 577E;
 - (c) if a final migration plan is in force—requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.
- (7) 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 (6)(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.
- (8) For the purposes of subclause (1), if:
 - (a) there is an agreement in force between Telstra and an NBN corporation; and
 - (b) the agreement relates to the NBN corporation's access to an eligible underground facility owned or operated by Telstra; and
 - (c) apart from this clause, the agreement would result in the NBN corporation being the operator of the eligible underground facility;the NBN corporation is taken not to be the operator of the eligible underground facility.

113 At the end of clause 36 of Schedule 1

Add:

- (7) An arbitrator must not make a determination under this clause if the determination would have the effect of:
 - (a) preventing Telstra from complying with an undertaking in force under section 577A, 577C or 577E; or
 - (b) if a final migration plan is in force—requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.
- (8) If:
 - (a) an agreement mentioned in paragraph (1)(a), (2)(a) or (3)(a) is in force; and
 - (b) the agreement is in writing;a determination under this clause has no effect to the extent to which it is inconsistent with the agreement.

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114 Section 152AA

Omit:

- If agreement cannot be reached, but no access undertaking is in operation, the terms and conditions are to be determined by the Commission acting as an arbitrator.
- An access undertaking (other than a special access undertaking) may adopt the terms and conditions set out in a *telecommunications access code*.
- The Commission may conduct an arbitration of a dispute about access to declared services. The Commission's determination on the arbitration must not be inconsistent with the standard access obligations or an access undertaking.
- The Commission may register agreements about access to declared services.
- A carrier, carriage service provider or related body must not prevent or hinder the fulfilment of a standard access obligation.

substitute:

- If agreement cannot be reached, no access undertaking is in operation, but the Commission has made binding rules of conduct, the terms and conditions are as specified in the binding rules of conduct.
- If agreement cannot be reached, no access undertaking is in operation, and no binding rules of conduct have been made, the terms and conditions are as specified in an access determination made by the Commission.
- A carrier, carriage service provider or related body must not prevent or hinder the fulfilment of a standard access obligation.

Note: Even though this section mentions binding rules of conduct, binding rules of conduct may only be made if the Commission considers that there is an urgent need to do so.

115 Section 152AC

Insert:

access agreement has the meaning given by section 152BE.

116 Section 152AC

Insert:

access determination means a determination under section 152BC.

117 Section 152AC (definition of *access undertaking*)

Omit “an ordinary access undertaking or”.

118 Section 152AC

Insert:

binding rules of conduct means rules made under subsection 152BD(1).

119 Section 152AC

Insert:

final access determination means an access determination other than an interim access determination.

120 Section 152AC

Insert:

fixed principles provision has the meaning given by section 152BCD.

121 Section 152AC

Insert:

fixed principles term or condition has the meaning given by section 152CBAA.

122 Section 152AC

Insert:

interim access determination means an access determination that is expressed to be an interim access determination.

123 Section 152AC (definition of *ordinary access undertaking*)

Repeal the definition.

124 Section 152AC (definition of *telecommunications access code*)

Repeal the definition.

125 Section 152AC

Insert:

variation agreement has the meaning given by subsection 152BE(3).

126 At the end of section 152AF

Add:

- (3) For the purposes of this Part, if an access determination imposes a requirement on a carrier or carriage service provider as mentioned in paragraph 152BC(3)(e), anything done by the carrier or provider in fulfilment of the requirement is taken to be an aspect of access to a declared service.

127 After section 152AH

Insert:

152AI When public inquiry commences

For the purposes of this Part, a public inquiry held by the Commission under Part 25 of the *Telecommunications Act 1997* **commences** when the Commission publishes the notice under section 498 of that Act about the inquiry.

128 Subsection 152ALA(2)

Repeal the subsection, substitute:

- (2) In specifying an expiry date, the Commission must have regard to:

- (a) the principle that the expiry date for a declaration should occur in the period:
 - (i) beginning 3 years after the declaration was made; and
 - (ii) ending 5 years after the declaration was made;unless, in the Commission's opinion, there are circumstances that warrant the expiry date occurring in a shorter or longer period; and
- (b) such other matters (if any) as the Commission considers relevant.

129 After subsection 152ALA(6)

Insert:

- (6A) If the fresh declaration comes into force immediately after the expiry of the expired declaration, the fresh declaration is taken to be a declaration that *replaces* the expired declaration.

130 Paragraph 152ALA(7)(a)

Omit "12-month", substitute "18-month".

Note: The heading to subsection 152ALA(7) is altered by omitting "12-month" and substituting "18-month".

131 After subparagraph 152ALA(7)(a)(v)

Insert:

- (vi) whether to extend or further extend the expiry date of a declaration by a period of not more than 12 months and then to allow the declaration to expire without making a new declaration under section 152AL; and

132 Subsection 152AM(3)

Repeal the subsection, substitute:

- (3) The Commission does not have a duty to consider whether to hold a public inquiry of a kind mentioned in paragraph 152AL(3)(a) if the Commission is requested to do so by a person.

133 Subsection 152AQ(3)

Omit "may", substitute "is to".

134 Subsections 152AQ(4), (5) and (6)

Repeal the subsections, substitute:

- (4) The Register is to be made available for inspection on the Commission's website.
- (5) The Register is not a legislative instrument.

135 Sections 152AQA and 152AQB

Repeal the sections.

136 Subsection 152AR(12) (definition of *pre-request right*)

Omit “, or under a determination (within the meaning of Division 8),”.

137 Section 152AS

Repeal the section.

138 After subsection 152ASA(1)

Insert:

- (1A) A service or a proposed service must not be specified in a determination under this section if, at the time when the determination is made, the service or proposed service is a declared service.

139 After subsection 152ASA(2)

Insert:

- (2A) A determination under this section may:
 - (a) provide that the determination must not be varied; or
 - (b) provide that the determination must not be varied except in such circumstances as are specified in the determination.
- (2B) A determination under this section may:
 - (a) provide that the determination must not be revoked; or
 - (b) provide that the determination must be revoked except in such circumstances as are specified in the determination.

140 Subsection 152ASA(8)

Omit all the words from and including “Commission”, substitute “Commission from making a fresh determination under this section in the same terms as the expired determination”.

141 After subsection 152ASA(11)

Insert:

Variation or revocation of determination

- (11A) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a power conferred on the Commission by subsection (1), but it applies with the following changes.
- (11B) A provision referred to in paragraph (2A)(a) or (b) or (2B)(a) or (b) cannot be varied or removed.
- (11C) A determination under this section must not be varied or revoked in a manner that is inconsistent with a provision referred to in paragraph (2A)(a) or (b) or (2B)(a) or (b).

142 Subsection 152ASA(12)

Repeal the subsection, substitute:

Determination is not a legislative instrument

- (12) A determination made under subsection (1) is not a legislative instrument.

143 Subsection 152ASA(13) (note)

Repeal the note.

144 Section 152AT

Repeal the section.

145 After subsection 152ATA(3)

Insert:

- (3A) A service or a proposed service must not be specified in an order under paragraph (3)(a) if, at the time when the order is made, the service or proposed service is a declared service.

146 After subsection 152ATA(4)

Insert:

- (4A) An order under paragraph (3)(a) may:

- (a) provide that the order must not be varied; or
 - (b) provide that the order must not be varied except in such circumstances as are specified in the order.
- (4B) An order under paragraph (3)(a) may:
- (a) provide that the order must not be revoked; or
 - (b) provide that the order must not be revoked except in such circumstances as are specified in the order.

147 After subsection 152ATA(6)

Insert:

Serial applications

- (7) If:
- (a) a person makes an application (the *first application*) under subsection (1) for an order in relation to a service or proposed service; and
 - (b) the Commission refuses the first application; and
 - (c) the person subsequently makes another application under subsection (1); and
 - (d) the Commission is satisfied that:
 - (i) the first application and the other application have material similarities; or
 - (ii) the grounds on which the person made the first application are materially similar to the grounds on which the person has made the other application;
- the Commission may refuse to consider the other application.

148 Subsection 152ATA(10)

Omit all the words from and including “Commission”, substitute “Commission from making a fresh order under paragraph (3)(a) in the same terms as the expired order”.

149 After subsection 152ATA(16)

Insert:

- (16A) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a power conferred on the Commission by paragraph (3)(a), but it applies with the following changes.

(16B) A provision referred to in paragraph (4A)(a) or (b) or (4B)(a) or (b) cannot be varied or removed.

(16C) An order under paragraph (3)(a) must not be varied or revoked in a manner that is inconsistent with a provision referred to in (4A)(a) or (b) or (4B)(a) or (b).

150 Subsection 152ATA(18) (note)

Repeal the note.

151 Subsection 152AU(1)

Omit “152AT(1) or”.

152 Sections 152AV to 152AX

Repeal the sections.

153 Subsection 152AXA(1)

Omit “(1)”.

Note: The heading to section 152AXA is altered by omitting “reviewable”.

154 Paragraph 152AXA(1)(a)

Omit “152AT or”.

155 Subsection 152AXA(2)

Repeal the subsection.

156 Section 152AY

Repeal the section, substitute:

152AY Compliance with standard access obligations

- (1) This section applies if a carrier or carriage service provider is required to comply with any or all of the standard access obligations.
 - (2) The carrier or carriage service provider must comply with the obligations:
 - (a) if an access agreement between:
 - (i) the carrier or carriage service provider, as the case requires; and
-

(ii) the access seeker;
is in operation and specifies terms and conditions about a particular matter—on such terms and conditions relating to that matter as are set out in the agreement; or

(b) if:

(i) paragraph (a) does not apply in relation to terms and conditions about a particular matter; and

(ii) a special access undertaking given by the carrier or carriage service provider is in operation, and the undertaking specifies terms and conditions about that matter—on such terms and conditions relating to that matter as are set out in the undertaking; or

(c) if:

(i) neither paragraph (a) nor (b) applies to terms and conditions about a particular matter; and

(ii) binding rules of conduct specify terms and conditions about that matter;

on such terms and conditions relating to that matter as are set out in the binding rules of conduct; or

(d) if:

(i) none of the above paragraphs applies to terms and conditions about a particular matter; and

(ii) an access determination specifies terms and conditions about that matter;

on such terms and conditions relating to that matter as are set out in the access determination.

Note 1: Sections 152BCC, 152BDB, 152BDE, 152CBIA, 152CBIB and 152CBIC, which deal with inconsistency, should be read and applied before this section is read and applied.

Note 2: Even though subsection (2) mentions binding rules of conduct, binding rules of conduct may only be made if the Commission considers that there is an urgent need to do so.

Note 3: For transitional provisions, see Division 2 of Part 2 of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*.

157 Paragraph 152BBAA(1)(a)

Omit “152AS or”.

158 Paragraph 152BBAA(1)(b)

Omit “152AT or”.

159 Subsection 152BBC(5)

Repeal the subsection.

160 Division 4 of Part XIC

Repeal the Division, substitute:

Division 4—Access determinations

Subdivision A—Commission may make access determinations

152BC Access determinations

- (1) The Commission may make a written determination relating to access to a declared service.
- (2) A determination under subsection (1) is to be known as an *access determination*.
- (3) An access determination may:
 - (a) specify any or all of the terms and conditions on which a carrier or carriage service provider is to comply with any or all of the standard access obligations applicable to the carrier or provider; or
 - (b) specify any other terms and conditions of an access seeker’s access to the declared service; or
 - (c) require a carrier or carriage service provider to comply with any or all of the standard access obligations applicable to the carrier or provider in a manner specified in the determination; or
 - (d) require a carrier or carriage service provider to extend or enhance the capability of a facility by means of which the declared service is supplied; or
 - (e) impose other requirements on a carrier or carriage service provider in relation to access to the declared service; or
 - (f) specify the terms and conditions on which a carrier or carriage service provider is to comply with any or all of those other requirements; or

- (g) require access seekers to accept, and pay for, access to the declared service; or
 - (h) provide that any or all of the obligations referred to in section 152AR are not applicable to a carrier or carriage service provider, either:
 - (i) unconditionally; or
 - (ii) subject to such conditions or limitations as are specified in the determination; or
 - (i) restrict or limit the application to a carrier or carriage service provider of any or all of the obligations referred to in section 152AR; or
 - (j) deal with any other matter relating to access to the declared service.
- (4) Subsection (3) does not limit subsection (1).
- (5) An access determination may make different provision with respect to:
- (a) different carriers or carriage service providers; or
 - (b) different classes of carriers or carriage service providers; or
 - (c) different access seekers; or
 - (d) different classes of access seekers.
- (6) Subsection (5) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (7) An access determination may provide for the Commission to perform functions, and exercise powers, under the determination.
- (8) Terms and conditions specified in an access determination as mentioned in paragraph (3)(a), (b) or (f) must include terms and conditions relating to price or a method of ascertaining price.
- (9) An access determination is not a legislative instrument.

