



# **Telecommunications Universal Service Management Agency Act 2012**

**No. 43, 2012**

**An Act to establish the Telecommunications  
Universal Service Management Agency, 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 Universal Service Management Agency Act 2012**

**No. 43, 2012**

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**An Act to establish the Telecommunications  
Universal Service Management Agency, and for  
other purposes**

*[Assented to 16 April 2012]*

The Parliament of Australia enacts:

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*Telecommunications Universal Service Management Agency Act 2012 No. 43, 2012 1*

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Telecommunications Universal Service Management Agency Act 2012*.

### 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
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	16 April 2012
2. Sections 3 to 125	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the latest of: (a) the time when an undertaking given by Telstra under section 577A of the <i>Telecommunications Act 1997</i> comes into force; and (b) if an undertaking given by Telstra is in force under section 577A of the <i>Telecommunications Act 1997</i> and the undertaking requires Telstra to give the ACCC a draft migration plan and, in accordance with the undertaking, Telstra has given the ACCC a draft migration plan—the time when the ACCC approves the draft migration plan under	1 July 2012 (see F2012L01028)

## Section 2

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	<p>section 577BD, 577BDA, 577BDB or 577BDC of that Act; and</p> <p>(c) if, under section 577GA of the <i>Telecommunications Act 1997</i>, the excluded spectrum regime applies to Telstra, and no declaration is in force under subsection 577J(3) of that Act—the time when an undertaking given by Telstra under section 577C of that Act comes into force; and</p> <p>(d) if, under section 577GA of the <i>Telecommunications Act 1997</i>, the excluded spectrum regime applies to Telstra, and no declaration is in force under subsection 577J(5) of that Act—the time when an undertaking given by Telstra under section 577E of that Act comes into force.</p> <p>However, if the provision(s) do not commence within the period of 6 months beginning on the latest of:</p> <p>(a) the time when an undertaking given by Telstra under section 577A of the <i>Telecommunications Act 1997</i> comes into force; and</p> <p>(b) if an undertaking given by Telstra is in force under section 577A of the <i>Telecommunications Act 1997</i> and the undertaking requires Telstra to give the ACCC a draft migration plan and, in accordance with the undertaking, Telstra has given the ACCC a draft migration plan—the time when the ACCC approves the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC of that Act; and</p> <p>(c) if, under section 577GA of the <i>Telecommunications Act 1997</i>, the</p>	

Section 3

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	<p>excluded spectrum regime applies to Telstra, and no declaration is in force under subsection 577J(3) of that Act—the time when an undertaking given by Telstra under section 577C of that Act comes into force; and</p> <p>(d) if, under section 577GA of the <i>Telecommunications Act 1997</i>, the excluded spectrum regime applies to Telstra, and no declaration is in force under subsection 577J(5) of that Act—the time when an undertaking given by Telstra under section 577E of that Act comes into force;</p> <p>they commence on the day after the end of that period.</p> <p>An expression used in this table item that is also used in the <i>Telecommunications Act 1997</i> has the same meaning in this table item as it has in that Act.</p> <p>Subsections 577BD(5), 577BDA(4) and (6), 577BDB(5) and 577BDC(4) of the <i>Telecommunications Act 1997</i> apply to this table item in the same way as they apply to the <i>Telecommunications Act 1997</i>.</p>	

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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 Simplified outline

The following is a simplified outline of this Act:

- 
- This Act sets up the Telecommunications Universal Service Management Agency (TUSMA).
  - TUSMA is responsible for entering into contracts, and making grants, to support the provision of public interest telecommunications services.
  - Public interest telecommunication services include:
    - (a) standard telephone services; and
    - (b) payphones; and
    - (c) emergency call services; and
    - (d) the National Relay Service.
  - TUSMA will monitor the performance of contractors and grant recipients.
  - TUSMA will maintain:
    - (a) a Register of Public Interest Telecommunications Contracts; and
    - (b) a Register of Public Interest Telecommunications Grants.
  - The Australian Communications and Media Authority will assess and collect the levy imposed on carriers by the *Telecommunications (Industry Levy) Act 2012*.
  - The proceeds of the levy will be used to:
    - (a) pay contractors and grant recipients; and
    - (b) pay TUSMA's administrative costs.

Section 4

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#### 4 Definitions

In this Act:

**access**, in relation to an emergency call service, has the same meaning as in the *Telecommunications Act 1997*.

**ACMA** means the Australian Communications and Media Authority.

**administrative costs** of TUSMA means:

- (a) remuneration and allowances of TUSMA members; or
- (b) remuneration and allowances of the CEO; or
- (c) remuneration, and other employment-related costs and expenses, in respect of members of the staff of TUSMA; or
- (d) any other costs, expenses and other obligations incurred by TUSMA in connection with the performance of TUSMA's functions or the exercise of TUSMA's powers;

but does not include:

- (e) amounts incurred under contracts made under section 13; and
- (f) amounts incurred by way of grants made under section 13.

**Appropriation Act** means an Act appropriating money for expenditure out of the Consolidated Revenue Fund in relation to a particular financial year.

**Australia**, when used in a geographical sense, has the same meaning as in the *Telecommunications Act 1997*.

**carriage service** has the same meaning as in the *Telecommunications Act 1997*.

**carriage service provider** has the same meaning as in the *Telecommunications Act 1997*.

**carrier** has the same meaning as in the *Telecommunications Act 1997*.

**CEO** means the Chief Executive Officer of TUSMA.

**Chair** means the Chair of TUSMA.

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**contractor** has the meaning given by section 13.

**customer cabling** has the same meaning as in the *Telecommunications Act 1997*.

**customer equipment** has the same meaning as in the *Telecommunications Act 1997*.

**designated transitional contract** has the meaning given by section 24, 25 or 26.

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

**eligible levy period** means:

- (a) the 2012-13 financial year; or
- (b) a later financial year.

**eligible revenue** for an eligible levy period has the meaning given by section 93.

**eligible revenue period** means:

- (a) the 2011-12 financial year; or
- (b) a later financial year.

**eligible revenue return** means a return under section 91.

**emergency call service** has the same meaning as in the *Telecommunications Act 1997*.

**engage in conduct** means:

- (a) do an act; or
- (b) omit to perform an act.

**facility**, when used in Part 2, has the same meaning as in the *Telecommunications Act 1997*.

**grant recipient** has the meaning given by section 13.

Section 4

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**levy** means levy imposed by the *Telecommunications (Industry Levy) Act 2012*.

**levy amount** has the meaning given by section 99.

**levy contribution factor** has the meaning given by section 98.

**national broadband network** has the same meaning as in the *National Broadband Network Companies Act 2011*.

**National Relay Service** means a service that provides persons who:

- (a) are deaf; or
- (b) have a hearing and/or speech impairment;

with access to a standard telephone service on terms, and in circumstances, that are comparable to those on which other Australians have access to a standard telephone service.

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

**overall levy target amount** has the meaning given by section 88.

**participating person** for an eligible revenue period has the meaning given by section 92.

**payphone** has the same meaning as in Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**person** has the same meaning as in the *Telecommunications Act 1997*.

**standard telephone service** has the same meaning as in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Note: See also section 6.

**supply** of a standard telephone service has a meaning affected by section 7.

**telecommunications industry** has the same meaning as in the *Telecommunications Act 1997*.



**Telecommunications Industry Ombudsman** has the same meaning as in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**Telecommunications Universal Service Special Account** means the Telecommunications Universal Service Special Account established by section 84.

**Telstra** has the same meaning as in the *Telecommunications Act 1997*.

**TUSMA** means the Telecommunications Universal Service Management Agency.

**TUSMA member** means a member of TUSMA, and includes the Chair.

**vacancy**, in relation to the office of a member of TUSMA, has a meaning affected by section 5.

**voice customer migration policy objective** means the policy objective set out in paragraph 11(e), in so far as that objective relates to either or both of the following:

- (a) customer information programs;
- (b) customer cabling installation programs.

## 5 Vacancy in the office of a TUSMA member

For the purposes of a reference in:

- (a) this Act to a **vacancy** in the office of a member of TUSMA;  
or
- (b) the *Acts Interpretation Act 1901* to a **vacancy** in the membership of a body;

there are taken to be 4 offices of members of TUSMA in addition to the Chair.

## 6 Standard telephone service

- (1) A reference in this Act to a **standard telephone service** is a reference to a standard telephone service (within the meaning of section 6 of the *Telecommunications (Consumer Protection and*

Section 7

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*Service Standards) Act 1999*) that has the characteristics (if any) specified in a determination under subsection (2) of this section.

- (2) The Minister may, by legislative instrument, determine specified characteristics for the purposes of subsection (1).

