



# Telecommunications Act 1997

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**Volume 1:** sections 1–594

Volume 2: Schedules  
Endnotes

Each volume has its own contents

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## About this compilation

### **This compilation**

This is a compilation of the *Telecommunications Act 1997* that shows the text of the law as amended and in force on 2 March 2019 (the *compilation date*).

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

### **Uncommenced amendments**

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

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

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

### **Editorial changes**

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

### **Modifications**

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

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

## **Part 1—Introduction**

### **1 Short title**

This Act may be cited as the *Telecommunications Act 1997*.

### **2 Commencement**

- (1) The following provisions of this Act commence on the day on which this Act receives the Royal Assent:
  - (a) this Part;
  - (b) Part 2;
  - (c) Divisions 2, 3 and 4 of Part 4;
  - (d) Division 3 of Part 25;
  - (f) section 589;
  - (g) section 594.
- (2) Sections 52 to 55 (inclusive) commence on 5 June 1997.
- (3) The remaining provisions of this Act commence on 1 July 1997.

### **3 Objects**

- (1) The main object of this Act, when read together with Parts XIB and XIC of the *Competition and Consumer Act 2010*, is to provide a regulatory framework that promotes:
  - (a) the long-term interests of end-users of carriage services or of services provided by means of carriage services; and
  - (b) the efficiency and international competitiveness of the Australian telecommunications industry; and
  - (c) the availability of accessible and affordable carriage services that enhance the welfare of Australians.

Section 3

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- (2) The other objects of this Act, when read together with Parts XIB and XIC of the *Competition and Consumer Act 2010*, are as follows:
- (a) to ensure that standard telephone services and payphones are:
    - (i) reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
    - (ii) are supplied as efficiently and economically as practicable; and
    - (iii) are supplied at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community;
  - (c) to promote the supply of diverse and innovative carriage services and content services;
  - (d) to promote the development of an Australian telecommunications industry that is efficient, competitive and responsive to the needs of the Australian community;
  - (e) to promote the effective participation by all sectors of the Australian telecommunications industry in markets (whether in Australia or elsewhere);
  - (f) to promote:
    - (i) the development of the technical capabilities and skills of the Australian telecommunications industry; and
    - (ii) the development of the value-adding and export-oriented activities of the Australian telecommunications industry; and
    - (iii) research and development that contributes to the growth of the Australian telecommunications industry;
  - (g) to promote the equitable distribution of benefits from improvements in the efficiency and effectiveness of:
    - (i) the provision of telecommunications networks and facilities; and
    - (ii) the supply of carriage services;
  - (h) to provide appropriate community safeguards in relation to telecommunications activities and to regulate adequately

participants in sections of the Australian telecommunications industry;

- (i) to promote the placement of lines underground, taking into account economic and technical issues, where placing such lines underground is supported by the affected community;
- (j) to promote responsible practices in relation to the sending of commercial electronic messages;
- (k) to promote responsible practices in relation to the making of telemarketing calls;
- (l) to promote responsible practices in relation to the sending of marketing faxes.

#### **4 Regulatory policy**

The Parliament intends that telecommunications be regulated in a manner that:

- (a) promotes the greatest practicable use of industry self-regulation; and
- (b) does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry;

but does not compromise the effectiveness of regulation in achieving the objects mentioned in section 3.

#### **5 Simplified outline**

The following is a simplified outline of this Act:

- This Act sets up a system for regulating telecommunications.
- The main entities regulated by this Act are *carriers* and *service providers*.
- A *carrier* is the holder of a carrier licence granted under this Act.

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- The owner of a **network unit** that is used to supply carriage services to the public must hold a carrier licence unless responsibility for the unit is transferred from the owner to a carrier.
- There are 4 types of network **unit**:
  - (a) a single line link connecting distinct places in Australia, where the line link meets certain minimum distance requirements;
  - (b) multiple line links connecting distinct places in Australia, where the line links meet certain minimum distance requirements;
  - (c) a designated radiocommunications facility;
  - (d) a facility specified in a Ministerial determination.
- Carrier licences are subject to **conditions**.
- There are 2 types of **service provider**:
  - (a) a carriage service provider;
  - (b) a content service provider.
- A **carriage service provider** is a person who supplies, or proposes to supply, certain carriage services.
- A **content service provider** is a person who supplies, or proposes to supply, certain content services.
- Service providers must comply with the **service provider rules**.

- The Australian Communications and Media Authority (**ACMA**) is to monitor, and report each year to the Minister on, significant matters relating to the *performance* of carriers and carriage service providers.
- Bodies and associations that represent sections of the telecommunications industry, the telemarketing industry or the fax marketing industry may develop *industry codes*.
- Industry codes may be *registered* by the ACMA.
- Compliance with an industry code is *voluntary* unless the ACMA directs a particular participant in the telecommunications industry, the telemarketing industry or the fax marketing industry to comply with the code.
- The ACMA has a reserve power to make an *industry standard* if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is *mandatory*.
- Carriers and carriage service providers must protect the *confidentiality* of communications.
- The ACMA, carriers and carriage service providers must do their best to prevent telecommunications networks and facilities from being used to commit offences.
- Carriers and carriage service providers must do their best to protect telecommunications networks and facilities from unauthorised interference or unauthorised access.
- Carriers and carriage service providers must ensure that it is possible to execute a *warrant* issued under the *Telecommunications (Interception and Access) Act 1979*.

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- Carriage service providers may be required to supply carriage services for *defence purposes* or for the *management of natural disasters*.
- A carrier or carriage service provider may be required to enter into an agreement with the Commonwealth about:
  - (a) planning for network survivability; or
  - (b) operational requirements in times of crisis.
- The ACMA may require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a standard telephone service.
- The ACMA must require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a declared carriage service.
- Carriers and carriage service providers may be required to comply with certain international conventions.
- The Minister may make *Rules of Conduct* about dealings with international telecommunications operators.
- Provision is made for the *technical regulation* of customer equipment, customer cabling and cabling work.
- The ACMA may regulate numbering by means of a *numbering plan*.
- Provision is made for *standard agreements* for the supply of carriage services.
- The ACMA and the ACCC may hold *public inquiries* about certain matters relating to telecommunications.



- The ACMA may *investigate* certain matters relating to telecommunications.
- Certain switching systems must be capable of providing *calling line identification*.
- Provision is made for the following ancillary matters:
  - (a) information-gathering powers;
  - (b) powers of search, entry and seizure;
  - (c) review of decisions;
  - (d) injunctions.