152BCA Matters that the Commission must take into account

- (1) The Commission must take the following matters into account in making an access determination:
- (a) whether the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services;

- (b) the legitimate business interests of a carrier or carriage service provider who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service;
 - (c) the interests of all persons who have rights to use the declared service;
 - (d) the direct costs of providing access to the declared service;
 - (e) the value to a person of extensions, or enhancement of capability, whose cost is borne by someone else;
 - (f) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility;
 - (g) the economically efficient operation of a carriage service, a telecommunications network or a facility.
- (2) If a carrier or carriage service provider who supplies, or is capable of supplying, the declared service supplies one or more other eligible services, then, in making an access determination that is applicable to the carrier or provider, as the case may be, the Commission may take into account:
- (a) the characteristics of those other eligible services; and
 - (b) the costs associated with those other eligible services; and
 - (c) the revenues associated with those other eligible services; and
 - (d) the demand for those other eligible services.
- (3) The Commission may take into account any other matters that it thinks are relevant.
- (4) This section does not apply to an interim access determination.
- (5) In this section:
- eligible service* has the same meaning as in section 152AL.

152BCB Restrictions on access determinations

- (1) The Commission must not make an access determination that would have any of the following effects:
- (a) preventing a service provider who already has access to the declared service from obtaining a sufficient amount of the
-

service to be able to meet the service provider's reasonably anticipated requirements, measured at the time when the access seeker made a request in relation to the service under section 152AR;

- (b) preventing a carrier or carriage service provider from obtaining a sufficient amount of the service to be able to meet the carrier's or provider's reasonably anticipated requirements, measured at the time when the access seeker made a request in relation to the service under section 152AR;
 - (c) preventing a person from obtaining, by the exercise of a pre-determination right, a sufficient level of access to the declared service to be able to meet the person's actual requirements;
 - (d) depriving any person of a protected contractual right;
 - (e) resulting in an access seeker becoming the owner (or one of the owners) of any part of a facility without the consent of the owner of the facility;
 - (f) requiring a person (other than an access seeker) to bear an unreasonable amount of the costs of:
 - (i) extending or enhancing the capability of a facility; or
 - (ii) maintaining extensions to or enhancements of the capability of a facility;
 - (g) requiring a carrier or carriage service provider to provide an access seeker with access to a declared service if there are reasonable grounds to believe that:
 - (i) the access seeker would fail, to a material extent, to comply with the terms and conditions on which the carrier or provider provides, or is reasonably likely to provide, that access; or
 - (ii) the access seeker would fail, in connection with that access, to protect the integrity of a telecommunications network or to protect the safety of individuals working on, or using services supplied by means of, a telecommunications network or a facility.
- (2) Examples of grounds for believing as mentioned in subparagraph (1)(g)(i) include:
- (a) evidence that the access seeker is not creditworthy; and

- (b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the carrier or carriage service provider).
- (3) The Commission must not make an access determination that is inconsistent with any of the standard access obligations that are, or will be, applicable to a carrier or carriage service provider.
- (3A) If a final migration plan is in force, the Commission must not make an access determination that would have the effect of requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.
- (4) If the Commission makes an access determination that has the effect of depriving a person (the *second person*) of a pre-determination right to require the carrier or provider to provide access to the declared service to the second person, the determination must also require the access seeker:
 - (a) to pay to the second person such amount (if any) as the Commission considers is fair compensation for the deprivation; and
 - (b) to reimburse the carrier or provider and the Commonwealth for any compensation that the carrier or provider or the Commonwealth agrees, or is required by a court order, to pay to the second person as compensation for the deprivation.
- (5) An access determination is of no effect to the extent to which it contravenes subsection (1), (3) or (3A).
- (6) In this section:
 - pre-determination right* means a right under a contract that was in force:
 - (a) if the access determination is one of a series of 2 or more successive access determinations—immediately before the first access determination came into force; or
 - (b) otherwise—immediately before the access determination came into force.

protected contractual right means a right under a contract that was in force at the beginning of 13 September 1996.

152BCC Access agreements prevail over inconsistent access determinations

If an access determination is applicable to the following parties:

- (a) a carrier or carriage service provider;
- (b) an access seeker;

the access determination has no effect to the extent to which it is inconsistent with an access agreement that is applicable to those parties.

152BCCA Final migration plan prevails over inconsistent access determinations

If a final migration plan is in force, an access determination has no effect to the extent to which it would have the effect of:

- (a) preventing Telstra from complying with the final migration plan; or
- (b) requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.

152BCD Fixed principles provisions

- (1) An access determination may include a provision that is specified in the determination to be a fixed principles provision.
- (2) If a fixed principles provision is included in an access determination, the determination must provide that a specified date is the nominal termination date for the fixed principles provision. The nominal termination date may be later than the expiry date for the determination.
- (3) If:
 - (a) an access determination (the **replacement access determination**) is expressed to replace a previous access determination; and
 - (b) the previous access determination included a fixed principles provision; and
 - (c) the nominal termination date for the fixed principles provision is later than the day on which the replacement access determination comes into force;then:

- (d) the replacement access determination must include a provision in the same terms as the fixed principles provision; and
 - (e) the provision must be specified in the replacement access determination to be a fixed principles provision; and
 - (f) the nominal termination date for the fixed principles provision so included in the replacement access determination must be the same as, or later than, the nominal termination date for the fixed principles provision included in the previous access determination; and
 - (g) if the previous access determination provided that the previous access determination must not be varied so as to alter or remove the fixed principles provision—the replacement access determination must provide that the replacement access determination must not be varied so as to alter or remove the fixed principles provision; and
 - (h) if the previous access determination provided that the previous access determination must not be varied so as to alter or remove the fixed principles provision except in such circumstances as are specified in the previous access determination:
 - (i) the replacement access determination must provide that the replacement access determination must not be varied so as to alter or remove the fixed principles provision except in such circumstances as are specified in the replacement access determination; and
 - (ii) those circumstances must be the same as the circumstances specified in the previous access determination.
- (4) If:
- (a) a fixed principles provision is included in an access determination; and
 - (b) the access determination ceases to be in force before the nominal termination date for the fixed principles provision;
- the fixed principles provision ceases to be in force when the access determination ceases to be in force.

Note: Even though a fixed principles provision ceases to be in force when the access determination ceases to be in force, subsection (3) requires that a replacement access determination include a provision in the same terms as the fixed principles provision.

- (5) If a fixed principles provision is included in an access determination, the access determination must:
- (a) provide that the access determination must not be varied so as to alter or remove the fixed principles provision; or
 - (b) provide that the access determination must not be varied so as to alter or remove the fixed principles provision except in such circumstances as are specified in the access determination.

152BCE Access determinations may be set out in the same document

Two or more access determinations may be set out in the same document.

152BCF Duration of access determination

- (1) An access determination relating to access to a declared service:
- (a) comes into force on the day specified in the determination as the day on which the determination is to come into force; and
 - (b) unless sooner revoked, ceases to be in force on the expiry date for the determination.
- (2) The specified day may be earlier than the day on which the determination was made.
- (2A) The specified day must not be earlier than the date of commencement of this section.
- (3) If the declared service is covered by a declaration under section 152AL, and the declaration is not a fresh declaration that replaces a previous declaration, the specified day must not be earlier than the day on which the declaration came into force.
- (3A) If the declared service is covered by subsection 152AL(7), the specified day must not be earlier than the day on which the service became a declared service under that subsection.
- (4) If:
- (a) an access determination is expressed to replace a previous access determination relating to access to the declared service; and

- (b) the previous access determination is not an interim access determination;

the specified day must be the first day after the expiry of the previous access determination.

(4A) If:

- (a) an access determination is expressed to replace a previous access determination relating to access to the declared service; and
- (b) the previous access determination is an interim access determination; and
- (c) the declared service is covered by a declaration under section 152AL;

the specified day must not be earlier than the day on which the declaration came into force.

Expiry date

- (5) An access determination must specify an expiry date for the determination.
- (6) In specifying an expiry date for an access determination, the Commission must have regard to:
 - (a) in a case where the declared service is covered by a declaration under section 152AL—the principle that the expiry date for the determination should be the same as the expiry date for the declaration (as that declaration stood at the time when the access determination was made) unless, in the Commission’s opinion, there are circumstances that warrant the specification of another date as the expiry date for the access determination; and
 - (b) such other matters (if any) as the Commission considers relevant.
- (7) If an access determination expires, this Part does not prevent the Commission from making a fresh access determination under section 152BC in the same terms as the expired access determination.

Automatic revocation of access determination

(8) If:

- (a) an access determination relating to access to a declared service is in force; and
- (b) the declared service is covered by a declaration under section 152AL, and the declaration ceases to be in force; and
- (c) the Commission does not make a fresh declaration under section 152AL that replaces the declaration referred to in paragraph (b) of this subsection;

the access determination is taken to be revoked at the time of the cessation.

(9) If:

- (a) an access determination relating to access to a declared service is in force; and
- (b) the declared service is covered by a declaration under section 152AL, and the declaration is revoked; and
- (c) the Commission does not make a fresh declaration under section 152AL that replaces the declaration referred to in paragraph (b) of this subsection;

the access determination is taken to be revoked at the time of the revocation of the declaration.

(9A) If:

- (a) an interim access determination relating to access to a declared service is in force; and
- (b) a final access determination relating to access to the declared service comes into force;

the interim access determination is taken to be revoked at the time when the final access determination comes into force.

Extension of access determination

(10) If:

- (a) an access determination (the ***original access determination***) relating to access to a declared service is in force; and
- (b) the Commission has commenced to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make another access determination in relation to access to the service; and

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- (c) the Commission considers that it will make the other access determination, but will not be in a position to do so before the expiry date for the original access determination;
- the Commission may, by writing, declare that the expiry date for the original access determination is taken to be the day immediately before the day on which the other access determination comes into force.
- (11) The Commission must publish a declaration under subsection (10) on the Commission's website.
- (12) If:
- (a) after holding a public inquiry under subsection 152ALA(7) in relation to a section 152AL declaration, the Commission:
- (i) extends or further extends the expiry date for the declaration by a period of not more than 12 months; and
- (ii) decides to allow the declaration to expire after the end of that period; and
- (b) an access determination is in force in relation to access to the declared service;
- the Commission may, by writing, extend the expiry date for the access determination by the same period.
- (13) The Commission must publish an instrument under subsection (12) on the Commission's website.
- (14) The Commission is not required to observe any requirements of procedural fairness in relation to a decision under subsection (10) or (12).
- (15) A declaration under subsection (10) is not a legislative instrument.
- (16) An instrument under subsection (12) is not a legislative instrument.

152BCG Interim access determinations

- (1) If:
- (a) the Commission makes a declaration under section 152AL after the commencement of this section; and
- (b) the declaration is not a fresh declaration that replaces a previous declaration; and

- (c) the Commission has commenced to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination in relation to access to the declared service; and
 - (d) either:
 - (i) the Commission considers that it is unlikely that a final access determination in relation to access to the service will be made within 6 months after the commencement of the public inquiry; or
 - (ii) the Commission considers that there is an urgent need to make an access determination in relation to access to the service before the completion of the public inquiry;
- the Commission must make an interim access determination in relation to access to the service.
- (2) If:
 - (a) a declaration is in force under section 152AL; and
 - (b) no access determination has previously been made in relation to access to the declared service;
- the Commission may make an interim access determination in relation to access to the service.
- (3) The day specified in an interim access determination as the day on which the determination is to come into force must not be earlier than the day on which the declaration mentioned in paragraph (1)(a) or (2)(a), as the case may be, came into force.
 - (4) The Commission is not required to observe any requirements of procedural fairness in relation to the making of an interim access determination.
 - (5) The Commission must not make an interim access determination otherwise than in accordance with this section.

152BCGA Stay of access determinations

- (1) Paragraphs 15(1)(a) and (b) and 15A(1)(a) and (b) of the *Administrative Decisions (Judicial Review) Act 1977* do not apply to a decision of the Commission to make an access determination.
- (2) If a person applies to the Federal Court under subsection 39B(1) of the *Judiciary Act 1903* for a writ or injunction in relation to a

decision of the Commission to make an access determination, the Court must not make any orders staying or otherwise affecting the operation or implementation of the decision pending the finalisation of the application.

Subdivision B—Public inquiries about proposals to make access determinations

152BCH Access determination to be made after public inquiry

- (1) The Commission must not make an access determination unless:
 - (a) the Commission has held a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make the determination; and
 - (b) the Commission has prepared a report about the inquiry under section 505 of the *Telecommunications Act 1997*; and
 - (c) the report was published during the 180-day period ending when the determination was made.
- (2) Subsection (1) does not apply to an interim access determination.
- (3) Subsection (1) has effect subject to section 152BCI.

152BCI When public inquiry must be held

- (1) If:
 - (a) the Commission makes a declaration under section 152AL after the commencement of this section; and
 - (b) no access determination has previously been made in relation to access to the declared service;the Commission must, within 30 days after the declaration is made, commence to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination relating to access to the declared service.
- (2) If:
 - (a) a declaration is in force under section 152AL immediately after the commencement of this section; and
 - (b) no access determination has previously been made in relation to access to the declared service;

the Commission must, during the 12-month period beginning at the commencement of this section, commence to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination relating to access to the declared service.

(3) If:

- (a) a declaration is in force under section 152AL; and
- (b) an access determination has previously been made in relation to access to the declared service;

the Commission must, during the period:

- (c) beginning 18 months before the expiry date for the access determination; and
- (d) ending 6 months before the expiry date for the access determination;

commence to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination relating to access to the declared service.