## 7 Supply of standard telephone services

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

where the equipment, goods or services, as the case may be, are for use in connection with the standard telephone service.

- (3) For the purposes of this section, *supply*, in relation to customer equipment or other goods, includes supply by way of hire.

## **8 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

## **9 Extension to external Territories**

This Act extends to:

- (a) the Territory of Christmas Island; and
- (b) the Territory of Cocos (Keeling) Islands; and
- (c) such other external Territories (if any) as are prescribed by regulations made for the purposes of paragraph 10(c) of the *Telecommunications Act 1997*.

## **10 Continuity of partnerships**

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

## **Part 2—Public interest telecommunications services**

### **Division 1—Policy objectives**

#### **11 Policy objectives**

The policy objectives of this Part are:

- (a) that standard telephone services are to:
  - (i) be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
  - (ii) be supplied to people in Australia on request; and
- (b) that payphones are to:
  - (i) be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
  - (ii) be supplied, installed and maintained in Australia; and
- (c) that end-users of standard telephone services in Australia are to have access, free of charge, to an emergency call service; and
- (d) that the National Relay Service is to be reasonably accessible to all persons in Australia who:
  - (i) are deaf; or
  - (ii) have a hearing and/or speech impairment;wherever they reside or carry on business; and
- (e) that there are to be such:
  - (i) customer information programs; and
  - (ii) customer cabling installation programs; and
  - (iii) carriage service development programs; and
  - (iv) other measures (if any) as are specified in the regulations;as are necessary to support the continuity of supply of carriage services during the transition to the national broadband network;

- (f) the objectives (if any) specified in the regulations, where those objectives relate to the supply of carriage services.

## **12 Achievement of policy objectives**

TUSMA must, in performing the functions, and exercising the powers, conferred by this Part, take all reasonable steps to ensure that the policy objectives of this Part are achieved.

## Division 2—Contracts and grants

### Subdivision A—General

#### 13 Contracts and grants

- (1) TUSMA may, on behalf of the Commonwealth:
  - (a) enter into a contract; or
  - (b) make a grant of financial assistance;for a purpose relating to the achievement of any or all of the policy objectives of this Part.

Note 1: For the policy objectives, see section 11.

Note 2: For transitional provisions, see sections 22 to 26.

- (2) For the purposes of this Act, if TUSMA enters into a contract with a person under subsection (1), the person is a **contractor**.
- (3) For the purposes of this Act, if TUSMA makes a grant of financial assistance to a person under subsection (1), the person is a **grant recipient**.

#### 14 Terms and conditions of grants

##### *Scope*

- (1) This section applies to a grant of financial assistance made under section 13.

##### *Terms and conditions*

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the grant recipient.
- (3) An agreement under subsection (2) is to be entered into by TUSMA on behalf of the Commonwealth.
- (4) Subsection (2) does not apply to a condition under section 15.

## **15 Condition about compliance with Ministerial determination**

### *Condition*

- (1) It is a condition of:
  - (a) a contract entered into under section 13; or
  - (b) a grant made under section 13;that the contractor or grant recipient, as the case may be, must comply with a determination under subsection (2) in so far as the determination applies to the contract or grant, as the case may be.

### *Determination*

- (2) The Minister may, by legislative instrument, make a determination that sets out either or both of the following:
  - (a) standards or rules that must be complied with by contractors or grant recipients, as the case may be, in relation to contracts entered into, or grants made, under section 13;
  - (b) minimum benchmarks that must be met or exceeded by contractors or grant recipients, as the case may be, in relation to contracts entered into, or grants made, under section 13.

Note: See also section 16 (designated transitional contracts).

### *Application of determinations*

- (3) A determination under subsection (2) may be of general application or may be limited as provided in the determination.
- (4) Subsection (3) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

### *Other terms and conditions*

- (5) This section does not, by implication, limit:
  - (a) the terms and conditions that may be included in a contract entered into under section 13; or
  - (b) the terms and conditions that may be included in an agreement under section 14.

**Section 15**

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*Determination prevails over inconsistent contract or agreement*

- (6) A term or condition:
- (a) of a contract entered into under section 13; or
  - (b) set out in an agreement under section 14;
- has no effect to the extent to which it is inconsistent with a determination under subsection (2) that applies to the contract or to the grant to which the agreement relates, as the case may be.
- (7) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it overrides a term or condition:
- (a) of a contract entered into under section 13; and
  - (b) that gives the contractor a right to adjustment of payment for a change in the services, facilities or customer equipment to be supplied by the contractor in accordance with the contract.
- (8) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it specifies the price, or a method of ascertaining the price, for any of the services, facilities or customer equipment to be supplied by a contractor in accordance with a section 13 contract.
- (9) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it overrides a term or condition:
- (a) set out in an agreement under section 14; and
  - (b) that gives the grant recipient a right to adjustment of payment for a change in the services, facilities or customer equipment to be supplied by the grant recipient in accordance with the terms and conditions of the grant.
- (10) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it specifies the price, or a method of ascertaining the price, for any of the services, facilities or customer equipment to be supplied by the grant recipient of a section 13 grant in accordance with the terms and conditions of the grant.

*Additional function of TUSMA*

- (11) The functions of TUSMA include the function of taking all reasonable steps to ensure that a contractor or grant recipient, as the case may be, complies with a determination under



subsection (2) in so far as the determination applies to the contract or grant, as the case may be.

### **16 Exemption of designated transitional contracts from Ministerial determination**

A designated transitional contract is exempt from a determination under subsection 15(2).

### **17 TUSMA has powers etc. of the Commonwealth**

- (1) TUSMA, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as:
  - (a) a party to a contract entered into under section 13; or
  - (b) the grantor of a grant made under section 13.
- (2) Without limiting subsection (1):
  - (a) an amount payable by the Commonwealth under a section 13 contract is to be paid by TUSMA on behalf of the Commonwealth; and
  - (b) an amount payable to the Commonwealth under a section 13 contract is to be paid to TUSMA on behalf of the Commonwealth; and
  - (c) a section 13 grant is to be paid by TUSMA on behalf of the Commonwealth; and
  - (d) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a section 13 grant is to be paid to TUSMA on behalf of the Commonwealth; and
  - (e) TUSMA may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns:
    - (i) a section 13 contract; or
    - (ii) a section 13 grant.

### **18 Conferral of powers on TUSMA**

TUSMA may exercise a power conferred on TUSMA by:

- (a) a contract entered into under section 13; or
- (b) an agreement under section 14.

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**19 TUSMA to notify the Minister about entering into contracts or making grants**

If:

- (a) TUSMA, on behalf of the Commonwealth, proposes to:
  - (i) enter into a contract under section 13; or
  - (ii) make a grant under section 13; and
- (b) the entering into of the contract, or the making of the grant, as the case may be, is likely to increase the amounts that may be debited from the Telecommunications Universal Service Special Account;

TUSMA must, before informing:

- (c) the public; or
- (d) the prospective contractor or prospective grant recipient, as the case may be;

about the proposal, give the Minister a written statement that sets out:

- (e) the details of the proposal; and
- (f) whether the proposal is consistent with TUSMA's corporate plan; and
- (g) the likely impact of the proposal on:
  - (i) the financial position of TUSMA; and
  - (ii) the total amount of levy payable by participating persons in relation to a particular eligible levy period.

**20 TUSMA to notify Minister about variations of contracts**

If:

- (a) a section 13 contract is in force; and
- (b) TUSMA, on behalf of the Commonwealth, proposes to enter into an agreement (the *variation agreement*) with the contractor to vary the contract; and
- (c) the proposed variation is likely to:
  - (i) result in a material change in the services, facilities or customer equipment to be supplied by the contractor in accordance with the contract; or

- (ii) increase the amounts that may be debited from the Telecommunications Universal Service Special Account;

TUSMA must, before deciding to enter into the variation agreement, give the Minister a written statement that sets out:

- (d) the details of the proposal; and
- (e) whether the proposal is consistent with TUSMA's corporate plan; and
- (f) the likely impact of the proposal on:
  - (i) the financial position of TUSMA; and
  - (ii) the total amount of levy payable by participating persons in relation to a particular eligible levy period.

## **21 TUSMA to notify Minister about variations of grants**

If:

- (a) a grant is made under section 13; and
- (b) TUSMA, on behalf of the Commonwealth, proposes to enter into an agreement (the *variation agreement*) with the grant recipient to vary the terms and conditions of the grant; and
- (c) the proposed variation is likely to:
  - (i) result in a material change in the services, facilities or customer equipment to be supplied by the grant recipient, in accordance with the terms and conditions of the grant; or
  - (ii) increase the amounts that may be debited from the Telecommunications Universal Service Special Account;

TUSMA must, before deciding to enter into the variation agreement, give the Minister a written statement that sets out:

- (d) the details of the proposal; and
- (e) whether the proposal is consistent with TUSMA's corporate plan; and
- (f) the likely impact of the proposal on:
  - (i) the financial position of TUSMA; and
  - (ii) the total amount of levy payable by participating persons in relation to a particular eligible levy period.