## 6 Main index

The following is a main index to this Act:

<b>Main Index</b>		
<b>Item</b>	<b>Topic</b>	<b>Provisions</b>
2	Calling line identification	Part 18
3	Carriers' powers and immunities	Part 24, Schedule 3
4	Carrier licence conditions	Part 3, Schedule 1
5	Carriers	Part 3
6	Communications, protection of	Part 13
8	Decisions, review of	Part 29, Schedule 4
9	Defence requirements and disaster plans	Part 16
10	Enforceable undertakings	Part 31A
11	Enforcement	Part 28
12	Industry codes and industry standards	Part 6
13	Information-gathering powers	Part 27
14	Injunctions	Part 30

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<b>Main Index</b>		
<b>Item</b>	<b>Topic</b>	<b>Provisions</b>
15	Inquiries, public	Part 25
16	International aspects	Part 20
17	Investigations	Part 26
19	Liability, vicarious	Part 32
21	National interest matters	Part 14
22	Network units	Part 2
23	Numbering and electronic addressing	Part 22
24	Penalties, civil	Part 31
25	Performance of carriers and carriage service providers, monitoring of	Part 5
26	Pre-selection	Part 17
28	Service provider rules	Part 4, Schedule 2
29	Service providers	Part 4
30	Standard agreements for the supply of carriage services	Part 23
32	Technical regulation	Part 21

**7 Definitions**

In this Act, unless the contrary intention appears:

**ACCC** means the Australian Competition and Consumer Commission.

**ACCC's telecommunications functions and powers** means the functions and powers conferred on the ACCC by or under:

- (a) this Act; or
- (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
- (ba) the *National Broadband Network Companies Act 2011*; or
- (c) Part XIB of the *Competition and Consumer Act 2010*; or
- (d) Part XIC of the *Competition and Consumer Act 2010*; or

- (e) any other provision of the *Competition and Consumer Act 2010*, in so far as that provision applies to a matter connected with telecommunications.

For this purpose, **telecommunications** means the carriage of communications by means of guided and/or unguided electromagnetic energy.

**access**, in relation to an emergency call service, has a meaning affected by section 18.

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

**ACMA's telecommunications functions** means the functions that are telecommunications functions, in relation to the ACMA, for the purposes of the *Australian Communications and Media Authority Act 2005*.

**ACMA's telecommunications powers** means the powers conferred on the ACMA by:

- (a) this Act; or
- (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
- (ba) Chapter 4 or 5 of the *Telecommunications (Interception and Access) Act 1979*; or
- (c) the *Spam Act 2003*; or
- (ca) the *Do Not Call Register Act 2006*; or
- (d) Part XIC of the *Competition and Consumer Act 2010*; or
- (e) section 12 of the *Australian Communications and Media Authority Act 2005*, in so far as that section relates to the ACMA's telecommunications functions.

**ACNC type of entity** means an entity that meets the description of a type of entity in column 1 of the table in subsection 25-5(5) of the *Australian Charities and Not-for-profits Commission Act 2012*.

**adverse security assessment** has the meaning given by section 35 of the *Australian Security Intelligence Organisation Act 1979*.

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**AFP Minister** means the Minister administering the *Australian Federal Police Act 1979*.

**aircraft** includes a balloon.

**ASIO** means the Australian Security Intelligence Organisation.

**Australia**, when used in a geographical sense, includes the eligible Territories.

**Australian number** has the same meaning as in the *Do Not Call Register Act 2006*.

**authorised infringement notice officer** means:

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

**base station that is part of a terrestrial radiocommunications customer access network** has the meaning given by section 34.

**broadcasting service** has the same meaning as in the *Broadcasting Services Act 1992*.

**building lot** has the meaning given by section 372Q.

**building unit** has the meaning given by section 372S.

**cabling licence** means a licence granted under section 427.

**carriage service** means a service for carrying communications by means of guided and/or unguided electromagnetic energy.

**carriage service intermediary** means a person who is a carriage service provider under subsection 87(5).

**carriage service provider** has the meaning given by section 87.

**carrier** means the holder of a carrier licence.

**carrier licence** means a licence granted under section 56.

**carry** includes transmit, switch and receive.

**civil penalty provision** means:

- (a) a provision of this Act (other than section 317ZB) that is declared by this Act to be a civil penalty provision; or
- (b) a provision of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* that is declared by that Act to be a civil penalty provision; or
- (c) a provision of the *Telecommunications (Interception and Access) Act 1979* that is declared by that Act to be a civil penalty provision for the purposes of this Act.

**commercial electronic message** has the same meaning as in the *Spam Act 2003*.

**communications** includes any communication:

- (a) whether between persons and persons, things and things or persons and things; and
- (b) whether in the form of speech, music or other sounds; and
- (c) whether in the form of data; and
- (d) whether in the form of text; and
- (e) whether in the form of visual images (animated or otherwise); and
- (f) whether in the form of signals; and
- (g) whether in any other form; and
- (h) whether in any combination of forms.

**Communications Access Co-ordinator** has the meaning given by section 6R of the *Telecommunications (Interception and Access) Act 1979*.

**connected**, in relation to:

- (a) a telecommunications network; or
- (b) a facility; or
- (c) customer cabling; or
- (d) customer equipment;

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includes connection otherwise than by means of physical contact, for example, a connection by means of radiocommunication.

**connection permit** means a permit issued under section 394.

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

**content service** has the meaning given by section 15.

**content service provider** has the meaning given by section 97.

**controlled carriage service** has the meaning given by section 14.

**controlled facility** has the meaning given by section 14.

**controlled network** has the meaning given by section 14.

**customer cabling** has the meaning given by section 20.

**customer equipment** has the meaning given by section 21.

**data processing device** means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

**Defence Department** means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

**defence purposes** means any one or more of the following:

- (a) the operation of command or control systems;
- (b) the operation, direction or use of a defence organisation;
- (c) the operation of intelligence systems;
- (d) the collection or dissemination of information relevant to the security or defence of:
  - (i) the Commonwealth; or
  - (ii) a foreign country that is allied or associated with the Commonwealth;

- (e) the operation or control of weapons systems, including any thing that, by itself or together with any other thing or things, is intended for defensive or offensive use in combat;
- (f) any other matter specified in the regulations.

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

***designated radiocommunications facility*** has the meaning given by section 31.

***Director-General of Security*** means the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*.

***directory assistance services*** means services that are:

- (a) provided to an end-user of a standard telephone service to help the end-user find the number of another end-user of a standard telephone service; and
- (b) provided by an operator or by means of:
  - (i) an automated voice response system; or
  - (ii) another technology-based system.

***distinct places*** has the meaning given by section 36.

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

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

***eligible partnership*** means a partnership where each partner is a constitutional corporation.

***eligible Territory*** means:

- (a) the Territory of Christmas Island; or
- (b) the Territory of Cocos (Keeling) Islands; or
- (c) an external Territory prescribed for the purposes of section 10.

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**emergency call contractor** means a person who performs services for or on behalf of a recognised person who operates an emergency call service, but does not include a person who performs such services in the capacity of an employee of the person who operates the emergency call service.

Note: **Recognised person who operates an emergency call service** is defined by section 19.

**emergency call person** means:

- (a) a recognised person who operates an emergency call service; or
- (b) an employee of such a person; or
- (c) an emergency call contractor; or
- (d) an employee of an emergency call contractor.

Note: **Recognised person who operates an emergency call service** is defined by section 19.