(4) Subsection (3) has effect subject to subsections (5), (6) and (7).

(5) If:

- (a) a declaration (the **current declaration**) is in force under section 152AL; and
- (b) an access determination has previously been made in relation to access to the declared service; and
- (c) the expiry date of the current declaration is extended or further extended for a period of not more than 12 months; and
- (d) the Commission decides to allow the current declaration to expire without making a new declaration under section 152AL;

the Commission is not required to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination relating to access to the declared service.

(6) If:

- (a) a declaration is in force under section 152AL; and
- (b) an access determination (the **current determination**) is in force in relation to access to the declared service; and

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(c) the Commission commences to hold a public inquiry under subsection 152ALA(7) in relation to the declaration;

then:

(d) the Commission may defer holding a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination relating to access to the declared service until the Commission decides whether to extend or further extend the expiry date for the declaration; and

(e) if the Commission decides to extend or further extend the expiry date for the declaration—the Commission must commence to hold such a public inquiry before the expiry date for the current access determination; and

(f) if the Commission decides not to extend or further extend the expiry date for the declaration—the Commission is not required to hold such a public inquiry.

(7) If:

(a) a declaration is in force under section 152AL; and

(b) an access determination has previously been made in relation to access to the declared service; and

(c) after holding a public inquiry under subsection 152ALA(7) in relation to the declaration, the Commission decides to allow the declaration to expire without making a new declaration under section 152AL;

the Commission is not required to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination relating to access to the declared service.

Note: If a service is a declared service under subsection 152AL(7) (which deals with special access undertakings), there is no need for the Commission to make a declaration of the service under section 152AL.

(8) Despite anything else in this section, if:

(a) the Commission makes binding rules of conduct that relate to access to a declared service; and

(b) no access determination is in force in relation to access to the declared service;

the Commission must, within 30 days after the binding rules of conduct are made, commence to hold a public inquiry under

Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination relating to access to the declared service.

152BCJ Combined inquiries about proposals to make access determinations

- (1) The Commission may decide to combine 2 or more public inquiries of a kind mentioned in section 152BCH.
- (2) If the Commission makes such a decision:
 - (a) the Commission may publish a single notice relating to the combined inquiry under section 498 of the *Telecommunications Act 1997*; and
 - (b) the Commission may prepare a single discussion paper about the combined inquiry under section 499 of that Act; and
 - (c) the Commission may hold hearings relating to the combined inquiry under section 501 of that Act; and
 - (d) the Commission must ensure that each inquiry is covered by a report under section 505 of that Act, whether the report relates:
 - (i) to a single one of those inquiries; or
 - (ii) to any 2 or more of those inquiries.

152BCK Time limit for making an access determination

- (1) This section applies if the Commission commences to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination.
- (2) The Commission must make a final access determination within 6 months after that commencement.

Extension of decision-making period

- (3) The Commission may, by written notice published on its website, extend or further extend the 6-month period referred to in subsection (2), so long as:
 - (a) the extension or further extension is for a period of not more than 6 months; and

- (b) the notice includes a statement explaining why the Commission has been unable to make a final access determination within that 6-month period or that 6-month period as previously extended, as the case may be.

Note: The Commission may be required to make an interim access determination—see section 152BCG.

Subdivision C—Variation or revocation of access determinations

152BCN Variation or revocation of access determinations

- (1) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a power conferred on the Commission by section 152BC, but it applies with the following changes.
- (2) The Commission is not required to hold a public inquiry under Part 25 the *Telecommunications Act 1997* about a proposal to vary an access determination if:
 - (a) the variation is of a minor nature; or
 - (b) each:
 - (i) carrier or carriage service provider; and
 - (ii) access seeker;whose interests are likely to be affected by the variation has consented in writing to the variation.
- (3) The Commission is not required to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to revoke an access determination if the Commission is satisfied that each:
 - (a) carrier or service provider; and
 - (b) access seeker;whose interests are likely to be affected by the revocation has consented in writing to the revocation.
- (4) If a fixed principles provision is included in an access determination:
 - (a) a provision referred to in paragraph 152BCD(5)(a) or (b) cannot be varied or removed; and

- (b) the access determination must not be varied in a manner that is inconsistent with a provision referred to in paragraph 152BCD(5)(a) or (b).
- (5) The Commission does not have a duty to consider whether to exercise the power to vary or revoke an access determination, whether the Commission is requested to do so by another person, or in any other circumstances.
- (6) If the Commission has commenced to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to vary an access determination, the Commission may alter the proposed variation.
- (7) Notice of the alteration is to be published in the same way in which a notice relating to the public inquiry was published under section 498 of the *Telecommunications Act 1997*.
- (8) Subsection (7) does not apply in relation to an alteration if:
- (a) the alteration is of a minor nature; or
 - (b) each:
 - (i) carrier or carriage service provider; and
 - (ii) access seeker;whose interests are likely to be affected by the alteration has consented in writing to the alteration.
- (9) Despite anything else in this section, if:
- (a) the Commission makes binding rules of conduct that relate to access to a declared service; and
 - (b) an access determination is in force in relation to access to the declared service;
- the Commission must, within 30 days after the binding rules of conduct are made, commence to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to vary the access determination.

Subdivision D—Compliance with access determinations

152BCO Carrier licence condition

A carrier licence held by a carrier is subject to a condition that the carrier must comply with any access determinations that are applicable to the carrier.

152BCP Service provider rule

- (1) In addition to the rules mentioned in section 98 of the *Telecommunications Act 1997*, the rule set out in subsection (2) of this section is a service provider rule for the purposes of that Act.
- (2) A carriage service provider must comply with any access determinations that are applicable to the provider.

Subdivision E—Private enforcement of access determinations

152BCQ Private enforcement of access determinations

- (1) If the Federal Court is satisfied, on the application of:
 - (a) an access seeker; or
 - (b) a carrier; or
 - (c) a carriage service provider;that a person has engaged, is engaging, or is proposing to engage in conduct that constitutes a contravention of an access determination, the Court may make any or all of the following orders:
 - (d) an order granting an injunction on such terms as the Court thinks appropriate:
 - (i) restraining the person from engaging in the conduct; or
 - (ii) if the conduct involves refusing or failing to do something—requiring the person to do that thing;
 - (e) an order directing the person to compensate the applicant for loss or damage suffered as a result of the contravention;
 - (f) any other order that the Court thinks appropriate.
- (2) The revocation or expiry of an access determination does not affect any remedy under subsection (1) in respect of a contravention of the access determination that occurred when the access determination was in force.

- (3) If the Federal Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.
- (4) A reference in this section to a person involved in the contravention is a reference to a person who has:
- (a) aided, abetted, counselled or procured the contravention; or
 - (b) induced the contravention, whether through threats or promises or otherwise; or
 - (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
 - (d) conspired with others to effect the contravention.

152BCR Consent injunctions

On an application for an injunction under section 152BCQ, the Federal Court may grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied that the section applies.

152BCS Interim injunctions

The Federal Court may grant an interim injunction pending determination of an application under section 152BCQ.

152BCT Factors relevant to granting a restraining injunction

The power of the Federal Court to grant an injunction under section 152BCQ restraining a person from engaging in conduct may be exercised whether or not:

- (a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

152BCU Factors relevant to granting a mandatory injunction

The power of the Federal Court to grant an injunction under section 152BCQ requiring a person to do a thing may be exercised whether or not:

- (a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or
- (b) the person has previously refused or failed to do that thing; or
- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that thing.

152BCV Discharge or variation of injunction or other order

The Federal Court may discharge or vary an injunction or order granted under this Subdivision.

Subdivision F—Register of Access Determinations

152BCW Register of Access Determinations

- (1) The Commission is to maintain a register, to be known as the Register of Access Determinations, in which the Commission includes all access determinations in force.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Commission's website.
- (4) The Register is not a legislative instrument.
- (5) If the Commission is satisfied that:
 - (a) publication of a particular provision of an access determination could reasonably be expected to prejudice substantially the commercial interests of a person; and
 - (b) the prejudice outweighs the public interest in the publication of the provision;the Commission may remove the provision from the version of the access determination that is included in the Register.

- (6) If the Commission does so, the Commission must include in the Register an annotation to that effect.

Division 4A—Binding rules of conduct

Subdivision A—Commission may make binding rules of conduct

152BD Binding rules of conduct

- (1) The Commission may make written rules that:
- (a) specify any or all of the terms and conditions on which a carrier or carriage service provider is to comply with any or all of the standard access obligations applicable to the carrier or provider in relation to a specified declared service; or
 - (b) require a carrier or carriage service provider to comply with any or all of the standard access obligations applicable to the carrier or provider in relation to a specified declared service in a manner specified in the rules;

if the Commission considers that there is an urgent need to do so.

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

- (2) Rules under subsection (1) are to be known as ***binding rules of conduct***.
- (3) Binding rules of conduct may be of general application or may be limited as provided in the rules.
- (4) In particular, binding rules of conduct may be limited to:
- (a) particular carriers or carriage service providers; or
 - (b) particular classes of carriers or carriage service providers; or
 - (c) particular access seekers; or
 - (d) particular classes of access seekers.
- (5) Subsection (4) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (6) The Commission is not required to observe any requirements of procedural fairness in relation to the making of binding rules of conduct.

- (7) The Commission does not have a duty to consider whether to make binding rules of conduct, whether at the request of a person or in any other circumstances.
- (8) Binding rules of conduct may provide for the Commission to perform functions, and exercise powers, under the rules.
- (9) An instrument under subsection (1) is not a legislative instrument.

152BDAA Matters that the Commission must take into account

- (1) The Commission must take the following matters into account in making binding rules of conduct:
 - (a) whether the binding rules of conduct will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services;
 - (b) the legitimate business interests of a carrier or carriage service provider who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service;
 - (c) the interests of all persons who have rights to use the declared service;
 - (d) the direct costs of providing access to the declared service;
 - (e) the value to a person of extensions, or enhancement of capability, whose cost is borne by someone else;
 - (f) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility;
 - (g) the economically efficient operation of a carriage service, a telecommunications network or a facility.
- (2) If a carrier or carriage service provider who supplies, or is capable of supplying, the declared service supplies one or more other eligible services, then, in making binding rules of conduct that are applicable to the carrier or provider, as the case may be, the Commission may take into account:
 - (a) the characteristics of those other eligible services; and
 - (b) the costs associated with those other eligible services; and
 - (c) the revenues associated with those other eligible services; and
 - (d) the demand for those other eligible services.

- (3) The Commission may take into account any other matters that it thinks are relevant.
- (4) The Commission is not required by subsection (1) or (2) to take a matter into account if it is not reasonably practicable for the Commission to do so, having regard to the urgent need to make the binding rules of conduct.
- (5) For the purposes of taking a particular matter into account under this section, the Commission is not required to obtain information, or further information, that is not already in the possession of the Commission if it is not reasonably practicable for the Commission to do so, having regard to the urgent need to make the binding rules of conduct.
- (6) In this section:
eligible service has the same meaning as in section 152AL.

152BDA Restrictions on binding rules of conduct

- (1) The Commission must not make binding rules of conduct that would have any of the following effects:
 - (a) preventing a service provider who already has access to the declared service from obtaining a sufficient amount of the service to be able to meet the service provider's reasonably anticipated requirements, measured at the time when the access seeker made a request in relation to the service under section 152AR;
 - (b) preventing a carrier or carriage service provider from obtaining a sufficient amount of the service to be able to meet the carrier's or provider's reasonably anticipated requirements, measured at the time when the access seeker made a request in relation to the service under section 152AR;
 - (c) preventing a person from obtaining, by the exercise of a pre-rules right, a sufficient level of access to the declared service to be able to meet the person's actual requirements;
 - (d) depriving any person of a protected contractual right;
 - (e) resulting in an access seeker becoming the owner (or one of the owners) of any part of a facility without the consent of the owner of the facility;

- (f) requiring a person (other than an access seeker) to bear an unreasonable amount of the costs of:
 - (i) extending or enhancing the capability of a facility; or
 - (ii) maintaining extensions to or enhancements of the capability of a facility;
 - (g) requiring a carrier or carriage service provider to provide an access seeker with access to a declared service if there are reasonable grounds to believe that:
 - (i) the access seeker would fail, to a material extent, to comply with the terms and conditions on which the carrier or provider provides, or is reasonably likely to provide, that access; or
 - (ii) the access seeker would fail, in connection with that access, to protect the integrity of a telecommunications network or to protect the safety of individuals working on, or using services supplied by means of, a telecommunications network or a facility.
- (2) Examples of grounds for believing as mentioned in subparagraph (1)(g)(i) include:
- (a) evidence that the access seeker is not creditworthy; and
 - (b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the carrier or carriage service provider).
- (3) The Commission must not make binding rules of conduct that are inconsistent with any of the standard access obligations that are, or will be, applicable to a carrier or carriage service provider.
- (3A) If a final migration plan is in force, the Commission must not make binding rules of conduct that would have the effect of requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.
- (4) If the Commission makes binding rules of conduct that have the effect of depriving a person (the *second person*) of a pre-rules right to require the carrier or provider to provide access to the declared service to the second person, the rules must also require the access seeker:

- (a) to pay to the second person such amount (if any) as the Commission considers is fair compensation for the deprivation; and
 - (b) to reimburse the carrier or provider and the Commonwealth for any compensation that the carrier or provider or the Commonwealth agrees, or is required by a court order, to pay to the second person as compensation for the deprivation.
- (5) Binding rules of conduct are of no effect to the extent to which they contravene subsection (1), (3) or (3A).
- (6) In this section:

pre-rules right means a right under a contract that was in force immediately before the binding rules of conduct came into force.

protected contractual right means a right under a contract that was in force at the beginning of 13 September 1996.