### **Subdivision B—Transitional**

#### **22 Transitional—standard telephone services**

If:

- (a) before the commencement of this section, the Commonwealth entered into a contract with Telstra wholly or partly for a purpose relating to the achievement of the policy objective that standard telephone services are to:
  - (i) be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
  - (ii) be supplied to people in Australia on request; and
- (b) as at the commencement of this section, the contract is in force;

this Act, and any other law of the Commonwealth, has effect as if the contract had been entered into by TUSMA under section 13 for a purpose relating to the achievement of that policy objective.

#### **23 Transitional—payphones**

If:

- (a) before the commencement of this section, the Commonwealth entered into a contract with Telstra wholly or partly for a purpose relating to the achievement of the policy objective that that payphones are to:
  - (i) be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
  - (ii) be supplied, installed and maintained in Australia; and
- (b) as at the commencement of this section, the contract is in force;

this Act, and any other law of the Commonwealth, has effect as if the contract had been entered into by TUSMA under section 13 for a purpose relating to the achievement of that policy objective.

## **24 Transitional—emergency call service**

If:

- (a) before the commencement of this section, the Commonwealth entered into a contract with Telstra wholly or partly for a purpose relating to the achievement of the policy objective that end-users of standard telephone services in Australia are to have access, free of charge, to an emergency call service; and
- (b) as at the commencement of this section, the contract is in force;

then:

- (c) this Act, and any other law of the Commonwealth, has effect as if the contract had been entered into by TUSMA under section 13 for a purpose relating to the achievement of that policy objective; and
- (d) for the purposes of this Act, the contract is a ***designated transitional contract*** so far as the contract relates to the purpose referred to in paragraph (a).

## **25 Transitional—National Relay Service**

If:

- (a) before the commencement of subsection 95(1A) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the Commonwealth entered into a contract with a company as mentioned in section 95 of that Act; and
- (b) as at the commencement of that subsection, the contract is in force;

then:

- (c) this Act, and any other law of the Commonwealth, has effect, after the commencement of that subsection, as if the contract had been entered into by TUSMA under section 13 of this Act for a purpose relating to the achievement of the policy objective set out in paragraph 11(d) of this Act; and
- (d) the contract is a ***designated transitional contract*** for the purposes of this Act.

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**26 Transitional—continuity of supply of carriage services during the transition to the national broadband network**

If:

- (a) before the commencement of this section, the Commonwealth entered into a contract with a person wholly or partly for a purpose relating to the achievement of the policy objective that there are to be such:
  - (i) customer information programs; and
  - (ii) customer cabling installation programs; and
  - (iii) carriage service development programs;as are necessary to support the continuity of supply of carriage services during the transition to the national broadband network; and
- (b) as at the commencement of this section, the contract is in force;

then:

- (c) this Act, and any other law of the Commonwealth, has effect as if the contract had been entered into by TUSMA under section 13 for a purpose relating to the achievement of that policy objective; and
- (d) for the purposes of this Act, the contract is a *designated transitional contract* so far as the contract relates to the purpose referred to in paragraph (a).

**Division 3—Registers****27 Register of Public Interest Telecommunications Contracts**

- (1) TUSMA is to maintain a register, to be known as the Register of Public Interest Telecommunications Contracts, in which TUSMA includes the following for each section 13 contract that is in force:
  - (a) the name of the contractor;
  - (b) the duration of the contract;
  - (c) a summary of the actions to be undertaken by the contractor under the contract;
  - (d) a description of the services, facilities or customer equipment to be supplied by the contractor in accordance with the contract;
  - (e) one of the following:
    - (i) the total amount paid or to be paid by the Commonwealth under the contract;
    - (ii) an estimate of the total amount paid or to be paid by the Commonwealth under the contract;
    - (iii) the method of working out the total amount paid or to be paid by the Commonwealth under the contract.
- (2) The Register of Public Interest Telecommunications Contracts is to be maintained by electronic means.
- (3) The Register of Public Interest Telecommunications Contracts is to be made available for inspection on TUSMA's website.
- (4) The Register of Public Interest Telecommunications Contracts is not a legislative instrument.

**28 Register of Public Interest Telecommunications Grants**

- (1) TUSMA is to maintain a register, to be known as the Register of Public Interest Telecommunications Grants, in which TUSMA includes the following for each section 13 grant that has been made:

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- (a) the name of the grant recipient;
  - (b) a summary of the terms and conditions of the grant that require action to be undertaken by the grant recipient;
  - (c) a description of the services, facilities or customer equipment to be supplied by the grant recipient in accordance with the terms and conditions of the grant;
  - (d) either:
    - (i) the amount of the grant; or
    - (ii) the method for working out the amount of the grant.
- (2) The Register of Public Interest Telecommunications Grants is to be maintained by electronic means.
- (3) The Register of Public Interest Telecommunications Grants is to be made available for inspection on TUSMA's website.
- (4) The Register of Public Interest Telecommunications Grants is not a legislative instrument.



## **Division 4—Monitoring of performance**

### **29 Monitoring of performance**

- (1) TUSMA must monitor, and report each financial year to the Minister on, all significant matters relating to:
  - (a) the performance of contractors; and
  - (b) the performance of grant recipients.
- (2) A report under subsection (1) for a financial year must set out details of the following matters:
  - (a) the adequacy of each contractor's compliance, during that year, with the terms and conditions of a section 13 contract;
  - (b) the adequacy of each grant recipient's compliance, during that year, with the terms and conditions of a section 13 grant;
  - (c) any notice of breach by a contractor of a section 13 contract, where the notice was given during that year;
  - (d) any notice of breach by a grant recipient of a term or condition of a section 13 grant, where the notice was given during that year;
  - (e) any remedial action taken by TUSMA during that year in response to a breach of a section 13 contract;
  - (f) any remedial action taken by TUSMA during that year in response to a breach of the terms or conditions of a section 13 grant;
  - (g) the result of any such remedial action.
- (3) Subsection (2) does not limit subsection (1).
- (4) A report under subsection (1) for a financial year must be included in TUSMA's annual report prepared under section 75 for that year.

## **Division 4A—Facilitation of the voice customer migration policy objective**

### **Subdivision A—Access to information or documents held by a carriage service provider**

#### **29A Access to information or documents held by a carriage service provider**

##### *Scope*

- (1) This section applies to a carriage service provider if TUSMA believes on reasonable grounds that the carriage service provider has information or a document that is relevant to the achievement of the voice customer migration policy objective.

##### *Requirement*

- (2) TUSMA may, by written notice given to the carriage service provider, require the carriage service provider:
  - (a) to give to TUSMA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to TUSMA, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to TUSMA, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

##### *Compliance*

- (4) A carriage service provider must comply with a requirement under subsection (2) to the extent that the carriage service provider is capable of doing so.
- (5) A carriage service provider commits an offence if:

- (a) TUSMA has given a notice to the carriage service provider under subsection (2); and
- (b) the carriage service provider engages in conduct; and
- (c) the carriage service provider's conduct contravenes a requirement in the notice.

Penalty for contravention of this subsection: 50 penalty units.

### **29B Copying documents—compensation**

A carriage service provider is entitled to be paid by TUSMA reasonable compensation for complying with a requirement covered by paragraph 29A(2)(c).

### **29C Copies of documents**

- (1) TUSMA may:
  - (a) inspect a document or copy produced under subsection 29A(2); and
  - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) TUSMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 29A(2)(c).

### **29D TUSMA may retain documents**

- (1) TUSMA may take, and retain for as long as is necessary, possession of a document produced under subsection 29A(2).
- (2) The carriage service provider otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by TUSMA to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, TUSMA must, at such times and places as TUSMA thinks appropriate, permit the carriage service provider otherwise entitled to possession of the document, or a

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person authorised by that carriage service provider, to inspect and make copies of, or take extracts from, the document.

**29E Law relating to legal professional privilege not affected**

This Subdivision does not affect the law relating to legal professional privilege.

**Subdivision B—Disclosure of information**

**29F Disclosure of information**

*Scope*

- (1) This section applies to information that:
  - (a) was obtained by TUSMA under section 29A; or
  - (b) is contained in a document, or a copy of a document, that was produced to TUSMA under section 29A.

*Disclosure*

- (2) TUSMA may disclose the information to a carriage service provider if the disclosure is for a purpose relating to the achievement of the voice customer migration policy objective.