**emergency call service** means a service for:

- (a) receiving and handling calls to an emergency service number; and
- (b) transferring such calls to:
  - (i) a police force or service; or
  - (ii) a fire service; or
  - (iii) an ambulance service; or
  - (iv) a service specified in the numbering plan for the purposes of this subparagraph; or
  - (v) a service for despatching a force or service referred to in subparagraph (i), (ii), (iii) or (iv).

For the purposes of paragraph (b), **transferring** a call includes giving information in relation to the call for purposes connected with dealing with the matter or matters raised by the call.

**emergency service number** has the meaning given by section 466.



***exempt network-user*** means:

- (a) a person:
  - (i) who is entitled to use a network unit to supply a carriage service; and
  - (ii) whose entitlement derives, directly or indirectly, from rights granted to a carrier; or
- (b) if:
  - (i) a police force or service; or
  - (ii) a fire service; or
  - (iii) an ambulance service; or
  - (iv) an emergency service specified in the regulations;  
(the ***first force or service***) uses a network unit for the sole or principal purpose of enabling either or both of the following:
    - (v) communication between the members of the first force or service;
    - (vi) communication between the members of the first force or service and the members of another force or service, where the other force or service is of a kind covered by subparagraph (i), (ii), (iii) or (iv);the first force or service.

For the purposes of paragraph (b), an employee of a force or service is taken to be a member of the force or service.

***facility*** means:

- (a) any part of the infrastructure of a telecommunications network; or
- (b) any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network.

***fax marketing industry*** means an industry that involves carrying on a fax marketing activity (as defined by section 109C).

***Federal Court*** means the Federal Court of Australia.

***fibre-ready facility*** has the meaning given by section 372W.

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

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

***Finance Minister*** means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

***fixed-line facility*** has the meaning given by section 372V.

***fixed radiocommunications link*** has the meaning given by section 35.

***Home Affairs Department*** means the Department administered by the Home Affairs Minister.

***Home Affairs Minister*** means the Minister administering the *Australian Security Intelligence Organisation Act 1979*.

***Home Affairs Secretary*** means the Secretary of the Home Affairs Department.

***hybrid fibre-coaxial network*** means a telecommunications network:

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

***immediate circle*** has the meaning given by section 23.

***import*** means import into Australia.

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

***infringement notice*** means an infringement notice under section 572E.

***inspector*** has the meaning given by section 533.

***integrated public number database scheme*** means the scheme in force under section 295A.

***intercell hand-over functions*** has the meaning given by section 33.

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

***internet service provider*** has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

***Layer 2 bitstream service*** means a carriage service that is:

- (a) either:
  - (i) a Layer 2 Ethernet bitstream service; or
  - (ii) a Layer 2 bitstream service specified in a legislative instrument made by the ACMA for the purposes of this subparagraph; and
- (b) a listed carriage service; and
- (c) supplied using a line to premises occupied or used by an end-user.

For this purpose, ***Layer 2*** has the same meaning as in the Open System Interconnection (OSI) Reference Model for data exchange.

***line*** means a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy.

***line link*** has the meaning given by section 30.

***listed carriage service*** has the meaning given by section 16.

***marketing fax*** means:

- (a) a marketing fax (within the meaning of the *Do Not Call Register Act 2006*) that is sent to an Australian number; or

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- (b) a fax (within the meaning of the *Do Not Call Register Act 2006*) that is sent to an Australian number, where, having regard to:
- (i) the content of the fax; and
  - (ii) the presentational aspects of the fax;
- it would be concluded that the purpose, or one of the purposes, of the fax is:
- (iii) to conduct opinion polling; or
  - (iv) to carry out standard questionnaire-based research.

**member** means a member of the ACMA (and does not include an associate member).

**NBN corporation** has the same meaning as in the *National Broadband Network Companies Act 2011*. This definition does not apply to:

- (a) section 577BA; or
- (b) section 577BC; or
- (c) clause 17 of Schedule 1; or
- (d) Part 5 of Schedule 1.

**network unit** has the meaning given by Division 2 of Part 2.

**nominated carriage service provider** means a carriage service provider covered by a declaration in force under subsection 197(4) of the *Telecommunications (Interception and Access) Act 1979*.

**nominated carrier** means a carrier in respect of whom a nominated carrier declaration is in force.

**nominated carrier declaration** means a declaration under section 81.

**notifiable equipment** has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

**numbering plan** has the meaning given by section 455.

**optical fibre line** means a line that consists of, or encloses, optical fibre.

**owner**, in relation to a network unit, means a person who legally owns the unit (whether alone or together with one or more other persons).

**person** includes a partnership.

**point-to-multipoint service** means a carriage service which allows a person to transmit a communication to more than one end-user simultaneously.

**project area** for a real estate development project has the meaning given by section 372Q.

**public body** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority, or institution, of the Commonwealth, a State or a Territory; or
- (c) an incorporated company all the stock or shares in the capital of which is beneficially owned by one of the following:
  - (i) the Commonwealth;
  - (ii) a State;
  - (iii) a Territory; or
- (d) an incorporated company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by one of the following:
  - (i) the Commonwealth;
  - (ii) a State;
  - (iii) a Territory.

**public mobile telecommunications service** has the meaning given by section 32.

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

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

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

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

**real estate development project** has the meaning given by section 372Q.

**recognised person who operates an emergency call service** has the meaning given by section 19.

**recognised testing authority** has the meaning given by section 409.

**record-keeping rule** means a rule under section 529.

**registered charity** means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

**satellite-based facility** means a radiocommunications transmitter, or a radiocommunications receiver, in a satellite.

**sell:**

- (a) when used in relation to a building lot—has the meaning given by section 372T; or
- (b) when used in relation to a building unit—has the meaning given by section 372U.

**service provider** has the meaning given by section 86.

**service provider rules** has the meaning given by section 98.

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

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

**standard questionnaire-based research** means research that involves people being asked to answer one or more standard questions, but does not include:

- (a) opinion polling; or
- (b) research of a kind specified in the regulations.

**standard telephone service** has the meaning given by section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**subdivision** of an area of land has a meaning affected by section 372R.

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

**telecommunications industry** includes an industry that involves:

- (a) carrying on business as a carrier; or
- (b) carrying on business as a carriage service provider; or
- (c) supplying goods or services for use in connection with the supply of a listed carriage service; or
- (d) supplying a content service using a listed carriage service; or
- (e) manufacturing or importing customer equipment or customer cabling; or
- (f) installing, maintaining, operating or providing access to:
  - (i) a telecommunications network; or
  - (ii) a facility;used to supply a listed carriage service.

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

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

**telecommunications network** means a system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy.

**telecommunications service** has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

**telecommunications system** has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

**telemarketing call** means:

- (a) a telemarketing call (within the meaning of the *Do Not Call Register Act 2006*) that is made to an Australian number; or
- (b) a voice call (within the meaning of the *Do Not Call Register Act 2006*) that is made to an Australian number, where, having regard to:
  - (i) the content of the call; and
  - (ii) the presentational aspects of the call;it would be concluded that the purpose, or one of the purposes, of the call is:
  - (iii) to conduct opinion polling; or
  - (iv) to carry out standard questionnaire-based research.

**telemarketing industry** means an industry that involves carrying on a telemarketing activity (as defined by section 109B).