152BDB Access agreements prevail over inconsistent binding rules of conduct

If binding rules of conduct are applicable to the following parties:

- (a) a carrier or carriage service provider;
- (b) an access seeker;

the binding rules of conduct have no effect to the extent to which they are inconsistent with an access agreement that is applicable to those parties.

152BDC Duration of binding rules of conduct

- (1) Binding rules of conduct come into force on the day specified in the rules as the day on which the rules are to come into force.
- (2) Binding rules of conduct must specify an expiry date for the rules.
- (3) An expiry date must occur in the 12-month period beginning when the rules were made.
- (4) Unless sooner revoked, binding rules of conduct cease to be in force on the expiry date for the rules.

152BDCA Final migration plan prevails over inconsistent binding rules of conduct

If a final migration plan is in force, binding rules of conduct have no effect to the extent to which they would have the effect of:

- (a) preventing Telstra from complying with the final migration plan; or
- (b) requiring Telstra to engage in conduct in connection with matters covered by the final migration plan.

152BDD Commission must give copy of binding rules of conduct to carrier etc.

If binding rules of conduct are limited to a particular carrier, carriage service provider or access seeker, as soon as practicable after making the rules, the Commission must give a copy of the rules to the carrier, carriage service provider or access seeker, as the case may be.

152BDE Access determinations that are inconsistent with binding rules of conduct

If a provision of an access determination (other than a fixed principles provision) is inconsistent with binding rules of conduct, the provision has no effect to the extent of the inconsistency.

152BDEA Stay of binding rules of conduct

- (1) Paragraphs 15(1)(a) and (b) and 15A(1)(a) and (b) of the *Administrative Decisions (Judicial Review) Act 1977* do not apply to a decision of the Commission to make binding rules of conduct.
- (2) If a person applies to the Federal Court under subsection 39B(1) of the *Judiciary Act 1903* for a writ or injunction in relation to a decision of the Commission to make binding rules of conduct, the Court must not make any orders staying or otherwise affecting the operation or implementation of the decision pending the finalisation of the application.

Subdivision B—Compliance with binding rules of conduct

152BDF Carrier licence condition

A carrier licence held by a carrier is subject to a condition that the carrier must comply with any binding rules of conduct that are applicable to the carrier.

152BDG Service provider rule

- (1) In addition to the rules mentioned in section 98 of the *Telecommunications Act 1997*, the rule set out in subsection (2) of this section is a service provider rule for the purposes of that Act.
- (2) A carriage service provider must comply with any binding rules of conduct that are applicable to the provider.

Subdivision C—Private enforcement of binding rules of conduct

152BDH Private enforcement of binding rules of conduct

- (1) If the Federal Court is satisfied, on the application of:
 - (a) an access seeker; or
 - (b) a carrier; or
 - (c) a carriage service provider;that a person has engaged, is engaging, or is proposing to engage in conduct that constitutes a contravention of binding rules of conduct, the Court may make any or all of the following orders:
 - (d) an order granting an injunction on such terms as the Court thinks appropriate:
 - (i) restraining the person from engaging in the conduct; or
 - (ii) if the conduct involves refusing or failing to do something—requiring the person to do that thing;
 - (e) an order directing the person to compensate the applicant for loss or damage suffered as a result of the contravention;
 - (f) any other order that the Court thinks appropriate.
- (2) The revocation or expiry of binding rules of conduct does not affect any remedy under subsection (1) in respect of a

contravention of the rules that occurred when the rules were in force.

- (3) If the Federal Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.
- (4) A reference in this section to a person involved in the contravention is a reference to a person who has:
- (a) aided, abetted, counselled or procured the contravention; or
 - (b) induced the contravention, whether through threats or promises or otherwise; or
 - (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
 - (d) conspired with others to effect the contravention.

152BDI Consent injunctions

On an application for an injunction under section 152BDH, the Federal Court may grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied that the section applies.

152BDJ Interim injunctions

The Federal Court may grant an interim injunction pending determination of an application under section 152BDH.

152BDK Factors relevant to granting a restraining injunction

The power of the Federal Court to grant an injunction under section 152BDH restraining a person from engaging in conduct may be exercised whether or not:

- (a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) the person has previously engaged in conduct of that kind; or

- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

152BDL Factors relevant to granting a mandatory injunction

The power of the Federal Court to grant an injunction under section 152BDH requiring a person to do a thing may be exercised whether or not:

- (a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or
- (b) the person has previously refused or failed to do that thing; or
- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that thing.

152BDM Discharge or variation of injunction or other order

The Federal Court may discharge or vary an injunction or order granted under this Subdivision.

Subdivision D—Register of Binding Rules of Conduct

152BDN Register of Binding Rules of Conduct

- (1) The Commission is to maintain a register, to be known as the Register of Binding Rules of Conduct, in which the Commission includes all binding rules of conduct in force.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Commission's website.
- (4) The Register is not a legislative instrument.
- (5) If the Commission is satisfied that:
 - (a) publication of a particular provision of binding rules of conduct could reasonably be expected to prejudice substantially the commercial interests of a person; and
 - (b) the prejudice outweighs the public interest in the publication of the provision;

the Commission may remove the provision from the version of the rules that is included in the Register.

- (6) If the Commission does so, the Commission must include in the Register an annotation to that effect.

Division 4B—Access agreements

152BE Access agreements

- (1) For the purposes of this Part, an *access agreement* is an agreement, where:
- (a) the agreement is in writing; and
 - (b) the agreement is legally enforceable; and
 - (c) the agreement relates to access to a declared service; and
 - (d) the parties to the agreement are:
 - (i) an access seeker; and
 - (ii) the carrier or carriage service provider who supplies, or proposes to supply, the declared service; and
 - (e) any of the following subparagraphs applies:
 - (i) the agreement embodies any or all of the terms and conditions on which the carrier or carriage service provider is to comply with any or all of the standard access obligations applicable to the carrier or provider;
 - (ii) if an access determination imposes requirements on a carrier or carriage service provider in relation to access to the declared service, as mentioned in paragraph 152BC(3)(e)—the agreement embodies any or all of the terms and conditions on which the carrier or carriage service provider is to comply with any or all of those requirements;
 - (iii) the agreement embodies any other terms and conditions of the access seeker's access to the declared service;
 - (iv) the agreement requires the carrier or carriage service provider to comply with any or all of the standard access obligations applicable to the carrier or provider in a manner specified in the agreement;
 - (v) the agreement requires the carrier or carriage service provider to extend or enhance the capability of a facility by means of which the declared service is supplied;

- (vi) the agreement imposes other requirements on the carrier or carriage service provider in relation to access to the declared service;
 - (vii) the agreement specifies the terms and conditions on which the carrier or carriage service provider is to comply with any or all of those other requirements;
 - (viii) the agreement requires the access seeker to accept, and pay for, access to the declared service;
 - (ix) the agreement provides that any or all of the obligations referred to in section 152AR are not applicable to the carrier or carriage service provider, either unconditionally or subject to such conditions or limitations as are specified in the agreement;
 - (x) the agreement restricts or limits the application to the carrier or carriage service provider of any or all of the obligations referred to in section 152AR;
 - (xi) the agreement deals with any other matter relating to access to the declared service.
- (1A) Paragraph (1)(b) does not apply to the agreement to the extent (if any) to which the agreement is covered by subparagraph (1)(e)(ix) or (x).
- (2) If:
- (a) an agreement relates to access to an eligible service (within the meaning of section 152AL); and
 - (b) at the time the agreement was entered into to, the eligible service was a not a declared service; and
 - (c) at a later time (the **declaration time**), the eligible service becomes a declared service; and
 - (d) if the agreement had been entered into immediately after the declaration time, the agreement would have been an access agreement;
- the agreement becomes an **access agreement** immediately after the declaration time.
- (3) If:
- (a) an access agreement is varied by another agreement (the **variation agreement**); and
 - (b) the variation agreement is in writing; and

(c) the variation agreement is legally enforceable;
a reference in this Part to the *access agreement* is a reference to the access agreement as varied by the variation agreement.

- (4) It is immaterial whether an access agreement or variation agreement was entered into before or after the commencement of this section.
- (5) An access agreement is not a legislative instrument.
- (6) A variation agreement is not a legislative instrument.

152BEA Lodgment of access agreements with the Commission

- (1) If:
- (a) an access agreement is covered by subsection 152BE(1); and
 - (b) the agreement was entered into after the commencement of this section;
- the carrier or carriage service provider who supplies, or proposes to supply, the service to which the agreement relates must, within 28 days after the day on which the agreement was entered into, give the Commission:
- (c) a copy of the agreement; and
 - (d) a written statement setting out such information (if any) about the agreement as is specified in an instrument in force under subsection (4).
- (2) If:
- (a) under subsection 152BE(2), an agreement becomes an access agreement after the commencement of this section; and
 - (b) the agreement was entered into after the commencement of this section;
- the carrier or carriage service provider who supplies, or proposes to supply, the service to which the agreement relates must, within 28 days after the day on which the agreement became an access agreement, give the Commission:
- (c) a copy of the agreement; and
 - (d) a written statement setting out such information (if any) about the agreement as is specified in an instrument in force under subsection (5).

- (3) If a variation agreement is entered into after the commencement of this section, the carrier or carriage service provider who supplies, or proposes to supply, the service to which the relevant access agreement relates must, within 28 days after the day on which the variation agreement was entered into, give the Commission:
 - (a) a copy of the variation agreement; and
 - (b) a written statement setting out such information (if any) about the variation agreement as is specified in an instrument in force under subsection (6).
- (4) The Commission may, by writing, specify information for the purposes of paragraph (1)(d).
- (5) The Commission may, by writing, specify information for the purposes of paragraph (2)(d).
- (6) The Commission may, by writing, specify information for the purposes of paragraph (3)(b).
- (7) The Commission may, by writing, require information in a statement given to the Commission under subsection (1), (2) or (3) to be verified by statutory declaration.
- (8) The Commission must publish an instrument under subsection (4), (5), (6) or (7) on the Commission's website.
- (9) The Commission may, before the end of the 28-day period referred to in subsection (1), (2) or (3), extend that period.
- (10) An instrument under subsection (4), (5), (6) or (7) is not a legislative instrument.
- (11) This section does not limit section 155.

152BEB Notification of termination of access agreement

- (1) This section applies if:
 - (a) a copy of an access agreement has been given to the Commission under section 152BEA; and
 - (b) the agreement is terminated, rescinded or cancelled before the expiry of the agreement.
 - (2) The carrier or carriage service provider who supplied, or proposed to supply, the service to which the agreement relates must, within
-

28 days after the termination, rescission or cancellation, as the case may be, notify the Commission, in writing, of the termination, rescission or cancellation.

152BEC Carrier licence condition

A carrier licence held by a carrier is subject to a condition that the carrier must comply with sections 152BEA and 152BEB.

152BED Service provider rule

- (1) In addition to the rules mentioned in section 98 of the *Telecommunications Act 1997*, the rule set out in subsection (2) of this section is a service provider rule for the purposes of that Act.
- (2) A carriage service provider must comply with sections 152BEA and 152BEB.

161 Subdivision A of Division 5 of Part XIC

Repeal the Subdivision.

162 Subsection 152CBA(1)

Omit “an active”, substitute “a”.

163 Before subsection 152CBA(4)

Insert:

- (3B) The undertaking may also state, in the event that the person supplies the service (whether to itself or to other persons), the person:
 - (a) will engage in specified conduct in relation to access to the service; and
 - (b) will do so on such terms and conditions as are specified in the undertaking.

164 Subsection 152CBA(10)

Repeal the subsection, substitute:

- (10) If the undertaking expires, this Part does not prevent the person from giving a fresh special access undertaking in the same terms as the expired undertaking.

165 Before subsection 152CBA(11)

Insert:

Commission may perform functions or exercise powers

- (10A) If the undertaking provides for the Commission to perform functions or exercise powers in relation to the undertaking, the Commission may perform those functions, and exercise those powers, in accordance with the undertaking.