**Subdivision C—Consent to customer contact**

**29G Consent to customer contact**

*Scope*

- (1) This section applies to a carriage service provider if:
  - (a) TUSMA believes on reasonable grounds that, if the carriage service provider were to consent to another person (the *third person*) contacting:
    - (i) the carriage service provider's customers; or
    - (ii) customers included in a particular class of the carriage service provider's customers;for a purpose relating to the achievement of the voice customer migration policy objective, that consent would be

- likely to facilitate the achievement of the voice customer migration policy objective; and
- (b) the carriage service provider is not a contractor in relation to a section 13 contract entered into for a purpose relating to the achievement of the voice customer migration policy objective; and
  - (c) the carriage service provider is not a grant recipient in relation to a section 13 grant made for a purpose relating to the achievement of the voice customer migration policy objective.

*Requirement*

- (2) TUSMA may, by written notice given to the carriage service provider, require the carriage service provider:
  - (a) to consent to the third person contacting:
    - (i) if subparagraph (1)(a)(i) applies—the carriage service provider’s customers; or
    - (ii) if subparagraph (1)(a)(ii) applies—customers included in a specified class of the carriage service provider’s customers;for a purpose relating to the achievement of the voice customer migration policy objective; and
  - (b) to do so within the period and in the manner specified in the notice.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

*Compliance*

- (4) A carriage service provider must comply with a requirement under subsection (2).
- (5) A carriage service provider commits an offence if:
  - (a) TUSMA has given a notice to the carriage service provider under subsection (2); and
  - (b) the carriage service provider engages in conduct; and
  - (c) the carriage service provider’s conduct contravenes a requirement in the notice.

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Penalty for contravention of this subsection: 50 penalty units.

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**30 Executive power of the Commonwealth**

This Part does not, by implication, limit the executive power of the Commonwealth.

## **Part 3—Telecommunications Universal Service Management Agency**

### **Division 1—TUSMA's establishment, functions, powers and liabilities**

#### **31 Establishment of the Telecommunications Universal Service Management Agency**

The Telecommunications Universal Service Management Agency is established by this section.

Note: In this Act, *TUSMA* means the Telecommunications Universal Service Management Agency—see section 4.

#### **32 Functions of TUSMA**

TUSMA has the following functions:

- (a) such functions as are conferred on TUSMA by this Act;
- (b) such functions as are conferred on TUSMA by the regulations;
- (c) such functions as are conferred on TUSMA by any other law of the Commonwealth;
- (d) to do anything incidental to or conducive to the performance of any of the above functions.

#### **33 Powers of TUSMA**

- (1) TUSMA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of TUSMA include, but are not limited to, the power to enter into contracts.

Note: The CEO may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

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- (3) Any contract entered into by TUSMA is to be entered into on behalf of the Commonwealth.
- (4) Any real or personal property held by TUSMA is held for and on behalf of the Commonwealth.
- (5) Any money received by TUSMA is received for and on behalf of the Commonwealth.
- (6) TUSMA cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.  
Note: The Commonwealth may hold real or personal property or money on trust.
- (7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

**34 TUSMA's liabilities are Commonwealth liabilities**

- (1) Any financial liabilities of TUSMA are taken to be liabilities of the Commonwealth.
- (2) In this section:  
*financial liability* means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

**35 TUSMA has privileges and immunities of the Crown**

TUSMA has the privileges and immunities of the Crown in right of the Commonwealth.



## **Division 2—Constitution and membership of TUSMA etc.**

### **Subdivision A—Constitution of TUSMA**

#### **36 Constitution of TUSMA**

- (1) TUSMA:
  - (a) is a body corporate with perpetual succession; and
  - (b) must have a seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name.
- (2) The seal of TUSMA is to be kept in such custody as TUSMA directs and must not be used except as authorised by TUSMA.
- (3) All courts, judges and persons acting judicially must:
  - (a) take judicial notice of the imprint of the seal of TUSMA appearing on a document; and
  - (b) presume that the document was duly sealed.

### **Subdivision B—TUSMA members**

#### **37 Membership of TUSMA**

TUSMA consists of the following members:

- (a) a Chair;
- (b) at least 4, and not more than 6, other members.

#### **38 Appointment of TUSMA members**

- (1) Each TUSMA member is to be appointed by the Minister by written instrument.
- (2) A person is not eligible for appointment as a TUSMA member unless the Minister is satisfied that the person has:
  - (a) substantial experience or knowledge; and

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- (b) significant standing;  
in at least one of the following fields:
  - (c) the operation of a sector of the telecommunications industry;
  - (d) consumer affairs;
  - (e) business or financial management;
  - (f) law;
  - (g) public administration.
- (3) The Minister must, to the extent to which it is reasonably practicable to do so, ensure that the TUSMA members collectively possess an appropriate balance of experience and knowledge in each of the fields covered by subsection (2).
- (4) A person is not eligible for appointment as a TUSMA member if the person:
  - (a) is a director of; or
  - (b) is concerned in, or takes part in, the management of; a carrier or a carriage service provider.
- (5) A TUSMA member holds office on a part-time basis.
- (6) A person must not hold office as a TUSMA member and as the CEO.

**39 Period of appointment for TUSMA members**

- (1) A TUSMA member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) A person is eligible for reappointment as a TUSMA member, but must not be reappointed more than once.

**40 Acting TUSMA members**

*Acting Chair*

- (1) The Minister may appoint a person to act as the Chair:
    - (a) during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office); or
    - (b) during any period, or during all periods, when the Chair:
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- (i) is absent from duty or Australia; or
- (ii) is, for any reason, unable to perform the duties of the office.

*Acting TUSMA member (other than the Chair)*

- (2) The Minister may appoint a person to act as a TUSMA member (other than the Chair):
  - (a) during a vacancy in the office of a TUSMA member (other than the Chair), whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when a TUSMA member (other than the Chair):
    - (i) is absent from duty or Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

*Eligibility*

- (3) A person is not eligible for appointment to act as:
  - (a) the Chair; or
  - (b) a TUSMA member (other than the Chair);unless the person is eligible for appointment as a TUSMA member.

Note: See section 38.

## Division 3—Terms and conditions for TUSMA members

### 41 Remuneration

- (1) A TUSMA member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a TUSMA member is to be paid the remuneration that is prescribed by the regulations.
- (2) A TUSMA member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### 42 Disclosure of interests to the Minister

A TUSMA member must give written notice to the Minister of all interests, pecuniary or otherwise, that the TUSMA member has or acquires and that conflict or could conflict with the proper performance of the TUSMA member's functions.

### 43 Disclosure of interests to TUSMA

- (1) A TUSMA member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by TUSMA must disclose the nature of the interest to a meeting of TUSMA.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the knowledge of the TUSMA member.
- (3) The disclosure must be recorded in the minutes of the meeting of TUSMA.
- (4) Unless TUSMA otherwise determines, the TUSMA member:
  - (a) must not be present during any deliberation by TUSMA on the matter; and

- (b) must not take part in any decision of TUSMA with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the TUSMA member:
  - (a) must not be present during any deliberation of TUSMA for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of TUSMA.

#### **44 Outside employment**

A TUSMA member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

#### **45 Leave of absence**

The Chair may grant leave of absence to a TUSMA member on the terms and conditions that the Chair determines.

#### **46 Resignation**

- (1) A TUSMA member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

#### **47 Termination of appointment**

- (1) The Minister may terminate the appointment of a TUSMA member for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a TUSMA member if:
  - (a) the TUSMA member:
    - (i) becomes bankrupt; or

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- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with his or her creditors; or
  - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (c) the TUSMA member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties (see section 44); or
  - (d) the TUSMA member fails, without reasonable excuse, to comply with section 42 or 43; or
  - (e) the TUSMA member is absent, except on leave of absence, from 3 consecutive meetings of TUSMA.
- (3) The Minister may terminate the appointment of a TUSMA member if the Minister is of the opinion that the performance of the TUSMA member has been unsatisfactory.

**48 Other terms and conditions**

A TUSMA member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## **Division 4—Decision-making by TUSMA**

### **49 Holding of meetings**

- (1) TUSMA is to hold such meetings as are necessary for the performance of its functions.
- (2) The Chair may convene a meeting at any time.

### **50 Presiding at meetings**

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the TUSMA members present must appoint one of themselves to preside.

### **51 Quorum**

At a meeting of TUSMA, a quorum is constituted by:

- (a) if the total number of TUSMA members is 5—3 TUSMA members; or
- (b) if the total number of TUSMA members is 6 or 7—4 TUSMA members.

### **52 Voting at meetings etc.**

- (1) At a meeting of TUSMA, a question is decided by a majority of the votes of TUSMA members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

### **53 Conduct of meetings**

TUSMA may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

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**54 Minutes**

TUSMA must keep minutes of its meetings.