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

**this Act** includes the regulations.

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



**vessel** means a vessel or boat of any description, and includes:

- (a) an air-cushion vehicle; and
- (b) any floating structure.

## **8 Crown to be bound**

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (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 Extra-territorial application**

This Act applies both within and outside Australia.

## **10 Extension to external Territories**

- (1) 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.
- (2) The operation of this Act in relation to Norfolk Island is not affected by the amendments made by Division 1 of Part 1 of Schedule 5 to the *Territories Legislation Amendment Act 2016*.

## **11 Extension to offshore areas**

- (1) This Act applies in relation to the offshore areas of:
  - (a) each of the States; and
  - (b) each of the eligible Territories;as if references in this Act to Australia included references to those offshore areas. This subsection has effect subject to subsection (2).

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- (2) The application of this Act in accordance with subsection (1) in relation to an offshore area extends only in relation to acts, matters and things touching, concerning, arising out of or connected with:
- (a) the exploration of the continental shelf of Australia; or
  - (b) the exploitation of the resources of the continental shelf of Australia.
- (3) The application of this Act in accordance with subsection (1) in relation to an offshore area extends in relation to all acts done by or in relation to, and all matters, circumstances and things affecting, any person who is in the offshore area for a reason touching, concerning, arising out of or connected with:
- (a) the exploration of the continental shelf of Australia; or
  - (b) the exploitation of the resources of the continental shelf of Australia.
- (4) Subsection (3) does not, by implication, limit subsection (2).
- (5) In this section:

*offshore area*, in relation to a State or Territory, has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

### 11A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### 12 Act subject to Radiocommunications Act

- (1) This Act has effect subject to the *Radiocommunications Act 1992*.
- (2) However, to avoid doubt, the fact that a person is authorised to do something under a licence under the *Radiocommunications Act 1992* does not entitle the person to do that thing if the person is

prohibited by or under this Act from doing it, unless a condition of the licence requires the person to do it.

### **13 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.

### **14 Controlled carriage services, controlled networks and controlled facilities**

#### *Controlled carriage services*

- (1) For the purposes of this Act, if:
- (a) a carrier or carriage service provider supplies, or proposes to supply, a carriage service; and
  - (b) the carriage service involves, or will involve, the use of a controlled network, or a controlled facility, of the carrier or of the provider, as the case may be;
- the carriage service is a **controlled carriage service** of the carrier or the provider, as the case may be.

#### *Controlled networks*

- (2) For the purposes of this Act, if:
- (a) a carrier or carriage service provider operates a telecommunications network; and
  - (b) the network satisfies the geographical test set out in subsection (4);
- the network is a **controlled network** of the carrier or the provider, as the case may be.

#### *Controlled facilities*

- (3) For the purposes of this Act, if:
- (a) a carrier or carriage service provider operates a facility; and
  - (b) the facility satisfies the geographical test set out in subsection (4);

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the facility is a **controlled facility** of the carrier or provider, as the case may be.

### *Geographical test*

- (4) For the purposes of this section, a telecommunications network, or a facility, **satisfies the geographical test** if:
- (a) the whole or any part of the network or facility, as the case requires, is, or will be, located in Australia; or
  - (b) all of the following conditions are satisfied:
    - (i) a person, or a group of persons, operates the network or the facility, as the case requires;
    - (ii) the person, or at least one of the members of the group, carries on, or will carry on, a telecommunications-related business wholly or partly in Australia;
    - (iii) the network, or the facility, as the case requires, is used, or will be used, to supply a listed carriage service, or a service that is ancillary or incidental to such a service.

### *Definition*

- (5) In this section:

**telecommunications-related business** means a business that consists of, or includes:

- (a) supplying a carriage service; or
- (b) supplying goods or services for use in connection with the supply of a carriage service; or
- (c) supplying a content service; or
- (d) installing, maintaining, operating or providing access to:
  - (i) a telecommunications network; or
  - (ii) a facility.

## 15 Content service

- (1) For the purposes of this Act, a **content service** is:
-

- (a) a broadcasting service; or
  - (b) an on-line information service (for example, a dial-up information service); or
  - (c) an on-line entertainment service (for example, a video-on-demand service or an interactive computer game service); or
  - (d) any other on-line service (for example, an education service provided by a State or Territory government); or
  - (e) a service of a kind specified in a determination made by the Minister for the purposes of this paragraph.
- (2) The Minister may, by legislative instrument, make a determination for the purposes of paragraph (1)(e).

## **16 Listed carriage services**

- (1) For the purposes of this Act, the following carriage services are *listed carriage services*:
- (a) a carriage service between a point in Australia and one or more other points in Australia;
  - (b) a carriage service between a point and one or more other points, where the first-mentioned point is in Australia and at least one of the other points is outside Australia;
  - (c) a carriage service between a point and one or more other points, where the first-mentioned point is outside Australia and at least one of the other points is in Australia.
- (2) For the purposes of this section, a *point* includes a mobile or potentially mobile point, whether on land, underground, in the atmosphere, in outer space, underwater, at sea or anywhere else.
- (3) For the purposes of this section, a point that is:
- (a) in the atmosphere; and
  - (b) in or below the stratosphere; and
  - (c) above Australia;
- is taken to be a point in Australia.
- (4) For the purposes of this section, a point that is:

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- (a) on a satellite; and
  - (b) above the stratosphere;
- is taken to be a point outside Australia.

### 18 Access to an emergency call service

For the purposes of this Act, a person is taken not to have *access* to an emergency call service unless, in the event that the person attempts to place a call to the relevant emergency service number, the call can be established and maintained.

### 19 Recognised person who operates an emergency call service

- (1) A reference in this Act to a *recognised person who operates an emergency call service* is a reference to a person who:
  - (a) operates an emergency call service; and
  - (b) is specified, in a written determination made by the ACMA for the purposes of this paragraph, as:
    - (i) a national operator of emergency call services; or
    - (ii) a regional operator of emergency call services.
- (2) A copy of a determination under paragraph (1)(b) is to be published in the *Gazette*.
- (3) A person may be specified in a determination under paragraph (1)(b) even if the person does not operate an emergency call service at the time the determination is made.
- (4) Subsection (3) is enacted for the avoidance of doubt.

### 20 Customer cabling

- (1) For the purposes of this Act, *customer cabling* means a line that, under the regulations, is treated as customer cabling.
- (2) Regulations made for the purposes of subsection (1) may deal with a matter by reference to the boundary of a telecommunications network.

Note: **Boundary of a telecommunications network** is defined by section 22.

- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) If no regulations are in force for the purposes of subsection (1), then, for the purposes of this Act, **customer cabling** means a line that is used, installed ready for use or intended for use on the customer side of the boundary of a telecommunications network.

Note: **Boundary of a telecommunications network** is defined by section 22.