166 After section 152CBA

Insert:

152CBAA Fixed principles terms and conditions

- (1) A special access undertaking may provide that a term or condition specified in the undertaking is a ***fixed principles term or condition*** for a period that, under the undertaking, is expressed to be the ***notional fixed period*** for the fixed principles term or condition.
- (2) If the undertaking does so, the undertaking may also provide that one or more specified circumstances are ***qualifying circumstances*** in relation to the fixed principles term or condition.
- (3) The notional fixed period for a fixed principles term or condition must:
 - (a) begin when the undertaking comes into operation; and
 - (b) end:
 - (i) at the expiry time of the undertaking; or
 - (ii) if an earlier time is ascertained in accordance with the undertaking—at that earlier time; or
 - (iii) if a later time is ascertained in accordance with the undertaking—at that later time.
- (4) If:
 - (a) a fixed principles term or condition is specified in a special access undertaking; and
 - (b) the undertaking ceases to be in operation before the end of the notional fixed period for the fixed principles term or condition;

the fixed principles term or condition ceases to be in operation when the undertaking ceases to be in operation.

Note: Even though the fixed principles term or condition ceases to be in operation when the undertaking ceases to be in operation, subsection (5) ensures that a fresh undertaking can include an identical fixed principles term or condition.

Consequences—acceptance of other undertaking

- (5) If:
- (a) a special access undertaking (the **original undertaking**) given by a person in relation to a particular service contained a fixed principles term or condition (the **original fixed principles term or condition**); and
 - (b) the original undertaking was accepted by the Commission; and
 - (c) during the notional fixed period for the original fixed principles term or condition, the person gives the Commission another special access undertaking (the **other undertaking**) in relation to the service; and
 - (d) the other undertaking contains a fixed principles term or condition (the **corresponding fixed principles term or condition**) that is identical to the original fixed principles term or condition; and
 - (e) the notional fixed period for the corresponding fixed principles term or condition ends at or before the end of the notional fixed period for the original fixed principles term or condition; and
 - (f) if there are qualifying circumstances in relation to the original fixed principles term or condition:
 - (i) there are qualifying circumstances in relation to the corresponding fixed principles term or condition; and
 - (ii) those qualifying circumstances are identical to the qualifying circumstances in relation to the original fixed principles term or condition; and
 - (g) if there are qualifying circumstances in relation to the original fixed principles term or condition—none of those circumstances exist;
- then:
- (h) the Commission must not reject the other undertaking for a reason that concerns:
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- (i) the corresponding fixed principles term or condition; or
 - (ii) the notional fixed period for the corresponding fixed principles term or condition; or
 - (iii) if there are qualifying circumstances in relation to the corresponding fixed principles term or condition—the specification of those circumstances; and
- (i) paragraphs 152CBD(2)(a), (b), (c) and (ca) do not apply to:
- (i) the corresponding fixed principles term or condition; or
 - (ii) the notional fixed period for the corresponding fixed principles term or condition; or
 - (iii) if there are qualifying circumstances in relation to the corresponding fixed principles term or condition—those circumstances; and
- (j) if the corresponding fixed principles term or condition is the only term or condition contained in the other undertaking—paragraph 152CBD(2)(d) does not apply to the other undertaking; and
- (k) if the corresponding fixed principles term or condition is not the only term or condition contained in the other undertaking—subparagraph 152CBD(2)(d)(ii) does not require the Commission to consider any submissions to the extent to which they relate to:
- (i) the corresponding fixed principles term or condition; or
 - (ii) the notional fixed period for the corresponding fixed principles term or condition; or
 - (iii) if there are qualifying circumstances in relation to the corresponding fixed principles term or condition—those circumstances.

Consequences—variation of undertaking

- (6) If:
- (a) a special access undertaking given by a person in relation to a particular service contains a fixed principles term or condition (the ***original fixed principles term or condition***); and
 - (b) the undertaking has been accepted by the Commission; and
 - (c) during the notional fixed period for the original fixed principles term or condition, the person gives the Commission a variation of the undertaking; and

- (d) the varied undertaking contains a fixed principles term or condition (the *corresponding fixed principles term or condition*) that is identical to the original fixed principles term or condition; and
- (e) the notional fixed period for the corresponding fixed principles term or condition is identical to the notional fixed period for the original fixed principles term or condition; and
- (f) if there are qualifying circumstances in relation to the original fixed principles term or condition:
 - (i) there are qualifying circumstances in relation to the corresponding fixed principles term or condition; and
 - (ii) those qualifying circumstances are identical to the qualifying circumstances in relation to the original fixed principles term or condition; and
- (g) if there are qualifying circumstances in relation to the original fixed principles term or condition—none of those circumstances exist;

the Commission must not reject the variation for a reason that concerns:

- (h) the corresponding fixed principles term or condition; or
- (i) the notional fixed period for the corresponding fixed principles term or condition; or
- (j) if there are qualifying circumstances in relation to the corresponding fixed principles term or condition—the specification of those circumstances.

167 Before paragraph 152CBC(6)(a)

Insert:

- (aa) if:
 - (i) the Commission has given a notice under section 152CBDA in relation to the undertaking; and
 - (ii) no varied undertaking was given to the Commission in response to the notice;a day in the period specified in the notice; and
- (ab) if:
 - (i) the Commission has given a notice under section 152CBDA in relation to the undertaking; and
 - (ii) a varied undertaking was given to the Commission in response to the notice; and

(iii) the Commission did not publish the varied undertaking under paragraph 152CBD(2)(d);

a day in the period:

(iv) beginning on the day in which the notice was given; and

(v) ending when the varied undertaking was given to the Commission in response to the notice; and

(ac) if:

(i) the Commission has given a notice under section 152CBDA in relation to the undertaking; and

(ii) a varied undertaking was given to the Commission in response to the notice; and

(iii) the varied undertaking was published under paragraph 152CBD(2)(d);

a day in the period:

(iv) beginning on the day on which the notice was given; and

(v) ending at the end of the time specified by the Commission when it published the varied undertaking; and

168 Paragraph 152CBC(6)(a)

After “if”, insert “paragraph (ac) does not apply and”.

169 After section 152CBC

Insert:

152BCA Serial undertakings

If:

(a) a person gives a special access undertaking (the *first special access undertaking*) to the Commission; and

(b) the Commission rejects the first special access undertaking; and

(c) the person subsequently gives another special access undertaking to the Commission; and

(d) the Commission is satisfied that any or all of the provisions of the first special access application are materially similar to any or all of the provisions of the other special access undertaking;

the Commission may refuse to consider the other special access undertaking.

170 After paragraph 152CBD(2)(c)

Insert:

- (ca) if subsection 152CBA(3B) applies—the Commission is satisfied that:
 - (i) the conduct referred to in paragraph 152CBA(3B)(a) will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services; and
 - (ii) the terms and conditions referred to in paragraph 152CBA(3B)(b) are reasonable; and

171 At the end of section 152CBD

Add:

- (3) Subsection (2) has effect subject to subsection 152CBAA(5) (fixed principles terms and conditions).
- (4) If the undertaking provides that a term or condition specified in the undertaking is a **fixed principles term or condition** for a period that, under the undertaking, is expressed to be the **notional fixed period** for the fixed principles term or condition, the Commission must refuse to accept the undertaking if the Commission considers that:
 - (a) the fixed principles term or condition should not be a fixed principles term or condition; or
 - (b) that notional fixed period should not be the notional fixed period for the fixed principles term or condition; or
 - (c) if the undertaking provides that one or more specified circumstances are qualifying circumstances in relation to the fixed principles term or condition—any of the qualifying circumstances should not be qualifying circumstances in relation to the fixed principles term or condition; or
 - (d) if the undertaking does not provide that particular circumstances are qualifying circumstances in relation to the fixed principles term or condition—those circumstances should be qualifying circumstances in relation to the fixed principles term or condition.

- (5) Subsection (4) has effect subject to subsection 152CBAA(5) (fixed principles terms and conditions).
- (6) If a special access undertaking is given to the Commission in response to a notice under section 152CBDA, the Commission is not required to publish the undertaking under paragraph (2)(d) of this section unless the Commission is satisfied that:
 - (a) the variations specified in the notice are not of a minor nature; or
 - (b) the variations specified in the notice are likely to have a material adverse effect on the legitimate commercial interests of any person.

172 After section 152CBD

Insert:

152CBDA Variation of special access undertaking

- (1) This section applies if a person gives a special access undertaking (the *original undertaking*) to the Commission.
- (2) The Commission may give the person a written notice stating that, if the person:
 - (a) makes such variations to the original undertaking as are specified in the notice; and
 - (b) gives the varied undertaking to the Commission within the period specified in the notice;the Commission will consider the varied undertaking under section 152CBC as if the varied undertaking had been given to the Commission instead of the original undertaking.
- (3) If the person gives the Commission a varied undertaking in response to the notice, the Commission must consider the varied undertaking under section 152CBC as if the varied undertaking had been given to the Commission instead of the original undertaking.
- (4) The Commission does not have a duty to consider whether to give a notice under subsection (2).

173 After subsection 152CBG(4)

Insert:

(4A) Subsection (4) has effect subject to subsection 152CBAA(6) (fixed principles terms and conditions).

174 After section 152CBI

Insert:

152CBIA Special access undertakings prevail over inconsistent access determinations

An access determination has no effect to the extent to which it is inconsistent with a special access undertaking that is in operation.

152CBIB Special access undertakings prevail over inconsistent binding rules of conduct

Binding rules of conduct have no effect to the extent to which they are inconsistent with a special access undertaking that is in operation.

152CBIC Access agreements prevail over special access undertakings

A special access undertaking has no effect to the extent to which it is inconsistent with an access agreement.

175 Subsection 152CC(2)

Omit “may”, substitute “is to”.

176 Subsections 152CC(3), (4) and (5)

Repeal the subsections, substitute:

(3) The Register is to be made available for inspection on the Commission’s website.

(4) The Register is not a legislative instrument.

177 Sections 152CE, 152CF, 152CG and 152CGA

Repeal the sections.

178 Section 152CGB

Repeal the section.

179 Subsection 152CH(1) (notes 1A, 1B, 2 and 3)

Repeal the notes.

180 Subsection 152CH(1) (note 5)

Repeal the note, substitute:

Note 5: Subsection 152CI(2) provides that a provision of an access determination has no effect to the extent that the provision is inconsistent with any Ministerial pricing determination.

Note 5A: Subsection 152CI(3) provides that a provision of binding rules of conduct have no effect to the extent that the provision is inconsistent with any Ministerial pricing determination.

181 Subsection 152CH(1) (note 6)

Repeal the note.

182 Subsection 152CI(2)

Repeal the subsection, substitute:

(2) If a provision of an access determination is inconsistent with any Ministerial pricing determination, the provision has no effect to the extent of the inconsistency.

(3) If a provision of binding rules of conduct is inconsistent with any Ministerial pricing determination, the provision has no effect to the extent of the inconsistency.

Note: The heading to section 152CI is altered by omitting “**and codes**” and substituting “, **access determinations and binding rules of conduct**”.

183 Subsection 152CJ(2)

Omit “may”, substitute “is to”.

184 Subsections 152CJ(3), (4) and (5)

Repeal the subsections, substitute:

(3) The Register is to be made available for inspection on the Commission’s website.

(4) The Register is not a legislative instrument.

185 Division 8 of Part XIC

Repeal the Division.

186 Division 9 of Part XIC

Repeal the Division.

187 Paragraph 152EF(1)(b)

Repeal the paragraph, substitute:

(b) a requirement imposed by an access determination; or

(ba) a requirement imposed by binding rules of conduct;

188 Subparagraph 152ELA(3)(a)(i)

Omit “152AT(1) or”.

189 Subparagraph 152ELA(3)(a)(ii)

Omit “or” (last occurring).

190 Subparagraph 152ELA(3)(a)(iii)

Repeal the subparagraph.

191 Paragraph 152ELA(3)(b)

Repeal the paragraph.

192 Paragraph 152ELA(3)(c)

Omit “this Part;”, substitute “this Part.”.

193 Paragraph 152ELA(3)(d)

Repeal the paragraph.

194 Subsections 152ELA(6) and (7)

Repeal the subsections, substitute:

(6) Subsection (5) does not limit subsection (1).

195 Before section 152EM

Insert:

152ELD Compensation for acquisition of property

(1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the

Commonwealth is liable to pay a reasonable amount of compensation to the person.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction 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 Part includes Division 2 of Part 2 of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*.

195A After section 152EO

Insert:

152EOA Review of operation of this Part

- (1) Before 30 June 2014, the Minister must cause to be conducted a review of the operation of:
 - (a) this Part; and
 - (b) the remaining provisions of this Act so far as they relate to this Part.
- (2) A review under subsection (1) must make provision for public consultation.
- (3) The Minister must cause to be prepared a report of a review under subsection (1).
- (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 completion of the preparation of the report.

196 Subsection 155AAA(21) (subparagraph (c)(i) of the definition of *protected information*)

Omit “152BT, 152BZ.”.

197 Subsection 171B(1)

Omit “and Division 8 of Part XIC have no effect to the extent (if any) to which they purport”, substitute “has no effect to the extent (if any) to which it purports”.

Note: The heading to section 171B is altered by omitting “and Division 8 of Part XIC do” and substituting “does”.

Division 2—Transitional provisions

198 Definitions

In this Division:

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

access determination has the same meaning as in Part XIC of the *Competition and Consumer Act 2010* as amended by this Part.

binding rules of conduct has the same meaning as in Part XIC of the *Competition and Consumer Act 2010* as amended by this Part.