## **Division 5—Delegation**

### **55 Delegation by TUSMA**

- (1) TUSMA may, by writing, delegate any or all of its functions and powers to:
    - (a) the CEO; or
    - (b) a TUSMA member; or
    - (c) a person who is:
      - (i) a member of the staff of TUSMA; and
      - (ii) an SES employee or acting SES employee; or
    - (d) a person who is:
      - (i) a member of the staff of TUSMA; and
      - (ii) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.
- Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.
- (2) A delegate must comply with any written directions of TUSMA.

## Division 6—Committees

### 56 Committees

- (1) TUSMA may establish committees to advise or assist it in the performance of its functions.
- (2) A committee may be constituted:
  - (a) wholly by TUSMA members; or
  - (b) wholly by persons who are not TUSMA members; or
  - (c) partly by TUSMA members and partly by other persons.
- (3) TUSMA may, by writing, determine, in relation to a committee established under this section:
  - (a) the committee's terms of reference; and
  - (b) the terms and conditions of appointment of the members of the committee; and
  - (c) the procedures to be followed by the committee.
- (4) A determination under subsection (3) is not a legislative instrument.
- (5) An appointment to a committee established under this section is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.
- (6) TUSMA may reimburse an expense that a member of a committee established under this section reasonably incurs in performing duties as a member of that committee.

### 57 TUSMA may assist committees

- (1) TUSMA may assist a committee established under section 56 in the performance of its functions.
- (2) The assistance may include the following:
  - (a) the provision of information;

- (b) the making available of resources and facilities (including secretariat services and clerical assistance).

## **Division 7—Chief Executive Officer of TUSMA**

### **58 Chief Executive Officer of TUSMA**

There is to be a Chief Executive Officer of TUSMA.

Note: In this Act, *CEO* means the Chief Executive Officer of TUSMA—see section 4.

### **59 Role**

- (1) The CEO is responsible for the day-to-day administration of TUSMA.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) The CEO is to act in accordance with the policies determined, and any directions given, by TUSMA.

### **60 Appointment of the CEO**

- (1) The CEO is to be appointed by TUSMA by written instrument.
- (2) The CEO holds office on a full-time basis.
- (3) The CEO must not be a TUSMA member.
- (4) Before making an appointment under subsection (1), TUSMA must consult the Minister.

### **61 Period of appointment of the CEO**

- (1) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) A person is eligible for reappointment as the CEO.

### **62 Acting CEO**

- (1) TUSMA may appoint a person to act as the CEO:
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- (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the CEO:
    - (i) is absent from duty or Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.
- (2) An appointment under subsection (1) is to be made by written instrument.

### **63 Remuneration**

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **64 Disclosure of interests to TUSMA**

The CEO must give written notice to TUSMA of all interests, pecuniary or otherwise, that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's functions.

### **65 Outside employment**

- (1) The CEO must not engage in paid employment outside the duties of his or her office without the Chair's approval.
- (2) The Chair must notify the Minister of any approval given under subsection (1).

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**66 Leave of absence**

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Chair may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants the CEO leave of absence for a period exceeding 2 months.

**67 Resignation**

- (1) The CEO may resign his or her appointment by giving the Chair a written resignation.
- (2) The resignation takes effect on the day it is received by the Chair or, if a later day is specified in the resignation, on that later day.
- (3) If the CEO resigns under this section, the Chair must notify the Minister of the resignation.

**68 Termination of appointment**

- (1) TUSMA may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.
- (2) TUSMA may terminate the appointment of the CEO if:
  - (a) the CEO:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the CEO engages, except with the Chair's approval, in paid employment outside the duties of his or her office (see section 65); or

- (d) the CEO fails, without reasonable excuse, to comply with section 64 (which deals with disclosure of interests to TUSMA).
- (3) TUSMA may terminate the appointment of the CEO if TUSMA is of the opinion that the performance of the CEO has been unsatisfactory.

### **69 Other terms and conditions**

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by TUSMA.

### **70 CEO not subject to direction by TUSMA on certain matters**

To avoid doubt, the CEO is not subject to direction by TUSMA in relation to the CEO's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
- (b) the *Public Service Act 1999*;

in relation to TUSMA.

## **Division 8—Staff of TUSMA etc.**

### **71 Staff of TUSMA**

- (1) The staff of TUSMA are persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the CEO and the staff of TUSMA together constitute a Statutory Agency; and
  - (b) the CEO is the Head of that Statutory Agency.

### **72 Consultants**

- (1) TUSMA may engage persons having suitable qualifications and experience as consultants to TUSMA.
- (2) The consultants are to be engaged on the terms and conditions that TUSMA determines in writing.

### **73 Persons assisting TUSMA**

TUSMA may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

whose services are made available to TUSMA in connection with the performance of any of its functions.



## **Division 9—Planning and reporting obligations of TUSMA**

### **74 Corporate plan**

- (1) TUSMA must prepare a corporate plan for TUSMA at least once each 3-year period and give it to the Minister.
- (2) The plan must cover a 3-year period.
- (3) The plan must include details of the following matters:
  - (a) the objectives of TUSMA;
  - (b) the strategies and policies that are to be followed by TUSMA in order to achieve those objectives;
  - (c) such other matters (if any) as the Minister requires.
- (4) The Chair must keep the Minister informed about:
  - (a) changes to the plan; and
  - (b) matters that might significantly affect the achievement of the objectives set out in the plan.
- (5) The Minister may give the Chair written guidelines that are to be used by the Chair in deciding whether a matter is covered by paragraph (3)(c) or (4)(b).
- (6) A guideline given under subsection (5) is not a legislative instrument.
- (7) TUSMA must ensure that the first corporate plan is prepared within 12 months after the commencement of this section.

### **75 Annual report**

- (1) TUSMA must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year.

Note 1: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

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Note 2: The annual report for a financial year must include TUSMA's performance monitoring report for the financial year (see subsection 29(4)).

- (2) A report for a financial year must set out:
- (a) each amount paid by TUSMA, on behalf of the Commonwealth, under a section 13 contract during that year; and
  - (b) the amount of each section 13 grant made during that year; and
  - (c) details of any action taken by TUSMA in that year in response to a direction given by the Minister under section 77.

**76 Minister may require TUSMA to prepare reports or give information**

*Reports*

- (1) The Minister may, by written notice given to TUSMA, require TUSMA:
- (a) to prepare a report about one or more specified matters relating to the performance of TUSMA's functions; and
  - (b) give a copy of the report to the Minister within the period specified in the notice.

*Information*

- (2) The Minister may, by written notice given to TUSMA, require TUSMA to:
- (a) prepare a document setting out specified information relating to the performance of TUSMA's functions; and
  - (b) give a copy of the document to the Minister within the period specified in the notice.

*Compliance*

- (3) TUSMA must comply with a requirement under subsection (1) or (2).

## **Division 10—Ministerial directions**

### **77 Minister may give directions to TUSMA**

- (1) The Minister may, by legislative instrument, give directions to TUSMA in relation to the performance of its functions.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) TUSMA must comply with a direction under subsection (1).

## **Part 4—Access to information or documents held by an NBN corporation**

### **78 Access to information or documents held by an NBN corporation**

#### *Scope*

- (1) This section applies to an NBN corporation if the Minister believes on reasonable grounds that the NBN corporation has information or a document that is relevant to:
  - (a) the performance of any of TUSMA's functions; or
  - (b) the exercise of any of TUSMA's powers.

#### *Requirement*

- (2) The Minister may, by written notice given to the NBN corporation, require the NBN corporation:
  - (a) to give to TUSMA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to TUSMA, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to TUSMA, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

#### *Compliance*

- (4) An NBN corporation must comply with a requirement under subsection (2) to the extent that the NBN corporation is capable of doing so.
- (5) An NBN corporation commits an offence if:
  - (a) the Minister has given a notice to the NBN corporation under subsection (2); and

- (b) the NBN corporation engages in conduct; and
- (c) the NBN corporation's conduct contravenes a requirement in the notice.

Penalty for contravention of this subsection: 50 penalty units.

### **79 Copying documents—compensation**

An NBN corporation is entitled to be paid by TUSMA reasonable compensation for complying with a requirement covered by paragraph 78(2)(c).

### **80 Copies of documents**

- (1) TUSMA may:
  - (a) inspect a document or copy produced under subsection 78(2); and
  - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) TUSMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 78(2)(c).