## 21 Customer equipment

- (1) For the purposes of this Act, **customer equipment** means:
  - (a) any equipment, apparatus, tower, mast, antenna or other structure or thing; or
  - (b) any system (whether software-based or otherwise);that:
  - (c) is used, installed ready for use or intended for use in connection with a carriage service; and
  - (d) under the regulations, is treated as customer equipment; but does not include a line.
- (2) Regulations made for the purposes of subsection (1) may deal with a matter by reference to the boundary of a telecommunications network.

Note: **Boundary of a telecommunications network** is defined by section 22.

- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) If no regulations are in force for the purposes of subsection (1), then, for the purposes of this Act, **customer equipment** means:
  - (a) any equipment, apparatus, tower, mast, antenna or other structure or thing that is used, installed ready for use or intended for use on the customer side of the boundary of a telecommunications network; or
  - (b) any system (whether software-based or otherwise) that is used, installed ready for use or intended for use on the

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customer side of the boundary of a telecommunications network;

but does not include:

- (c) a line; or
- (d) equipment of a kind specified in regulations made for the purposes of this paragraph; or
- (e) an apparatus, tower, mast, antenna or other structure or thing that is of a kind specified in regulations made for the purposes of this paragraph; or
- (f) a system (whether software-based or otherwise) that is of a kind specified in regulations made for the purposes of this paragraph.

Note : *Boundary of a telecommunications network* is defined by section 22.

**22 Customer cabling and customer equipment—boundary of a telecommunications network**

- (1) For the purposes of sections 20, 21, 30, 349, 372B, 372C and 372V, the boundary of a telecommunications network is to be ascertained in accordance with the regulations.
- (2) Regulations made for the purposes of subsection (1) may deal with a matter by reference to any or all of the following:
  - (a) the terms of an agreement between 2 or more carriers, where the agreement is entered into for the purposes of those regulations;
  - (b) the terms of an agreement between 2 or more carriage service providers, where the agreement is entered into for the purposes of those regulations;
  - (c) the terms of an agreement between a carrier and a carriage service provider, where the agreement is entered into for the purposes of those regulations;
  - (d) the terms of an agreement between a carrier and a customer of the carrier, where the agreement is entered into for the purposes of those regulations;



- (e) the terms of an agreement between a carriage service provider and a customer of the provider, where the agreement is entered into for the purposes of those regulations.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) If no regulations are in force for the purposes of subsection (1), then, for the purposes of sections 20, 21, 30, 349, 372B, 372C and 372V, the boundary of a telecommunications network is:
- (a) in a case where a telecommunications network is used to supply a carriage service to an end-user in a building by means of a line that enters the building—the point agreed between the customer and the carrier or carriage service provider who operates the telecommunications network, or, failing agreement:
    - (i) if there is a main distribution frame in the building and the line is connected to the frame—the side of the frame nearest to the end-user; or
    - (ii) if subparagraph (i) does not apply but the line is connected to a network termination device located in, on or within close proximity to, the building—the side of the device nearest to the end-user; or
    - (iii) if neither subparagraph (i) nor (ii) applies but the line is connected to one or more sockets in the building—the side nearest to the end-user of the first socket after the building entry point; or
  - (b) in a case where a telecommunications network is used to supply a carriage service to an end-user by means of a satellite-based facility that transmits to, or receives transmissions from, the point where the end user is located—the outer surface of the satellite-based facility; or
  - (c) in a case where:
    - (i) a telecommunications network is used to supply a carriage service to an end-user; and
    - (ii) paragraphs (a) and (b) do not apply;

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the outer surface of the fixed facility nearest to the end-user, where the facility is used, installed ready for use or intended for use to supply the carriage service.

- (5) If, immediately before 1 July 1997, the boundary of a telecommunications network used to supply a standard telephone service to an end-user in a building by means of a line that enters the building is the side of a main distribution frame, or a telephone socket, nearest to the end-user, paragraph (4)(a) has effect, on and after 1 July 1997, as if the customer and the carrier or carriage service provider who operates the network had agreed to the boundary at that point.
- (6) Subsection (5) does not prevent the customer and the carrier or carriage service provider agreeing to a boundary at a different point.
- (7) For the purposes of subsection (4), the **building entry point** is the point at which a line that is used to provide a carriage service to an end-user in a building meets the outer surface of that building, immediately before entering the building.
- (8) In this section:  
**building** includes a structure, a caravan and a mobile home.

### 23 Immediate circle

- (1) For the purposes of this Act, a person's **immediate circle** consists of the person, together with the following persons:
  - (a) if the person is an individual—an employee of the individual;
  - (b) if the person is a partnership—an employee of the partnership;
  - (c) if the person is a body corporate:
    - (i) an officer of the body corporate;
    - (ii) if another body corporate is related to the first-mentioned body corporate (within the meaning of the *Corporations Act 2001*)—that other body corporate and an officer of that other body corporate;

- (d) if the person is the Commonwealth:
  - (i) an authority or institution of the Commonwealth (other than an authority or institution that carries on a business as a core function) and a constituent member or an employee of such an authority or institution;
  - (ii) an officer or employee of the Commonwealth;
  - (iii) a member of the Australian Defence Force;
  - (iv) a member of the Australian Federal Police;
  - (v) a member of the Parliament and a member of the staff of a member of the Parliament;
  - (vi) a person who holds or performs the duties of an office under the Constitution or a law of the Commonwealth;
- (e) if the person is a State:
  - (i) an authority or institution of the State (other than an authority or institution that carries on a business as a core function) and a constituent member or an employee of such an authority or institution;
  - (ii) an officer or employee of the State;
  - (iii) a member of the police force of the State;
  - (iv) a member of the Parliament of the State and a member of the staff of a member of the Parliament of the State;
  - (v) a person who holds or performs the duties of an office under a law of the State;
- (f) if the person is a Territory:
  - (i) an authority or institution of the Territory (other than an authority or institution that carries on a business as a core function) and a constituent member or an employee of such an authority or institution;
  - (ii) an officer or employee of the Territory;
  - (iii) a member of the police force of the Territory;
  - (iv) a member of the Legislative Assembly of the Territory and a member of the staff of a member of the Legislative Assembly of the Territory;
  - (v) a person who holds or performs the duties of an office under a law of the Territory;

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- (g) if the person is an authority or institution of the Commonwealth (other than an authority or institution that carries on a business as a core function):
  - (i) a constituent member or an employee of the authority or institution;
  - (ii) the Commonwealth;
  - (iii) an officer or employee of the Commonwealth;
  - (iv) a member of the Australian Defence Force;
  - (v) a member of the Australian Federal Police;
  - (vi) a member of the Parliament and a member of the staff of a member of the Parliament;
  - (vii) a person who holds or performs the duties of an office under the Constitution or a law of the Commonwealth;
  - (viii) another authority or institution of the Commonwealth (other than an authority or institution that carries on a business as a core function) and a constituent member or an employee of the other authority or institution;
- (h) if the person is an authority or institution of the Commonwealth, being an authority or institution that carries on a business as a core function—a constituent member or an employee of the authority or institution;
- (i) if the person is an authority or institution of a State (other than an authority or institution that carries on a business as a core function):
  - (i) a constituent member or an employee of the authority or institution;
  - (ii) the State;
  - (iii) an officer or employee of the State;
  - (iv) a member of the police force of the State;
  - (v) a member of the Parliament of the State and a member of the staff of a member of the Parliament of the State;
  - (vi) a person who holds or performs the duties of an office under a law of the State;
  - (vii) another authority or institution of the State (other than an authority or institution that carries on a business as a