199 Transitional—certificates under subclause 33(3) of Schedule 1 to the *Telecommunications Act 1997*

- (1) This item applies to a certificate if:
 - (a) the certificate was issued under subclause 33(3) of Schedule 1 to the *Telecommunications Act 1997* before the commencement of this item; and
 - (b) the certificate was in force immediately before that commencement.
- (2) The certificate has effect, after the commencement of this item, as if it had been issued by the ACCC under subclause 33(3) of Schedule 1 to the *Telecommunications Act 1997* as amended by this Part.

200 Transitional—certificates under subclause 34(3) of Schedule 1 to the *Telecommunications Act 1997*

- (1) This item applies to a certificate if:
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- (a) the certificate was issued under subclause 34(3) of Schedule 1 to the *Telecommunications Act 1997* before the commencement of this item; and
 - (b) the certificate was in force immediately before that commencement.
- (2) The certificate has effect, after the commencement of this item, as if it had been issued by the ACCC under subclause 34(3) of Schedule 1 to the *Telecommunications Act 1997* as amended by this Part.

201 Transitional—certificates under subclause 35(3) of Schedule 1 to the *Telecommunications Act 1997*

- (1) This item applies to a certificate if:
 - (a) the certificate was issued under subclause 35(3) of Schedule 1 to the *Telecommunications Act 1997* before the commencement of this item; and
 - (b) the certificate was in force immediately before that commencement.
- (2) The certificate has effect, after the commencement of this item, as if it had been issued by the ACCC under subclause 35(3) of Schedule 1 to the *Telecommunications Act 1997* as amended by this Part.

202 Transitional—ordinary class exemptions from standard access obligations

- (1) This item applies to a determination that:
 - (a) was made under section 152AS of the *Competition and Consumer Act 2010*; and
 - (b) was in force immediately before the commencement of this item.
- (2) Despite:
 - (a) the repeal of section 152AS of the *Competition and Consumer Act 2010* effected by this Part; and
 - (b) the amendment of paragraph 152BBAA(1)(a) of that Act made by this Part;

that section and that paragraph continue to apply, in relation to the determination, as if that repeal had not happened and that amendment had not been made. This subitem has effect subject to the following subitem.

- (3) The determination ceases to have effect, to the extent to which it relates to a particular declared service, when the first access determination relating to access to the declared service comes into force.

203 Transitional—ordinary individual exemptions from standard access obligations

- (1) This item applies to a determination that:
- (a) was made under section 152AT of the *Competition and Consumer Act 2010*; and
 - (b) was in force immediately before the commencement of this item.
- (2) Despite:
- (a) the repeal of section 152AT of the *Competition and Consumer Act 2010* effected by this Part; and
 - (b) the amendment of paragraph 152BBAA(1)(b) of that Act made by this Part;

that section and that paragraph continue to apply, in relation to the determination, as if that repeal had not happened and that amendment had not been made. This subitem has effect subject to the following subitem.

- (3) The determination ceases to have effect, to the extent to which it relates to a particular declared service, when the first access determination relating to access to the declared service comes into force.

204 Transitional—ordinary access undertakings given to the Commission before 15 September 2009

- (1) This item applies to an ordinary access undertaking that:
- (a) was given by a carrier or carriage service provider to the Commission under section 152BS of the *Competition and Consumer Act 2010* before 15 September 2009; and
 - (b) was accepted by the Commission under section 152BU of that Act before the commencement of this item; and

- (c) was in operation immediately before the commencement of this item.
- (2) Despite the following repeals effected, and amendments made, by this Part:
- (a) the repeal of Subdivision A of Division 5 of Part XIC of the *Competition and Consumer Act 2010*;
 - (b) the amendment of the definition of ***access undertaking*** in section 152AC of that Act;
 - (c) the repeal of the definition of ***ordinary access undertaking*** in section 152AC of that Act;
 - (d) the amendment of subparagraph (c)(i) of the definition of ***protected information*** in subsection 155AAA(21) of that Act;
- that Subdivision and those definitions continue to apply, in relation to the undertaking, as if those repeals had not happened and those amendments had not been made. This subitem has effect subject to the following subitems.
- (3) The undertaking cannot be varied so as to extend its duration.
- (4) If the undertaking adopts a set of model terms and conditions set out in the telecommunications access code, then, despite the repeal of sections 152BJ and 152BK of the *Competition and Consumer Act 2010*, those sections continue to apply, in relation to the undertaking, as if those repeals had not happened.
- (5) If the undertaking is inconsistent with an access agreement, the undertaking has no effect to the extent of the inconsistency.

205 Transitional—ordinary access undertakings given to the Commission on or after 15 September 2009

- (1) This item applies to an ordinary access undertaking that:
- (a) was given to the Commission under section 152BS of the *Competition and Consumer Act 2010* on or after 15 September 2009; and
 - (b) was accepted by the Commission under section 152BU of that Act before the commencement of this item; and
 - (c) was in operation immediately before the commencement of this item.

- (2) Despite the following repeals effected, and amendments made, by this Part:
- (a) the repeal of Subdivision A of Division 5 of Part XIC of the *Competition and Consumer Act 2010*;
 - (b) the amendment of the definition of *access undertaking* in section 152AC of that Act;
 - (c) the repeal of the definition of *ordinary access undertaking* in section 152AC of that Act;
 - (d) the amendment of subparagraph (c)(i) of the definition of *protected information* in subsection 155AAA(21) of that Act;

that Subdivision and those definitions continue to apply, in relation to the undertaking, as if those repeals had not happened and those amendments had not been made. This subitem has effect subject to the following subitems.

- (3) The undertaking cannot be varied so as to extend its duration.
- (4) The undertaking ceases to have effect, to the extent to which it relates to a particular declared service, when the first access determination relating to access to the declared service comes into force.
- (5) If the undertaking adopts a set of model terms and conditions set out in the telecommunications access code, then, despite the repeal of sections 152BJ and 152BK of the *Competition and Consumer Act 2010*, those sections continue to apply, in relation to the undertaking, as if those repeals had not happened.
- (6) If the undertaking is inconsistent with an access agreement, the undertaking has no effect to the extent of the inconsistency.

206 Transitional—continuity of special access undertakings

The amendment of subsection 152CBA(1) of the *Competition and Consumer Act 2010* made by this Part does not affect the continuity of a special access undertaking that was in operation immediately before the commencement of this item.

207 Transitional—arbitration of access disputes

- (1) Despite the following repeals effected, and amendments made, by this Part:
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- (a) the repeal of Division 8 of Part XIC of the *Competition and Consumer Act 2010*;
- (b) the amendment of the definition of *pre-request right* in subsection 152AR(12) of that Act;
- (c) the repeal of subsection 152BBC(5) of that Act;
- (d) the repeal of section 152CGB of that Act;
- (e) the amendments of section 152ELA of that Act;
- (f) the amendment of subsection 171B(1) of that Act;

that Division, that definition, and those sections and subsections continue to apply as if those repeals had not happened and those amendments had not been made. This subitem has effect subject to the following subitems.

(2) If:

- (a) a declared service is supplied, or proposed to be supplied, by a carrier or a carriage service provider; and
- (b) one or more standard access obligations apply, or will apply, to the carrier or provider in relation to the declared service; and
- (c) an access seeker is unable to agree with the carrier or provider about one or more aspects of access to the declared service;

then:

- (d) if the declared service was a declared service immediately before the commencement of this item—a person is not entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010* at any time after the first final access determination relating to access to the declared service has come into force; or
- (e) otherwise—a person is not entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010*.

(3) If:

- (a) a declared service is supplied, or proposed to be supplied, by a carrier or a carriage service provider; and
- (b) one or more standard access obligations apply, or will apply, to the carrier or provider in relation to the declared service; and

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- (c) an access seeker is unable to agree with the carrier or provider about the terms and conditions on which the carrier or provider is to comply with those obligations;

then:

- (d) if the declared service was a declared service immediately before the commencement of this item—a person is not entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010* at any time after the first final access determination relating to access to the declared service has come into force; or
- (e) otherwise—a person is not entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010*.

(3A) If:

- (a) a declared service is supplied, or proposed to be supplied, by Telstra; and
- (b) one or more standard access obligations apply, or will apply, to Telstra in relation to the declared service; and
- (c) an access agreement relating to access to the declared service:
 - (i) is in force between an NBN corporation (within the meaning of section 577BA of the *Telecommunications Act 1997*) and Telstra; and
 - (ii) is specified in an undertaking in force under section 577A of the *Telecommunications Act 1997*; and
- (d) the access agreement was entered into before the first final access determination relating to access to the declared service has come into force;

neither Telstra nor the NBN corporation is entitled to notify an access dispute to the Commission under section 152CM of the *Competition and Consumer Act 2010* in relation to the declared service.

(4) A final determination made by the Commission under Division 8 of Part XIC of the *Competition and Consumer Act 2010* after the commencement of this item must specify an expiry date for the determination. Unless sooner revoked, the determination ceases to be in force on the expiry date for the determination.

(5) If:

- (a) an access agreement relating to access to a declared service is entered into before the first final access determination relating to access to the declared service has come into force; and
 - (b) the access agreement is inconsistent with a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*;

the access agreement has no effect to the extent of the inconsistency.
 - (6) If a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*:
 - (a) does not have an expiry date; and
 - (b) is inconsistent with a final access determination;

the first-mentioned determination has no effect to the extent of the inconsistency.
 - (7) If:
 - (a) a final access determination is inconsistent with a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*; and
 - (b) the determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010* has an expiry date;

the final access determination has no effect to the extent of the inconsistency.
 - (8) If an interim access determination is inconsistent with a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*, the interim access determination has no effect to the extent of the inconsistency.
 - (9) If a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*:
 - (a) does not have an expiry date; and
 - (b) is inconsistent with binding rules of conduct;

the determination has no effect to the extent of the inconsistency.
 - (10) If:
 - (a) binding rules of conduct are inconsistent with a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010*; and
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- (b) the determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010* has an expiry date; the binding rules of conduct have no effect to the extent of the inconsistency.
- (11) If a determination under Division 8 of Part XIC of the *Competition and Consumer Act 2010* relating to access to a declared service is inconsistent with an access agreement that was entered into after the first final access determination relating to access to the declared service has come into force, the first-mentioned determination has no effect to the extent of the inconsistency.
- (12) The Commission may, at any time, terminate an arbitration under Division 8 of Part XIC of the *Competition and Consumer Act 2010* (without making a determination under that Division) if the Commission commences to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make an access determination relating to access to the declared service concerned.

208 Transitional—compliance with standard access obligations

- (1) This item applies if:
- (a) a carrier or carriage service provider is required to comply with any or all of the standard access obligations; and
 - (b) either:
 - (i) an ordinary access undertaking given by the carrier or carriage service provider is in operation, and the undertaking specifies any or all of the terms and conditions on which the carrier or carriage service provider is to comply with any of the standard obligations; or
 - (ii) a determination made by the Commission under Division 8 of Part XIC of the *Competition and Consumer Act 2010* is in force, and the determination specifies any or all of the terms and conditions on which the carrier or carriage service provider is to comply with any of the standard obligations.
- (2) The carrier or carriage service provider must comply with the obligations mentioned in paragraph (1)(a):
- (a) if an access agreement between:
-

- (i) the carrier or carriage service provider, as the case requires; and
 - (ii) the access seeker;
- is in operation and specifies terms and conditions about a particular matter—on such terms and conditions relating to that matter as are set out in the agreement; or
- (b) if:
- (i) paragraph (a) does not apply in relation to terms and conditions about a particular matter; and
 - (ii) an access undertaking given by the carrier or carriage service provider is in operation, and the undertaking specifies terms and conditions about that matter—on such terms and conditions relating to that matter as are set out in the undertaking; or
- (c) if:
- (i) neither paragraph (a) nor (b) applies to terms and conditions about a particular matter; and
 - (ii) binding rules of conduct specify terms and conditions about that matter;
- on such terms and conditions relating to that matter as are set out in the binding rules of conduct; or
- (d) if:
- (i) none of the above paragraphs applies to terms and conditions about a particular matter; and
 - (ii) a determination made by the Commission under Division 8 of Part XIC of the *Competition and Consumer Act 2010* specifies terms and conditions about that matter;
- on such terms and conditions relating to that matter as are set out in the determination; or
- (e) if:
- (i) none of the above paragraphs applies to terms and conditions about a particular matter; and
 - (ii) an access determination specifies terms and conditions about that matter;
- on such terms and conditions relating to that matter as are set out in the access determination.

Note 1: Subitems 204(5), 205(6) and 207(5) to (11) of this Schedule, and sections 152BCC, 152BDB, 152BDE, 152CBIA, 152CBIB, 152CBIC and 152CGB of the *Competition*

Schedule 1 Amendments

Part 2 Telecommunications access regime

and Consumer Act 2010, which deal with inconsistency, should be read and applied before this item is read and applied.

Note 2: Even though subitem (2) mentions binding rules of conduct, binding rules of conduct may only be made if the Commission considers that there is an urgent need to do so.

- (3) Section 152AY of the *Competition and Consumer Act 2010* as amended by this Part does not apply in relation to compliance by the carrier or carriage service provider with the standard access obligations.