### **81 TUSMA may retain documents**

- (1) TUSMA may take, and retain for as long as is necessary, possession of a document produced under subsection 78(2).
- (2) The NBN corporation otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by TUSMA to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, TUSMA must, at such times and places as TUSMA thinks appropriate, permit the NBN corporation otherwise entitled to possession of the document, or a person authorised by that NBN corporation, to inspect and make copies of, or take extracts from, the document.

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**82 Law relating to legal professional privilege not affected**

This Part does not affect the law relating to legal professional privilege.

**83 Severability**

- (1) Without limiting its effect apart from this section, this Part also has effect as provided by this section.

*Corporations power*

- (2) This Part also has the effect it would have if:
- (a) subsection (3) had not been enacted; and
  - (b) each reference in this Part to an NBN corporation were, by express provision, confined to an NBN corporation that is a constitutional corporation.

*Communications power*

- (3) This Part also has the effect it would have if:
- (a) subsection (2) had not been enacted; and
  - (b) each reference in this Part to an NBN corporation were, by express provision, confined to an NBN corporation that:
    - (i) carries on; or
    - (ii) proposes to carry on; or
    - (iii) has the object of carrying on;a business that consists of or includes the supply of a carriage service.

## **Part 5—Telecommunications Universal Service Special Account**

### **84 Telecommunications Universal Service Special Account**

- (1) The Telecommunications Universal Service Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.
- (3) The Account is to be administered by TUSMA.

### **85 Credits to the Account**

There must be credited to the Telecommunications Universal Service Special Account:

- (a) an amount equal to an amount paid to the Commonwealth by way of levy; and
- (b) an amount equal to an amount paid to the Commonwealth under a section 13 contract; and
- (c) an amount equal to an amount paid to the Commonwealth by way of damages or compensation for a breach of a section 13 contract; and
- (d) an amount equal to an amount paid to the Commonwealth by way of the repayment of the whole or a part of a section 13 grant.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

### **86 Purposes of the Account**

The purposes of Telecommunications Universal Service Special Account are as follows:

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- (a) to pay amounts payable by the Commonwealth under a contract entered into under section 13;
- (b) to make grants under section 13;
- (c) to pay the administrative costs of TUSMA;
- (d) to make distributions in accordance with section 87;
- (e) to pay refunds under section 111.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

**87 Distribution of remaining balance of the Account**

- (1) TUSMA may distribute to persons who are or were participating persons any balance standing to the credit of the Telecommunications Universal Service Special Account that remains after all payments payable by TUSMA or the Commonwealth, in respect of debits from the Account for an eligible levy period, have been paid.
- (2) The Minister may, by legislative instrument, determine rules for making those distributions.
- (3) TUSMA must comply with any rules determined under subsection (2).



## **Part 6—Assessment, collection and recovery of levy**

### **Division 1—Overall levy target amount**

#### **88 Overall levy target amount**

For the purposes of this Act, the *overall levy target amount* for an eligible levy period is the sum of:

- (a) the total amount paid by TUSMA on behalf of the Commonwealth during the period under contracts made under section 13; and
- (b) the total amount paid by TUSMA on behalf of the Commonwealth during the period by way of grants made under section 13; and
- (c) the total amount of TUSMA's administrative costs incurred during the period;

reduced by the total of the amounts appropriated by Appropriation Acts for the purposes of:

- (d) making payments under section 13 contracts during the period; and
- (e) making section 13 grants during the period; and
- (f) the administrative costs of TUSMA in relation to the period.

#### **89 Statement of estimate of overall levy target amount**

##### *Estimate of overall levy target amount*

- (1) Before the start of each eligible levy period, the Minister must prepare a written estimate of the overall levy target amount for the period.

##### *Estimates of components of estimated overall levy target amount*

- (2) Before the start of each eligible levy period, the Minister must prepare a written estimate of the total amount that is likely to be paid by TUSMA on behalf of the Commonwealth during the period under contracts made, or likely to be made, under section 13.

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- (3) Before the start of each eligible levy period, the Minister must prepare a written estimate of the total amount that is likely to be paid by TUSMA on behalf of the Commonwealth during the period by way of grants made, or likely to be made, under section 13.
- (4) Before the start of each eligible levy period, the Minister must prepare a written statement setting out:
  - (a) an estimate of the total amount of TUSMA's administrative costs likely to be incurred during the period; and
  - (b) a breakdown of the amount referred to in paragraph (a) into categories specified in the regulations.

*Other matters*

- (5) Before making an estimate under this section, the Minister must consult TUSMA.
- (6) The Minister must give a copy of an estimate under this section to:
  - (a) TUSMA; and
  - (b) the ACMA.
- (7) As soon as practicable after the Minister gives TUSMA or the ACMA a copy of an estimate under this section, TUSMA or the ACMA, as the case may be, must cause the copy to be published on TUSMA's website or the ACMA's website, as the case may be.
- (8) An estimate under this section is not a legislative instrument.

**90 Statement of overall levy target amount**

*Overall levy target amount*

- (1) Within 3 months after an eligible levy period, the Minister must prepare a written statement setting out the overall levy target amount for the period.

*Components of overall levy target amount*

- (2) Within 3 months after an eligible levy period, the Minister must prepare a written statement setting out the total amount paid by

TUSMA on behalf of the Commonwealth during the period under contracts made under section 13.

- (3) Within 3 months after an eligible levy period, the Minister must prepare a written statement setting out the total amount paid by TUSMA on behalf of the Commonwealth during the period by way of grants made under section 13.
- (4) Within 3 months after an eligible levy period, the Minister must prepare a written statement setting out:
  - (a) the total amount of TUSMA's administrative costs incurred during the period; and
  - (b) a breakdown of the amount referred to in paragraph (a) into categories specified in the regulations.

*Other matters*

- (5) Before preparing a statement under this section, the Minister must consult TUSMA.
- (6) The Minister must give a copy of a statement under this section to:
  - (a) TUSMA; and
  - (b) the ACMA.
- (7) As soon as practicable after the Minister gives TUSMA or the ACMA a copy of a statement under this section, TUSMA or the ACMA, as the case may be, must cause the copy to be published on TUSMA's website or the ACMA's website, as the case may be.
- (8) A statement under this section is not a legislative instrument.

## **Division 2—Eligible revenue of participating persons**

### **91 Participating person must lodge return of eligible revenue**

- (1) A participating person for an eligible revenue period (other than the first eligible revenue period) must:
  - (a) give the ACMA a written return of the person's eligible revenue for that period; and
  - (b) do so within the period specified in an instrument in force under subsection (5).
- (2) The return must be in a form approved in writing by the ACMA.
- (3) The approved form may require verification, by a statutory declaration, of statements made in the return.
- (4) The return must set out:
  - (a) the eligible revenue for the eligible revenue period of the participating person; and
  - (b) details of how the eligible revenue was worked out; and
  - (c) such other information (if any) as the approved form of return requires.
- (5) The ACMA may, by legislative instrument, specify a period for the purposes of paragraph (1)(b). The period must begin at or after the end of the eligible revenue period.

Note: See also section 120 (offence of failing to lodge eligible revenue return).

### **92 Participating person**

- (1) For the purposes of this Act, a person is a *participating person* for an eligible revenue period if:
  - (a) the person was a carrier at any time during the eligible revenue period; or
  - (b) both:

- (i) the Minister makes a written determination that carriage service providers are participating persons for the eligible revenue period; and
  - (ii) the person was a carriage service provider at any time during the eligible revenue period.
- (2) However, a person is not a *participating person* for an eligible revenue period if the person is of a kind, determined in writing by the Minister for the purposes of this subsection, to be exempt from this section.
- (3) A determination under subsection (1) or (2) is a legislative instrument.

### 93 Eligible revenue

#### *General rule*

- (1) For the purposes of this Act, *eligible revenue* of a person for an eligible revenue period (other than the first eligible revenue period) is the amount ascertained in accordance with a written determination made by the ACMA for the purposes of this subsection.
- (2) Subsection (1) has effect subject to subsection (3).
- (3) The *eligible revenue* of a participating person for an eligible revenue period (other than the first eligible revenue period):
- (a) is taken to be zero if the person's eligible revenue is less than the amount (the *threshold amount*) determined in writing by the Minister for the purposes of this subsection; or
  - (b) in any other case—must be reduced by the threshold amount.
- (4) To avoid doubt, a determination under subsection (1) may, in providing how to work out the eligible revenue of a person, refer to revenue of other persons.
- (5) A determination under subsection (1) must not provide that:
- (a) an amount payable under a contract entered into under section 13; or
  - (b) a grant under section 13;

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is included in a person's eligible revenue.

- (6) A determination under subsection (1) or (3) is a legislative instrument.

*First eligible revenue period*

- (7) For the purposes of this Act, **eligible revenue** of a person for the first eligible revenue period is the amount that is assessed by the ACMA under section 20F of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* as the person's eligible revenue (within the meaning of that Act) for the eligible revenue period (within the meaning of that Act) that began on 1 July 2011.