- core function) and a constituent member or an employee of the other authority or institution;
- (j) if the person is an authority or institution of a State, being an authority or institution that carries on a business as a core function—a constituent member or an employee of the authority or institution;
  - (k) if the person is an authority or institution of a Territory (other than an authority or institution that carries on a business as a core function):
    - (i) a constituent member or an employee of the authority or institution;
    - (ii) the Territory;
    - (iii) an officer or employee of the Territory;
    - (iv) a member of the police force of the Territory;
    - (v) a member of the Legislative Assembly of the Territory and a member of the staff of a member of the Legislative Assembly of the Territory;
    - (vi) a person who holds or performs the duties of an office under a law of the Territory;
    - (vii) another authority or institution of the Territory (other than an authority or institution that carries on a business as a core function) and a constituent member or an employee of the other authority or institution;
  - (l) if the person is an authority or institution of a Territory, being an authority or institution that carries on a business as a core function—a constituent member or employee of the authority or institution;
  - (m) if the person is a tertiary education institution:
    - (i) a member of the governing body of the tertiary education institution;
    - (ii) an officer or employee of the tertiary education institution;
    - (iii) a student of the tertiary education institution;
  - (n) a person specified in a determination under subsection (2).

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- (2) The Minister may, by legislative instrument, make a determination specifying persons for the purposes of paragraph (1)(n).
- (3) A determination under subsection (2) may be unconditional or subject to such conditions (if any) as are specified in the determination.
- (4) Paragraphs (1)(a) to (m) (inclusive) do not, by implication, limit subsections (2) and (3).
- (5) The Minister may, by legislative instrument, make a determination providing that a specified authority or specified institution is taken to carry on a business as a core function for the purposes of subsection (1).
- (6) The Minister may, by legislative instrument, make a determination providing that a specified authority or specified institution is taken not to carry on a business as a core function for the purposes of subsection (1).
- (7) A determination under subsection (2), (5) or (6) has effect accordingly.
- (9) For the purposes of this section, a person who holds or performs the duties of the office of Administrator of the Northern Territory is taken to be an officer of that Territory.
- (10) For the purposes of this section, the Australian Federal Police is taken to be the police force of the Australian Capital Territory.
- (11) In this section:

**core function**, in relation to an authority or institution, means a function of the authority or institution other than a secondary or incidental function.

**director** includes a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

***executive officer***, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

***officer***, in relation to a body corporate, includes a director, secretary, executive officer or employee of the body.

***tertiary education institution*** means:

- (a) a higher education institution (within the meaning of the *Student Assistance Act 1973*); or
- (b) a technical and further education institution (within the meaning of that Act).

## **24 Extended meaning of *use***

Unless the contrary intention appears, a reference in this Act to the ***use*** of a thing is a reference to the use of the thing either:

- (a) in isolation; or
- (b) in conjunction with one or more other things.

## Part 2—Network units

### Division 1—Simplified outline

#### 25 Simplified outline

The following is a simplified outline of this Part:

- The object of this Part is to define the expression *network unit*.
- There are 4 types of network unit:
  - (a) a single line link connecting distinct places in Australia, where the line link meets certain minimum distance requirements;
  - (b) multiple line links connecting distinct places in Australia, where the line links meet certain minimum distance requirements;
  - (c) a designated radiocommunications facility;
  - (d) a facility specified in a Ministerial determination.



## **Division 2—Basic definition**

### **26 Single line links connecting distinct places in Australia**

- (1) If:
  - (a) a line link connects distinct places in Australia; and
  - (b) the distinct places are at least the statutory distance apart;the line link is a **network unit**.
- (2) For the purposes of this section, the **statutory distance** is:
  - (a) 500 metres; or
  - (b) if a longer distance, not exceeding 50 kilometres, is specified in the regulations—that longer distance.

### **27 Multiple line links connecting distinct places in Australia**

- (1) If:
  - (a) the same person owns, or the same persons own, 2 or more line links; and
  - (b) each of those line links connects distinct places in Australia; and
  - (c) the aggregate of the distances between the distinct places is more than the statutory distance;each of those line links is a **network unit**.

Note: **Statutory distance** is defined by subsection (3).

- (2) If:
  - (a) the following conditions are satisfied in relation to 2 or more line links:
    - (i) the owners of the line links are bodies corporate;
    - (ii) the owners of the line links are all members of the same related company group; and
  - (b) each of those line links connects distinct places in Australia; and

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(c) the aggregate of the distances between the distinct places is more than the statutory distance;  
each of those line links is a **network unit**.

Note: **Statutory distance** is defined by subsection (3).

- (3) For the purposes of this section, the **statutory distance** is:
- (a) 5 kilometres; or
  - (b) if a longer distance, not exceeding 500 kilometres, is specified in the regulations—that longer distance.
- (4) In this section:

**owner** means legal or beneficial owner, and **own** has a corresponding meaning.

**related company group** means a group of 2 or more bodies corporate, where each member of the group is related to each other member of the group.

- (5) For the purposes of this section, the question whether a body corporate is related to another body corporate is to be determined in the same manner as that question is determined under the *Corporations Act 2001*.

## 28 Designated radiocommunications facility

- (1) If a designated radiocommunications facility is used, or is for use, to supply a carriage service between a point in Australia and one or more other points in Australia, the facility is a **network unit**.
- (2) It does not matter whether the supply involves:
- (a) the use of a satellite; or
  - (b) the use of a line or other facility outside Australia.
- (3) For the purposes of this section, a **point** includes a mobile or potentially mobile point, whether on land, underground, in the atmosphere, in outer space, underwater, at sea or anywhere else.
- (4) For the purposes of this section, a point that is:

(a) in the atmosphere; and  
(b) in or below the stratosphere; and  
(c) above Australia;  
is taken to be a point in Australia.

(5) For the purposes of this section, a point that is:  
(a) on a satellite; and  
(b) above the stratosphere;  
is taken to be a point outside Australia.

### **29 Facilities specified in Ministerial determination**

- (1) The Minister may, by legislative instrument, determine that a specified facility is a *network unit* for the purposes of this Act.
- (2) The determination has effect accordingly.
- (4) To avoid doubt, nothing in the other provisions of this Part limits the power conferred by subsection (1).

## Division 3—Related definitions

### 30 Line links

- (1) A line constitutes a line link.
- (2) If:
  - (a) a line is connected to another line; and
  - (b) the other line constitutes, or forms part of, a line link;the first-mentioned line, and the line link referred to in paragraph (b), together constitute a line link.
- (3) Subsection (2) is recursive, that is, the reference in paragraph (2)(b) to a line link is a reference to something that is a line link because of any other application or applications of this section.
- (4) For the purposes of subsection (2), a line is connected to another line if, and only if:
  - (a) the lines are connected to each other; or
  - (b) each of the lines is connected to the same facility (other than a line);in such a way that a communication can be carried, by means of the 2 lines, or by means of facilities including the 2 lines, in the same way as if the 2 lines were a single line.
- (4A) A line does not form part of any line link to the extent that the line is on the customer side of the boundary of a telecommunications network.