209 Transitional—hindering the fulfilment of an obligation imposed by an arbitration determination

In addition to its effect apart from this item, section 152EF of the *Competition and Consumer Act 2010* as amended by this Part also has the effect it would have if the reference in paragraph (1)(a) of that section to a standard access obligation included a reference to an obligation imposed by a determination made by the Commission under Division 8 of Part XIC of the *Competition and Consumer Act 2010*.

210 Transitional—regulations

The Governor-General may make regulations in relation to transitional matters arising out of the amendments made by this Part.

Part 3—Anti-competitive conduct

Division 1—Amendments

Competition and Consumer Act 2010

211 At the end of section 151AF (before the note)

Add:

; (d) content services.

212 Subsections 151AKA(9) and (10)

Repeal the subsections (including the note), substitute:

Procedural fairness

- (9) The Commission is not required to observe any requirements of procedural fairness in relation to the issue of a Part A competition notice.

Note: For the effect of a Part A competition notice, see subsections 151BY(3), 151CB(3), 151CC(3) and 151CE(5).

Division 2—Application

213 Application—competition notices

The amendment of section 151AKA of the *Competition and Consumer Act 2010* made by this Part applies in relation to Part A competition notices issued after the commencement of this item.

Part 4—Universal service regime

Telecommunications (Consumer Protection and Service Standards) Act 1999

214 Subsection 5(2)

Insert:

payphone carriage service means a carriage service supplied by means of a payphone.

215 Subsection 5(2)

Insert:

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

216 Subsection 5(2)

Insert:

VOIP service means a carriage service that enables a voice call to originate on customer equipment by means of the internet protocol.

216A Subparagraph 6(1)(b)(i)

Omit “has a hearing impairment”, substitute “is deaf or has a hearing and/or speech impairment”.

216B Subparagraph 6(1)(b)(ii)

Omit “teletypewriter”, substitute “device that enables text-based communication”.

217 After section 6

Insert:

6A When a standard telephone service is supplied in fulfilment of the universal service obligation

Mobile and VOIP services

- (1) For the purposes of this Act, if:
- (a) a standard telephone service is supplied, or proposed to be supplied, to a customer by a primary universal service provider; and
 - (b) the service is:
 - (i) a public mobile telecommunications service; or
 - (ii) a VOIP service;
- the service is taken not to be supplied in fulfilment of the universal service obligation unless, before the customer entered into an agreement with the primary universal service provider for the supply of the service:
- (c) the provider notified the customer, in writing, that the service is supplied in fulfilment of the universal service obligation; and
 - (d) the notice complied with such requirements (if any) as are specified in a determination under subsection (2).
- (2) The ACMA may, by legislative instrument, determine requirements for the purposes of paragraph (1)(d).

Other services

- (3) For the purposes of this Act, if:
- (a) a standard telephone service (the **relevant service**) is supplied, or proposed to be supplied, to a customer by a primary universal service provider; and
 - (b) the relevant service is not:
 - (i) a public mobile telecommunications service; or
 - (ii) a VOIP service;
- the relevant service is taken not to be supplied in fulfilment of the universal service obligation if, before the customer entered into an agreement with the primary universal service provider for the supply of the relevant service:
- (c) the customer was given the option of being supplied with another standard telephone service by the provider on the

basis that the other standard telephone service would be supplied in fulfilment of the universal service obligation; and

- (d) the customer has, by written notice given to the provider, acknowledged that the relevant service is not supplied in fulfilment of the universal service obligation; and
- (e) the notice complied with such requirements (if any) as are specified in a determination under subsection (4).

- (4) The ACMA may, by legislative instrument, determine requirements for the purposes of paragraph (3)(e).

218 After section 8B

Insert:

8BA Special meaning of *standard telephone service*

- (1) A reference in this Part to a *standard telephone service* is a reference to a *standard telephone service* (within the meaning of section 6) that has the characteristics (if any) specified in a determination under subsection (2).
- (2) The Minister may, by legislative instrument, determine specified characteristics for the purposes of subsection (1).

219 Subsections 9(2) and (3)

Repeal the subsections, substitute:

- (2) The obligation mentioned in paragraph (1)(a) includes the obligation to supply standard telephone services to people in Australia on request.
- (2A) The obligation mentioned in paragraph (1)(b) includes the obligation to supply, install and maintain payphones in Australia.
- (2B) The obligation mentioned in paragraph (1)(c) includes the obligation to supply prescribed carriage services to people in Australia on request.
- (2C) An obligation does not arise under paragraph (1)(a) or subsection (2) in relation to the supply of a standard telephone service to a person on request unless the request complies with the

requirements (if any) set out in a determination under subsection (2D).

- (2D) The Minister may, by legislative instrument, determine requirements for the purposes of subsection (2C).
- (2E) An obligation does not arise under paragraph (1)(a) or subsection (2) in relation to the supply of a standard telephone service 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 (2E).

220 Subsection 9(4)

Omit “(2)(a)”, substitute “(1)(a) or subsection (2)”.

221 Subsection 9(5)

Omit “(2)(c)”, substitute “(1)(c) or subsection (2B)”.

222 Subsection 9(6)

Omit “(2)(a)”, substitute “(1)(a) or subsection (2)”.

223 Section 9A

Repeal the section, substitute:

9A Reasonable accessibility of prescribed carriage services

- (1) The Minister may determine in writing, for the purpose of paragraph 9(1)(c), what is, or is not, necessary to ensure that prescribed carriage services are reasonably accessible as mentioned in that paragraph.
- (2) A determination under subsection (1) is a legislative instrument.

224 Subsection 12C(1)

Omit “take all reasonable steps to”.

225 After Subdivision B of Division 5 of Part 2

Insert:

Subdivision BA—Standard telephone service requirements

12EB Performance standards

Determination

- (1) The Minister may make a written determination setting out standards to be complied with by a primary universal service provider in relation to any or all of the following matters:
 - (a) the terms and conditions of the supply of a standard telephone service to a customer, other than price-related terms and conditions;
 - (b) the reliability of a standard telephone service supplied to a customer;
 - (c) the supply of a temporary standard telephone service to a customer;
 - (d) the maximum period within which a primary universal service provider must supply a standard telephone service following the making of a request by a prospective customer;
 - (e) the maximum period within which a primary universal service provider must rectify a fault or service difficulty relating to a standard telephone service following the making of a report by a customer about the fault or service difficulty;
 - (f) any other matter concerning the supply, or proposed supply, of a standard telephone service to a customer or prospective customer.
- (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*.

Compliance

- (4) A primary universal service provider must comply with a standard in force under subsection (1).

Determination prevails over inconsistent instruments

- (5) Each of the following instruments:
-

- (a) an approved policy statement for a primary universal service provider;
- (b) an approved standard marketing plan for a primary universal service provider;

has no effect to the extent to which the instrument is inconsistent with a determination in force under subsection (1).

Service supplied in fulfilment of the universal service obligation

- (6) This section does not apply to a standard telephone service unless the service is supplied, or proposed to be supplied, in fulfilment of the universal service obligation.

Note: See also section 6A (when a standard telephone service is supplied in fulfilment of the universal service obligation).

Determination is a legislative instrument

- (7) A determination under subsection (1) is a legislative instrument.

12EC Performance benchmarks

Determination

- (1) The Minister may make a written determination setting out standards to be complied with by a primary universal service provider in relation to any or all of the following matters:
 - (a) the terms and conditions of the supply of a standard telephone service to a customer, other than price-related terms and conditions;
 - (b) the reliability of a standard telephone service supplied to a customer;
 - (c) the supply of a temporary standard telephone service to a customer;
 - (d) the maximum period within which a primary universal service provider must supply a standard telephone service following the making of a request by a prospective customer;
 - (e) the maximum period within which a primary universal service provider must rectify a fault or service difficulty relating to a standard telephone service following the making of a report by a customer about the fault or service difficulty;

- (f) any other matter concerning the supply, or proposed supply, of a standard telephone service to a customer or prospective customer.
- (2) A determination under subsection (1) may be of general application or may be limited as provided in the instrument.
- (3) Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Determination prevails over inconsistent instruments

- (4) Each of the following instruments:
 - (a) an approved policy statement for a primary universal service provider;
 - (b) an approved standard marketing plan for a primary universal service provider;has no effect to the extent to which the instrument is inconsistent with a determination in force under subsection (1).

Determination is a legislative instrument

- (5) A determination under subsection (1) is a legislative instrument.

Performance benchmarks

- (6) The Minister may, by legislative instrument, set minimum benchmarks in relation to compliance by a primary universal service provider with a standard in force 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*.

Provider must meet or exceed minimum benchmarks

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

Clause 1 of Schedule 1 to the Telecommunications Act 1997 does not apply to a breach of a standard

- (10) Clause 1 of Schedule 1 to the *Telecommunications Act 1997* does not apply to a contravention of a standard in force under subsection (1).

Note: Clause 1 of Schedule 1 to the *Telecommunications Act 1997* requires carriers to comply with this Act.

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

- (11) Clause 1 of Schedule 2 to the *Telecommunications Act 1997* does not apply to a contravention of a standard in force under subsection (1).

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

Subdivision BB—Payphone requirements

12ED Performance standards

Determination

- (1) The Minister may make a written determination setting out standards to be complied with by a primary universal service provider in relation to any or all of the following matters:
- (a) the characteristics of a payphone carriage service;
 - (b) the supply, installation or maintenance of a payphone;
 - (c) the supply of a payphone carriage service;
 - (d) the reliability of a payphone;
 - (e) the reliability of a payphone carriage service;
 - (f) the maximum period within which a primary universal service provider must rectify a fault or service difficulty relating to a payphone following the making of a report about a fault or service difficulty;
 - (g) the maximum period within which a primary universal service provider must rectify a fault or service difficulty relating to a payphone carriage service following the making of a report about a fault or service difficulty;
 - (h) the handling of requests for the removal of a payphone;

- (i) any other matter concerning:
 - (i) the supply, installation or maintenance of a payphone;
or
 - (ii) the supply of a payphone carriage service.
- (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*.

Compliance

- (4) A primary universal service provider must comply with a determination under subsection (1).

Determination prevails over inconsistent instruments

- (5) Each of the following instruments:
 - (a) an approved policy statement for a primary universal service provider;
 - (b) an approved standard marketing plan for a primary universal service provider;has no effect to the extent to which the instrument is inconsistent with a determination in force under subsection (1).

Determination is a legislative instrument

- (6) A determination under subsection (1) is a legislative instrument.

12EE Performance benchmarks

Determination

- (1) The Minister may make a written determination setting out standards to be complied with by a primary universal service provider in relation to any or all of the following matters:
 - (a) the characteristics of a payphone carriage service;
 - (b) the supply, installation or maintenance of a payphone;
 - (c) the supply of a payphone carriage service;
 - (d) the reliability of a payphone;
 - (e) the reliability of a payphone carriage service;

- (f) the maximum period within which a primary universal service provider must rectify a fault or service difficulty relating to a payphone following the making of a report about a fault or service difficulty;
 - (g) the maximum period within which a primary universal service provider must rectify a fault or service difficulty relating to a payphone carriage service following the making of a report about a fault or service difficulty;
 - (h) the handling of requests for the removal of a payphone;
 - (i) any other matter concerning:
 - (i) the supply, installation or maintenance of a payphone; or
 - (ii) the supply of a payphone carriage service.
- (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*.

Determination prevails over inconsistent instruments

- (4) Each of the following instruments:
- (a) an approved policy statement for a primary universal service provider;
 - (b) an approved standard marketing plan for a primary universal service provider;
- has no effect to the extent to which the instrument is inconsistent with a determination in force under subsection (1).

Determination is a legislative instrument

- (5) A determination under subsection (1) is a legislative instrument.

Performance benchmarks

- (6) The Minister may, by legislative instrument, set minimum benchmarks in relation to compliance by a primary universal service provider with a standard in force 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*.

Provider must meet or exceed minimum benchmarks

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

Clause 1 of Schedule 1 to the Telecommunications Act 1997 does not apply to a breach of a standard

- (10) Clause 1 of Schedule 1 to the *Telecommunications Act 1997* does not apply to a contravention of a standard in force under subsection (1).

Note: Clause 1 of Schedule 1 to the *Telecommunications Act 1997* requires carriers to comply with this Act.

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

- (11) Clause 1 of Schedule 2 to the *Telecommunications Act 1997* does not apply to a contravention of a standard in force under subsection (1).

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

12EF Rules about the location of payphones

- (1) The Minister may make a determination setting out rules to be complied with by a primary universal service provider in relation to the places or areas in which payphones are to be located.

Compliance

- (2) A primary universal service provider must comply with a determination under subsection (1).
- (3) If a primary universal service provider complies with a determination under subsection (1), the provider is taken to have complied with an obligation under paragraph 9(1)(b) or subsection 9(2A), to the extent to which the obligation relates to the location of payphones.

Determination prevails over inconsistent instruments

- (4) Each of the following instruments:
- (a) an approved policy statement for a primary universal service provider;
 - (b) an approved standard marketing plan for a primary universal service provider;
- has no effect to the extent to which the instrument is inconsistent with a determination in force under subsection (1).