Note: The first eligible revenue period is the 2011-12 financial year (see section 4).

**94 Audit report to accompany eligible revenue return**

- (1) An eligible revenue return must be accompanied by a report of an approved auditor that:
- (a) is in a form approved in writing by the ACMA; and
  - (b) states that the auditor has audited the return; and
  - (c) contains a determination, in the terms specified in the form, of the auditor's opinion; and
  - (d) states that the auditor has been given sufficient information and assistance in order to audit the return; and
  - (e) includes all other statements and information required by the form to be included.
- (2) The ACMA may, by written notice given to a person, exempt the person from subsection (1).
- (3) A notice under subsection (2) is not a legislative instrument.
- (4) The ACMA may, by legislative instrument, determine that a specified person is an **approved auditor** for the purposes of this section.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

### **95 ACMA may inquire into correctness of return**

The ACMA may make whatever inquiries it thinks necessary or desirable in order to determine whether or not a participating person's eligible revenue return for an eligible revenue period correctly states the person's eligible revenue for that period.

### **96 ACMA to assess eligible revenue**

- (1) The ACMA must make a written assessment of each participating person's eligible revenue for an eligible revenue period (other than the first eligible revenue period).

Note: The assessment may be included in the same document as any other assessment the ACMA makes under this Part (see section 104).

- (2) The assessment must be based on:
  - (a) the person's eligible revenue return; and
  - (b) the information and documents obtained by the ACMA because of its inquiries into the correctness of the return; and
  - (c) any other information or documents that the ACMA has and that it thinks relevant to making the assessment.
- (3) Subsection (2) has effect subject to section 97.
- (4) The ACMA must give a copy of an assessment of a person's eligible revenue to the person concerned.
- (5) The assessment is not a legislative instrument.

### **97 Assessment based on estimate of eligible revenue**

- (1) If a participating person fails to give the ACMA an eligible revenue return for an eligible revenue period (other than the first eligible revenue period), the ACMA may:
  - (a) estimate the person's eligible revenue for that period; and
  - (b) make a written assessment under section 96 of the person's eligible revenue for that period based on that estimate.
- (2) The ACMA must give the person at least 14 days' written notice of:
  - (a) the amount of eligible revenue proposed to be assessed; and

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- (b) the ACMA's proposal to make the assessment based on the estimate.
- (3) The ACMA must not make an assessment based on an estimate after receiving an eligible revenue return for the period from the person concerned.
- (4) However, if the ACMA has made an assessment based on the estimate, the ACMA is not required to change it if an eligible revenue return is later given to the ACMA.

**98 Levy contribution factor**

- (1) The rule in subsection (2) applies if the ACMA has assessed the eligible revenue of participating persons for an eligible revenue period.
- (2) For the eligible levy period starting immediately after the eligible revenue period, the ACMA must work out a levy contribution factor for each of those participating persons.

Note: The levy contribution factor is used to work out the levy amount of a participating person. See section 99.

- (3) For the purposes of this Act, the *levy contribution factor* of a person for an eligible levy period is the amount worked out using the following formula:

$$\frac{\text{Individual eligible revenue}}{\text{Total eligible revenue}}$$

where:

*individual eligible revenue* means the assessed eligible revenue of the person for the eligible revenue period ending immediately before the eligible levy period.

*total eligible revenue* means the total assessed eligible revenue, for the eligible revenue period ending immediately before the eligible levy period, of all the participating persons for the eligible revenue period.



## Division 3—Levy amount

### 99 Levy amount of a participating person

#### *Levy amount—general rule*

- (1) If a person is a participating person for an eligible revenue period (the **relevant eligible revenue period**) (other than the first or second eligible revenue period), then, for the purposes of this Act, the **levy amount** of the person for the eligible levy period starting immediately after the relevant eligible revenue period is the amount worked out using the formula:

Levy contribution factor × Overall levy target amount

where:

**levy contribution factor** means the person's levy contribution factor for the eligible levy period worked out under section 98.

**overall levy target amount** means the overall levy target amount for the eligible levy period worked out under section 88.

Note: The *Telecommunications (Industry Levy) Act 2012* imposes levy on the levy amount.

- (2) The Minister may, by legislative instrument, modify the formula in subsection (1).

#### *Levy amount—first or second eligible revenue period*

- (3) If:
- (a) a person is a participating person for an eligible revenue period (the **relevant eligible revenue period**); and
  - (b) the relevant eligible revenue period is the first or second eligible revenue period;
- then, for the purposes of this Act, the **levy amount** of the person for the eligible levy period starting immediately after the relevant eligible revenue period is the amount worked out using the formula:

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Levy contribution factor × Overall levy cap amount

where:

**levy contribution factor** means the person's levy contribution factor for the eligible levy period worked out under section 98.

**overall levy cap amount** means the overall levy cap amount for the eligible levy period.

Note: The *Telecommunications (Industry Levy) Act 2012* imposes levy on the levy amount.

- (4) For the purposes of this section, the **overall levy cap amount** for an eligible levy period is the amount ascertained in accordance with a written instrument made by the Minister for the purposes of this subsection.
- (5) An instrument made under subsection (4) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the instrument.
- (6) The Minister must not make an instrument under subsection (4) that relates to a particular eligible levy period before the end of the eligible levy period.
- (7) The Minister must take all reasonable steps to ensure that an instrument under subsection (4) that relates to a particular eligible levy period is made during the 3-month period starting immediately after the end of the eligible levy period.
- (8) The Minister may, by legislative instrument, modify the formula in subsection (3).

### 100 ACMA to make written assessment

- (1) For each eligible levy period, the ACMA must make a written assessment setting out the matters in subsection (2).
- (2) For each participating person for the eligible revenue period ending immediately before the eligible levy period, the assessment must set out:

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- (a) the person's levy amount under section 99 for the eligible levy period; and
- (b) the levy payable by the person on that amount.

Note: Section 105 sets out when the levy is payable.

- (3) The ACMA must act expeditiously in preparing its assessment. However, a failure to comply with this subsection does not affect the validity of the assessment.
- (4) The assessment is not a legislative instrument.

### **101 Publication of assessment**

As soon as practicable after making an assessment under section 100, the ACMA must:

- (a) publish a copy of the assessment on the ACMA's website; and
- (b) give a copy of the assessment to the participating person to whom the assessment relates.

## **Division 4—Assessments**

### **102 Variation of assessments**

- (1) The ACMA may vary an assessment made under this Part by making such alterations and additions as it thinks necessary, even if levy has been paid in respect of an assessment.
- (2) Unless the contrary intention appears, an amended assessment is taken, for the purposes of this Part, to be an assessment under section 96 or 100, as the case may be.

### **103 ACMA may accept statements**

Despite anything in this Part, the ACMA may, for the purposes of making an assessment under this Part, partly or completely accept a statement in an eligible revenue return.

### **104 Multiple assessments in the same document**

The ACMA may include in the same document more than one assessment made under this Part.

## **Division 5—Collection and recovery of levy**

### **105 When levy payable**

- (1) Levy assessed under section 100 becomes due and payable on:
  - (a) the 28th day; or
  - (b) such later day as is determined in writing by the ACMA; after the ACMA gives a copy of the assessment to the participating person to whom the assessment relates.
- (2) A copy of a determination under paragraph (1)(b) must be published on the ACMA's website.
- (3) A determination under paragraph (1)(b) is not a legislative instrument.

### **106 Recovery of levy**

Levy:

- (a) is a debt due to the ACMA on behalf of the Commonwealth; and
- (b) may be recovered by the ACMA, on behalf of the Commonwealth, in a court of competent jurisdiction.

### **107 Validity of assessment**

The validity of an assessment under this Part is not affected by a contravention of this Part.

### **108 Evidence of assessment**

*Scope*

- (1) This section applies if a document that purports to be a copy of an assessment under section 100 is produced in a proceeding.

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*Evidence*

- (2) Except so far as the contrary is established, it must be presumed:
- (a) that the document is a copy of the assessment; and
  - (b) that the ACMA has duly made the assessment; and
  - (c) that the amounts and other particulars set out in the assessment are correct.

**109 Onus of establishing incorrectness of assessment**

In any proceeding, the onus of establishing that an assessment under section 100 is incorrect is on the party making that assertion.

**110 Set-off**

- (1) If:
- (a) an amount of levy (the *first amount*) is payable by a person in relation to:
    - (i) the eligible levy period starting immediately after the first eligible revenue period; or
    - (ii) the eligible levy period starting immediately after the second eligible revenue period; and
  - (b) an amount (the *second amount*) is payable by the Commonwealth to the person;
- the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.
- (2) For the purposes of paragraph (1)(b), if a person is eligible to receive a grant of financial assistance from the Commonwealth, the amount of the grant is taken to be an amount payable by the Commonwealth to the person.