Note: *Boundary of a telecommunications network* is defined by section 22.

- (5) A facility other than a line does not form part of any line link.

### 31 Designated radiocommunications facility

- (1) A reference in this Act to a *designated radiocommunications facility* is a reference to:

- (a) a base station used, or for use, to supply a public mobile telecommunications service; or
  - (b) a base station that is part of a terrestrial radiocommunications customer access network; or
  - (c) a fixed radiocommunications link; or
  - (d) a satellite-based facility; or
  - (e) a radiocommunications transmitter of a kind specified in a determination under subsection (2); or
  - (f) a radiocommunications receiver of a kind specified in a determination under subsection (3);
- but does not include a reference to:
- (g) a base station of a kind declared under subsection (5) to be exempt from this section; or
  - (h) a fixed radiocommunications link of a kind declared under subsection (5) to be exempt from this section; or
  - (i) a satellite-based facility of a kind declared under subsection (5) to be exempt from this section.

Note 1: **Public mobile telecommunications service** is defined by section 32.

Note 2: **Base station that is part of a terrestrial radiocommunications customer access network** is defined by section 34.

Note 3: **Fixed radiocommunications link** is defined by section 35.

Note 4: **Satellite-based facility** is defined by section 7.

- (2) The Minister may, by legislative instrument, make a determination for the purposes of paragraph (1)(e).
- (3) The Minister may, by legislative instrument, make a determination for the purposes of paragraph (1)(f).
- (5) The Minister may, by legislative instrument, make a declaration for the purposes of paragraph (1)(g), (h) or (i).
- (7) To avoid doubt, nothing in the other provisions of this Part limits a power conferred by subsection (2), (3) or (5).

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**32 Public mobile telecommunications service**

- (1) For the purposes of this Act, if:
- (a) an end-user can use a carriage service while moving continuously between places; and
  - (b) the customer equipment used for or in relation to the supply of the service is not in physical contact with any part of the telecommunications network by means of which the service is supplied; and
  - (c) the service is supplied by use of a telecommunications network that has intercell hand-over functions; and
  - (d) the service is not an exempt service (as defined by subsection (2), (3) or (4));
- the service is a ***public mobile telecommunications service***.
- (2) For the purposes of this section, a carriage service is an ***exempt service*** if:
- (a) the service is supplied by means of a telecommunications network (a ***primary network***) that is connected to one or more line links or other facilities that, apart from this section, are eligible network units; and
  - (b) the principal function of the primary network is to supply carriage services between customer equipment connected to the primary network and other such equipment; and
  - (c) the supply of carriage services between such equipment and equipment connected to the network units is, at most, an ancillary function of the primary network; and
  - (d) despite the connection or connections referred to in paragraph (a), the primary network cannot be used in carrying a communication, as a single transaction, between equipment connected to the network units and other such equipment.
- (3) For the purposes of this section, a carriage service is an ***exempt service*** if the service is:
- (a) a one-way only, store-and-forward communications service; or

- (b) a service that performs the same functions as such a service.
- (4) For the purposes of this section, a carriage service is an ***exempt service*** if all of the end-users of the service are located at the same distinct place.
- (5) In this section:  
***eligible network unit*** means a network unit:
  - (a) that is owned by one or more carriers; or
  - (b) in relation to which a nominated carrier declaration is in force.

### **33 Intercell hand-over functions**

- (1) For the purposes of this Act, a telecommunications network is taken to have ***intercell hand-over functions*** if, and only if:
  - (a) the facilities of the network include at least 2 base stations each of which transmits and receives signals to and from customer equipment (***mobile equipment***) that is:
    - (i) used for or in relation to the supply of an eligible mobile telecommunications service; and
    - (ii) located within a particular area (a ***cell***); and
  - (b) the network includes the functions necessary to do the following while the network is carrying a communication made to or from particular mobile equipment:
    - (i) determine in which cell the equipment is located and cause the base station in that cell to transmit and receive signals to and from the equipment;
    - (ii) when the equipment moves from one cell to another, cause the base station in the one cell to stop, and the base station in the other cell to start, transmitting and receiving signals to and from the equipment.
- (2) For the purposes of this section, a carriage service is an ***eligible mobile telecommunications service*** if:
  - (a) an end-user can use it while moving continuously between places; and

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- (b) customer equipment used for or in relation to the supply of the service is not in physical contact with any part of the telecommunications network by means of which the service is supplied.

**34 When a base station is part of a terrestrial radiocommunications customer access network**

- (1) For the purposes of this Act, a base station is part of a terrestrial radiocommunications customer access network if, and only if:
  - (a) the base station is part of a telecommunications network; and
  - (b) the base station is not an exempt base station (as defined by subsection (2)); and
  - (c) the base station is used, or for use, in connection with the supply of a carriage service; and
  - (d) customer equipment used for or in relation to the supply of the service is not in physical contact with any part of the telecommunications network by means of which the service is supplied; and
  - (e) the service is wholly or principally used, or wholly or principally for use, by each end-user:
    - (i) at premises occupied or used by the end-user; or
    - (ii) in the immediate vicinity of those premises; and
  - (f) the network does not have intercell hand-over functions; and
  - (g) the conditions (if any) specified in the regulations are satisfied; and
  - (h) the network is not an exempt network (as defined by subsection (3)).
- (2) For the purposes of paragraph (1)(b), a base station is an **exempt base station** if the sole use of the base station is use by a broadcaster to:
  - (a) supply broadcasting services to the public; or
  - (b) supply a secondary carriage service by means of the main carrier signal of a primary broadcasting service;or both.



- (3) For the purposes of paragraph (1)(h), a network is an **exempt network** if:
- (a) the network is used, or for use, for the sole purpose of supplying carriage services on a non-commercial basis; or
  - (b) the network is of a kind specified in the regulations.
- (4) In this section:
- broadcaster** means:
- (a) the Australian Broadcasting Corporation; or
  - (b) the Special Broadcasting Service Corporation; or
  - (c) the holder of a licence under the *Broadcasting Services Act 1992*; or
  - (d) a person who provides a broadcasting service under a class licence under the *Broadcasting Services Act 1992*.

### 35 Fixed radiocommunications link

- (1) For the purposes of this Act, a **fixed radiocommunications link** is a facility, or a combination of facilities, where:
- (a) the facility or combination is used, or for use, in connection with the supply of a carriage service between 2 or more fixed points by means of radiocommunication; and
  - (b) some or all of the communications carried by means of the facility or combination have the characteristic of double-ended interconnection (as defined by subsection (3)); and
  - (c) the facility or combination does not consist of:
    - (i) one or more base stations that are part of a terrestrial radiocommunications customer access network; or
    - (ii) one or more base stations that would be part of such a network if paragraph 34(1)(h) had not been enacted.
- (2) For the purposes of this section, a **fixed point** is a fixed point on:
- (a) land; or
  - (b) a building or structure on land.