Determination is a legislative instrument

- (5) A determination under subsection (1) is a legislative instrument.

12EG Rules about the process for public consultation on the location or removal of payphones

- (1) The Minister may make a determination setting out rules to be complied with by a primary universal service provider in relation to the process for public consultation on the location or removal of payphones.
- (2) The Minister must ensure that a determination under subsection (1) provides that, if:
- (a) a primary universal service provider makes a decision to remove a payphone from a particular location; and
 - (b) that payphone is the only payphone at that location;
- then:
- (c) the provider must undertake a process for public consultation on the removal of that payphone; and
 - (d) if, in accordance with that process, a person makes a submission to the provider—the provider must notify the person, in writing, of the outcome of that process.

Compliance

- (3) A primary universal service provider must comply with a determination under subsection (1).

Determination prevails over inconsistent instruments

- (4) Each of the following instruments:
-

- (a) an approved policy statement for a primary universal service provider;
- (b) an approved standard marketing plan for a primary universal service provider;

has no effect to the extent to which the instrument is inconsistent with a determination in force under subsection (1).

Determination is a legislative instrument

- (5) A determination under subsection (1) is a legislative instrument.

12EH Rules about the process for resolution of complaints about the location or removal of payphones

- (1) The Minister may make a determination setting out rules to be complied with by a primary universal service provider in relation to the process for resolution of complaints about the location or removal of payphones.

Compliance

- (2) A primary universal service provider must comply with a determination under subsection (1).

Determination prevails over inconsistent instruments

- (3) Each of the following instruments:
 - (a) an approved policy statement for a primary universal service provider;
 - (b) an approved standard marketing plan for a primary universal service provider;

has no effect to the extent to which the instrument is inconsistent with a determination in force under subsection (1).

Determination is a legislative instrument

- (4) A determination under subsection (1) is a legislative instrument.

12EI Directions by the ACMA about the removal of payphones

Scope

- (1) This section applies if:
 - (a) a primary universal service provider has made a decision to remove a payphone from a particular location; and
 - (b) a person notifies the ACMA, in writing, that the person objects to the removal; and
 - (c) the ACMA is satisfied that:
 - (i) the removal would breach, or has breached, a determination under subsection 12EF(1); or
 - (ii) the provider has breached a determination under subsection 12EG(1) in relation to the removal.

Direction

- (2) If the payphone has not been removed, the ACMA may, by written notice given to the provider, direct the provider not to remove the payphone from that location.
- (3) If the payphone has been removed, the ACMA may, by written notice given to the provider, direct the provider:
 - (a) to supply and install a payphone at that location; and
 - (b) to do so within the period specified in the notice.
- (4) A period specified under paragraph (3)(b) must not be shorter than 30 days after the notice is given.
- (5) A direction under subsection (2) or (3) must not be inconsistent with a determination under subsection 12EF(1).

Compliance

- (6) A primary universal service provider must comply with a direction under subsection (2) or (3).

Direction is not a legislative instrument

- (7) A direction under subsection (2) or (3) is not a legislative instrument.

226 Subsection 150(3)

Schedule 1 Amendments
Part 4 Universal service regime

Repeal the subsection.

188 *Telecommunications Legislation Amendment (Competition and Consumer Safeguards)*
Act 2010 No. 140, 2010

Part 5—Customer service guarantee

Telecommunications (Consumer Protection and Service Standards) Act 1999

227 Before section 113

Insert:

Division 1—Introduction

228 Section 113

Before:

- The Telecommunications Industry Ombudsman may issue an evidentiary certificate in relation to a contravention of a performance standard.

insert:

- The Minister may make performance standards to be complied with by carriage service providers in relation to the supply of wholesale carriage services.
- The Minister may set minimum benchmarks in relation to compliance by carriage service providers with performance standards.

229 After section 114

Insert:

114A Wholesale carriage service and wholesale customer

For the purposes of this Part, if:

- (a) a carriage service provider (the *first provider*) supplies, or proposes to supply, a carriage service to another carriage service provider (the *second provider*); and

(b) the carriage service is, or is to be, supplied to the second provider in order that the second provider can provide a carriage service;

then:

(c) the carriage service that is, or is to be, supplied to the second provider is a *wholesale carriage service*; and

(d) the second provider is a *wholesale customer* of the first provider.

Division 2—Retail performance standards and benchmarks

230 After subsection 115(2)

Insert:

(2A) A standard under this section does not apply in relation to matter concerning the supply, or proposed supply, of a wholesale carriage service.

231 Subsections 115(5) and (6)

Repeal the subsections, substitute:

(5) An instrument under subsection (1) is a legislative instrument.

232 After section 117A

Insert:

117B Performance benchmarks

(1) The Minister may, by legislative instrument, set minimum benchmarks in relation to compliance by carriage service providers with a standard in force under section 115.

(2) An instrument under this section may be of general application or may be limited as provided in the instrument.

(3) Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

117C Compliance with performance benchmarks

Scope

- (1) This section applies if an instrument under section 117B is applicable to a carriage service provider (the *first provider*).

Provider must meet or exceed minimum benchmark

- (2) The first provider must meet or exceed a minimum benchmark set by the instrument.

Contravention caused by another provider

- (3) For the purposes of determining whether the first provider has met or exceeded a minimum benchmark set by the instrument, if:
 - (a) the first provider has contravened a standard in force under section 115; and
 - (b) the contravention is wholly or partly attributable to one or more acts or omissions of another carriage service provider; the first provider is taken not to have contravened the standard.

Division 3—Wholesale performance standards and benchmarks

117D Performance standards

- (1) The Minister may, by legislative instrument, make standards to be complied with by carriage service providers in relation to a matter that:
 - (a) concerns the supply, or proposed supply, of wholesale carriage services to a wholesale customer; and
 - (b) is capable of affecting the capacity or ability of a wholesale customer to comply with a standard in force under section 115 in relation to a matter concerning the supply, or proposed supply, of a carriage service by the wholesale customer.
- (2) A standard under this section may be of general application or may be limited as provided in the standard.

- (3) Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

117E Performance benchmarks

- (1) The Minister may, by legislative instrument, set minimum benchmarks in relation to compliance by carriage service providers with a standard in force under section 117D.
- (2) An instrument under this section may be of general application or may be limited as provided in the instrument.
- (3) Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

117F Compliance with performance benchmarks

Scope

- (1) This section applies if an instrument under section 117E is applicable to a carriage service provider (the *first provider*).

Provider must meet or exceed minimum benchmark

- (2) The first provider must meet or exceed a minimum benchmark set by the instrument.

Contravention caused by another provider

- (3) For the purposes of determining whether the first provider has met or exceeded a minimum benchmark set by the instrument, if:
- (a) the first provider has contravened a standard in force under section 117D; and
 - (b) the contravention is wholly or partly attributable to one or more acts or omissions of another carriage service provider; the first provider is taken not to have contravened the standard.

Division 4—Other provisions

233 At the end of subsection 118(1)

Add “or 117D”.

234 At the end of paragraph 118(3)(a)

Add “or 117D”.

235 Subsection 120(4)

Repeal the subsection, substitute:

- (4) A waiver must be in the form specified in the instrument.
- (5) The form must include a statement that summarises the consequences of the waiver.
- (6) A waiver must not be set out in a standard form of agreement formulated by a carriage service provider for the purposes of section 479 of the *Telecommunications Act 1997*.
- (7) A customer is not entitled to waive, in whole or in part, the customer’s protection and rights under this Part in relation to a particular standard telephone service supplied, or proposed to be supplied, by the carriage service provider concerned if the service is supplied, or proposed to be supplied, in fulfilment of the universal service obligation.
- (8) An instrument under subsection (1) is a legislative instrument.

236 After section 120

Insert:

120A Carriage service may be supplied on condition that the customer waives the customer service guarantee

This Act does not prevent, and is taken never to have prevented, a carriage service provider from supplying, or proposing to supply, a particular carriage service to a customer on condition that the customer waives, in accordance with section 120, the customer’s protection and rights under this Part in relation to the carriage service.

237 Section 122

After “115”, insert “or 117D”.

238 After section 122

Insert:

122A Failure to meet or exceed a minimum benchmark is not an offence

A contravention of section 117C or 117F is not an offence.

239 At the end of section 123 (before the note)

Add “or 117D”.

240 Application—waiver

The amendments of section 120 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* made by this Part apply in relation to a waiver given after the commencement of this item.

Part 5A—Record-keeping rules

Telecommunications Act 1997

241 After subsection 529(2)

Insert:

- (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.
- (2F) Subsections (2) to (2E) do not limit subsection (1).

242 Paragraphs 529(4)(a) and (b)

Repeal the paragraphs, substitute:

- (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.

243 At the end of section 529

Add:

- (5) This section does not limit section 521 (which is about the general information-gathering powers of the ACMA).

244 Transitional—record-keeping rules

The amendments made by this Part do not affect the continuity of the record-keeping rules.

Part 6—Priority assistance

Telecommunications Act 1997

245 At the end of Schedule 2

Add:

Part 6—Priority assistance

16 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with priority assistance for people with life-threatening medical conditions.
- A carriage service provider must comply with the priority assistance industry code.
- If a carriage service provider receives an inquiry from a prospective residential customer about the supply of a standard telephone service, and the provider does not offer priority assistance, the provider must:
 - (a) inform the prospective residential customer that the provider does not offer priority assistance in connection with the service; and
 - (b) inform the prospective residential customer of the names of one or more carriage service providers from whom the prospective residential customer can obtain priority assistance.

17 Priority assistance industry code

For the purposes of this Part, the *priority assistance industry code* is:

- (a) the code that is:
 - (i) entitled *Priority Assistance for Life Threatening Medical Conditions*; and
 - (ii) registered under Part 6; or
- (b) if that code is replaced by another code registered under Part 6—the replacement code.

18 Compliance with the priority assistance industry code

A carriage service provider must comply with the priority assistance industry code to the extent (if any) to which the code is applicable to the provider.

19 Information for prospective residential customers of a carriage service provider who does not offer priority assistance

Scope

- (1) This clause applies to a carriage service provider if:
 - (a) the provider receives an inquiry from a prospective residential customer about the supply of a standard telephone service; and
 - (b) the provider does not offer priority assistance in connection with the service.

Requirement

- (2) The provider must:
 - (a) inform the prospective residential customer that the provider does not offer priority assistance in connection with the service; and
 - (b) inform the prospective residential customer of the names of one or more carriage service providers from whom the prospective residential customer can obtain priority assistance in connection with a standard telephone service.

Definition

(3) In this clause:

priority assistance has the same meaning as in the priority assistance industry code.

20 Requirements for Telstra

This Part does not impose a requirement on Telstra if clause 19 of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* is in force.

Note: Clause 19 of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* is about Telstra's priority assistance obligations.

Part 7—Infringement notices etc.

Division 1—Amendments

Telecommunications Act 1997

246 Section 7

Insert:

authorised infringement notice officer means:

- (a) the Chair of the ACMA; or
- (b) a member of the staff of the ACMA appointed under section 572L.

247 Section 7

Insert:

infringement notice means an infringement notice under section 572E.

248 Section 7

Insert:

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

249 After Part 31A

Insert:

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*;

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;

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:
 - (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
 - (d) 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.

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.
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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:
 - (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*.

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 Part 3 of the *Legislative Instruments Act 2003*.

Schedule 1 Amendments

Part 7 Infringement notices etc.

- (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.

Division 2—Application

250 Application—infringement notices

Section 572E of the *Telecommunications Act 1997* as amended by this Part applies in relation to an alleged contravention of a civil penalty provision that occurs after the commencement of this item.

Part 8—Civil penalty provisions

Telecommunications Act 1997

251 Section 7 (definition of *civil penalty provision*)

Repeal the definition, substitute:

civil penalty provision means:

- (a) a provision of this Act that is declared by this Act to be a civil penalty provision; or
- (b) a provision of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* that is declared by that Act to be a civil penalty provision.

Part 9—Industry standards

Telecommunications Act 1997

252 Subsection 112(2)

After “124, 125”, insert “, 125AA”.

253 After section 125

Insert:

125AA ACMA must determine an industry standard if directed by the Minister

- (1) The ACMA may, by legislative instrument, determine a standard that:
 - (a) applies to participants in a particular section of the telecommunications industry; and
 - (b) deals with one or more matters relating to the telecommunications activities of those participants.

Note 1: For examples of matters that may be dealt with by industry standards, see section 113.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A standard under subsection (1) is to be known as an *industry standard*.
- (3) If the ACMA is satisfied that a body or association represents that section of the telecommunications industry, the ACMA must consult the body or association before determining a standard under subsection (1).
- (4) The Minister may, in writing, direct the ACMA to determine a standard under subsection (1) that:
 - (a) applies to participants in a specified section of the telecommunications industry; and
 - (b) deals with one or more specified matters relating to the telecommunications activities of those participants.

- (5) The ACMA must not determine a standard under subsection (1) unless it does so in accordance with a direction under subsection (4).
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*[Minister's second reading speech made in—
House of Representatives on 20 October 2010
Senate on 17 November 2010]*

(253/10)

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