**111 Refund of overpayment of levy**

If there is an overpayment of levy, the overpayment is to be refunded by TUSMA on behalf of the Commonwealth.

**112 Cancellation of certain exemptions from levy**

- (1) This section cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay levy.
- (2) The cancellation does not apply if the provision of the other Act is enacted after the commencement of this section and refers specifically to levy imposed by the *Telecommunications (Industry Levy) Act 2012*.

**113 Commonwealth not liable to levy**

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

**114 Performance bonds and guarantees**

- (1) The Minister may, by written determination, require a person who has a liability to pay levy, or an anticipated liability to pay levy, to obtain, in accordance with the determination, performance bonds or guarantees in respect of the person's liability or anticipated liability.
- (2) The person must comply with the determination.
- (3) A determination under this section is a legislative instrument.
- (4) In this section:  
*performance bond* has the meaning given by the determination.

## **Division 6—Disclosure of information**

### **115 Public may request information**

- (1) A person may request the ACMA to make available to the person:
  - (a) specified information or documents on the basis of which the ACMA may make, or has made, its assessment under section 100 for an eligible levy period; or
  - (b) specified information about how the ACMA may work out, or has worked out, the matters mentioned in paragraphs 100(2)(a) and (b).
- (2) The ACMA must comply with a request as provided in section 117. This subsection has effect subject to subsection (3).
- (3) The ACMA must not make available under this section:
  - (a) information (other than information prescribed for the purposes of this paragraph):
    - (i) that was obtained from, or relates to, a person who is a participating person for an eligible revenue period; and
    - (ii) the making available of which under this section can reasonably be expected to cause substantial damage to the person's commercial or other interests; or
  - (b) information prescribed for the purposes of this paragraph; or
  - (c) so much of a document as sets out information of a kind referred to in paragraph (a) or (b).

### **116 Request for information that is unavailable under section 115**

- (1) A person who is a participating person for an eligible revenue period may request the ACMA to make available to the person specified information or documents of a kind referred to in subsection 115(1) that subsection 115(3) prevents the ACMA from making available to the person under section 115.
- (2) The ACMA must comply with a request as provided for in section 117. This subsection has effect subject to subsection (3) of this section.



- (3) The ACMA must not, under this section, make available to a person (the *first person*) information, or so much of a document as sets out information:
- (a) that was obtained from, or relates to, another person (the *second person*) who is a participating person for an eligible revenue period; and
  - (b) the making available of which to the first person can reasonably be expected to cause substantial damage to the second person's commercial or other interests;
- unless the ACMA is satisfied:
- (c) that the information could be obtained by the first person lawfully, and without the second person's consent, from a source other than the ACMA; or
  - (d) that:
    - (i) the first person has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, the ACMA made the assessment concerned; and
    - (ii) having regard to the policy objectives in section 11, the first person's interest in being able to examine that basis and those methods in order to see how its liability to pay levy has been assessed outweighs the second person's interest in avoiding the damage referred to in paragraph (b) of this subsection.
- (4) In determining the question referred to in paragraph (3)(b), the ACMA must have regard to:
- (a) whether any undertakings have been given under subsection (5) and, if so, the nature of those undertakings; and
  - (b) such other matters (if any) as the ACMA considers relevant.
- (5) For the purposes of this section, a person may give the ACMA a written undertaking that, if specified information, or the whole or a part of a specified document, is made available to the person under this section, the person will not:
- (a) disclose the information, or the contents of the document, except to one or more specified persons; or

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- (b) use the information, or the document, except for the purpose of informing itself about the basis on which, or the methods by which, the ACMA made the assessment concerned.

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

- (6) If a person gives an undertaking under subsection (5), the person must comply with the undertaking.

**117 How the ACMA is to comply with a request**

- (1) The ACMA may comply with a request by a person under section 115 or 116 by:
  - (a) communicating information to the person in writing or in some other form; or
  - (b) making documents available for inspection by the person or by an employee, agent or professional adviser of the person; or
  - (c) giving to the person copies of, extracts from, or summaries of, documents.

- (2) In this section:

*document* includes a part of a document.

**118 Minister's information-gathering powers**

*Scope*

- (1) This section applies if the Minister has reason to believe that a carrier or carriage service provider has information that is relevant to the exercise of the Minister's powers, or performance of the Minister's functions, under this Part.

*Requirement*

- (2) The Minister may give written notice to the carrier or provider requiring the carrier or provider to give the information to the Minister, within the period and in the manner specified in the notice.

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- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.
- (4) The carrier or provider must comply with the notice.
- (5) An individual is not required to give information under subsection (2) if the information might tend to incriminate the individual or expose the individual to a penalty.
- (6) This section does not affect the law relating to legal professional privilege.
- (7) A notice under subsection (2) is a legislative instrument.

## Division 7—Other matters

### 119 Delegation by the Minister

- (1) The Minister may, by writing, delegate any or all of his or her functions or powers under this Part to a member of the staff of the ACMA who is:
  - (a) an SES employee; or
  - (b) an acting SES employee.
- (2) A delegate must comply with any written directions of the Minister.

### 120 Offence of failing to lodge eligible revenue return

- (1) A person commits an offence if:
  - (a) the person is subject to a requirement under section 91; and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the requirement.

Penalty: 50 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (3) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

### 121 Late payment penalty

- (1) If an amount of levy that is payable by a person remains unpaid after the day on which it becomes due and payable, the person is liable to pay a penalty (*late payment penalty*) on the unpaid amount for each day until all of the levy has been paid.

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- (2) The late payment penalty rate is 20% per year, or such lower rate as the ACMA determines in writing for the purposes of this subsection.
- (3) The ACMA may remit the whole or part of a late payment penalty that a person is liable to pay under subsection (2).
- (4) The late payment penalty for a day is due and payable at the end of that day.
- (5) Late payment penalty:
  - (a) is a debt due to the ACMA on behalf of the Commonwealth;  
and
  - (b) may be recovered by the ACMA, on behalf of the Commonwealth, in a court of competent jurisdiction.
- (6) If the amount of the late payment penalty for a day is not an amount of whole dollars, the late payment penalty is rounded to the nearest dollar (rounding 50 cents upwards).
- (7) A determination under subsection (2) is a legislative instrument.

## Part 7—Miscellaneous

### 122 Disclosure of information to certain bodies or persons

- (1) TUSMA may disclose information to any of the following bodies or persons if TUSMA is satisfied that the information will enable or assist the body or person to perform or exercise any of the functions or powers of the body or person:
  - (a) the ACMA;
  - (b) the Australian Competition and Consumer Commission;
  - (c) the Telecommunications Industry Ombudsman;
  - (d) the Regional Telecommunications Independent Review Committee;
  - (e) the Secretary of the Department.
- (2) TUSMA may, by writing, impose conditions to be complied with in relation to information disclosed under subsection (1).
- (3) An instrument made under subsection (2) that imposes conditions relating to one particular disclosure identified in the instrument is not a legislative instrument.
- (4) Otherwise, an instrument made under subsection (2) is a legislative instrument.

### 123 Review of the operation of this Act

#### *Review*

- (1) Before 1 January 2018, the Minister must cause to be conducted a review of the operation of:
  - (a) this Act; and
  - (b) legislative instruments under this Act; and
  - (c) the *Telecommunications Act 1997* to the extent to which that Act relates to this Act.

- (2) Without limiting subsection (1), a review under that subsection must consider the following matters:
- (a) the extent to which the policy objectives set out in section 11 have been achieved;
  - (b) whether there should be any changes to arrangements for the provision of:
    - (i) standard telephone services; and
    - (ii) payphones; and
    - (iii) emergency call services; and
    - (iv) the National Relay Service;
  - (c) whether there should be any changes to the functions of TUSMA.
- (3) A review under subsection (1) must have regard to developments in the telecommunications industry, including developments in the technology for the provision of:
- (a) standard telephone services; and
  - (b) payphones; and
  - (c) emergency call services; and
  - (d) the National Relay Service.

*Public consultation*

- (4) A review under subsection (1) must make provision for public consultation.

*Report*

- (5) The Minister must cause to be prepared a report of a review under subsection (1).
- (6) The Minister must cause copies of a 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.

## **124 Compensation for acquisition of property**

- (1) If the operation of this Act, or a legislative instrument under this Act, would result in an acquisition of property from a person

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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.

### 125 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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[*Minister's second reading speech made in—  
House of Representatives on 2 November 2011  
Senate on 9 February 2012*]

(202/11)