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- (3) For the purposes of this section, if:
- (a) a communication is carried over a line link or other facility that, apart from this section, is an eligible network unit; and
  - (b) the communication is then carried (immediately or with a transmission delay of not longer than 30 seconds), by means of radiocommunication, between 2 or more fixed points; and
  - (c) the communication is then carried (immediately or with a transmission delay of not longer than 30 seconds) over another line link or other facility that, apart from this section, is an eligible network unit;
- the communication referred to in paragraph (b) has the characteristic of double-ended interconnection.

- (4) In this section:

***eligible network unit*** means a network unit:

- (a) that is owned by one or more carriers; or
- (b) in relation to which a nominated carrier declaration is in force.

## **Division 4—Distinct places**

### **36 Distinct places—basic rules**

- (1) Places are distinct unless they are all in the same area because of subsection (2), (3) or (4).
- (2) Places are in the same area if they are all situated in the same property as defined by section 37.
- (3) Places are in the same area if they are situated in properties each of which forms part of a combined area as defined by section 38 and:
  - (a) the same person or persons is or are the principal user (as defined by section 39) of all the properties that together constitute that combined area; or
  - (b) because of a determination in force under section 40, that combined area is an eligible combined area for the purposes of this paragraph.
- (4) Places are in the same area if they are all situated in the same eligible Territory.
- (5) The later provisions of this Division have effect only for the purposes of this Division.

### **37 Properties**

- (1) An area of land is a property if:
    - (a) there is a single freehold or leasehold title in relation to that area (whether or not that title is registered under a law of a State or Territory relating to the registration of interests in land); and
    - (b) no part of that area is subject to a lease granted by the holder of that title; and
    - (c) the title to the area is defined by reference to geographical coordinates.
  - (2) If:
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- (a) there is a single freehold or leasehold title (as mentioned in paragraph (1)(a)) in relation to an area of land; and
  - (b) some but not all of that area is subject to a lease granted by the holder of that title;
- then, an area of land:
- (c) all of which is within the area referred to in paragraph (a) of this subsection; and
  - (d) none of which is subject to such a lease;
- is a property unless it is only part of another such area.
- (3) An area of land is not a property except as provided in this section.
  - (4) The regulations may prescribe the circumstances in which an area of land in relation to which there is a single freehold or leasehold title is not to constitute a property for the purposes of this Division.
  - (5) Despite paragraph (1)(c), the regulations may prescribe the circumstances in which an area of land, the title to which is defined otherwise than by reference to geographical coordinates, is a property.
  - (6) In this section:
    - land* includes premises and a part of premises, but does not include unalienated Crown land.
    - lease* includes sublease and *leasehold title* has a corresponding meaning.

### **38 Combined areas**

- (1) 2 contiguous properties form a combined area.
- (2) If:
  - (a) a property is contiguous with another property; and
  - (b) the other property forms part of a combined area;the first-mentioned property, and the combined area referred to in paragraph (b), together form a combined area.

- (3) Subsection (2) is recursive, that is, the reference in paragraph (2)(b) to a combined area is a reference to something that is a combined area because of any other application or applications of this section.

### **39 Principal user of a property**

- (1) The principal user of a property is the person who:
- (a) occupies the property; or
  - (b) uses the property for the purpose that is the sole or principal purpose for which the property is used.
- (2) However, if 2 or more persons:
- (a) together occupy a property; or
  - (b) together use a property for the purpose that is the sole or principal purpose for which the property is used;
- they are taken to together be the principal user of the property.

### **40 Eligible combined areas**

The Minister may, by legislative instrument, determine that specified combined areas are eligible combined areas for the purposes of paragraph 36(3)(b).

## Part 3—Carriers

### Division 1—Simplified outline

#### 41 Simplified outline

The following is a simplified outline of this Part:

- The owner of a network unit that is used to supply carriage services to the public must hold a carrier licence unless:
  - (a) a nominated carrier declaration is in force in relation to the network unit; or
  - (b) an exemption applies.
- Carrier licences are granted by the ACMA.
- The holder of a carrier licence is known as a *carrier*.
- If responsibility for a network unit is transferred from the owner of the unit to a carrier, the ACMA may make a ***nominated carrier declaration*** that declares the carrier to be the ***nominated carrier*** in relation to the unit.
- Carrier licences are subject to conditions.

## **Division 2—Prohibitions relating to carriers**

### **42 Network unit not to be used without carrier licence or nominated carrier declaration**

- (1) If there is only one owner of a network unit, the owner of the network unit must not use the unit, either alone or jointly with one or more other persons, to supply a carriage service to the public, unless:
  - (a) the owner holds a carrier licence; or
  - (b) a nominated carrier declaration is in force in relation to the unit.
- (2) If there is only one owner of a network unit, the owner of the network unit must not allow or permit another person to use the unit to supply a carriage service to the public unless:
  - (a) the owner holds a carrier licence; or
  - (b) a nominated carrier declaration is in force in relation to the unit.
- (3) If there are 2 or more owners of a network unit, an owner of the network unit must not use the unit, either alone or jointly with one or more other persons, to supply a carriage service to the public, unless:
  - (a) the owner holds a carrier licence; or
  - (b) a nominated carrier declaration is in force in relation to the unit.
- (4) If there are 2 or more owners of a network unit, an owner of the network unit must not, either alone or together with one or more other owners, allow or permit another person to use the unit to supply a carriage service to the public unless:
  - (a) the owner holds a carrier licence; or
  - (b) a nominated carrier declaration is in force in relation to the unit.

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- (5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence punishable on conviction by a fine not exceeding 20,000 penalty units.

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

**43 Continuing offences**

A person who contravenes section 42 commits a separate offence in respect of each day (including a day of a conviction under this section or any later day) during which the contravention continues.

**44 Supply to the public**

- (1) This section sets out the circumstances in which a network unit is taken, for the purposes of section 42, to be used to supply a carriage service to the public.
- (2) If:
- (a) there is only one owner of a network unit; and
  - (b) no nominated carrier declaration is in force in relation to the unit; and
  - (c) any of the following conditions is satisfied:
    - (i) the unit is used for the carriage of communications between 2 end-users, where each end-user is outside the immediate circle of the owner of the unit;
    - (ii) the unit is used to supply point-to-multipoint services to end-users, where at least one end-user is outside the immediate circle of the owner of the unit;
    - (iii) the unit is used to supply designated content services (other than point-to-multipoint services) to one or more end-users, where at least one end-user is outside the immediate circle of the owner of the unit;
- the unit is used to supply a carriage service to the public.
- (3) If:
- (a) there are 2 or more owners of a network unit; and



- (b) no nominated carrier declaration is in force in relation to the unit; and
- (c) any of the following conditions is satisfied:
  - (i) the unit is used for the carriage of communications between 2 end-users, where each end-user is outside the overlap of the immediate circles of the owners of the unit;
  - (ii) the unit is used to supply point-to-multipoint services to end-users, where at least one end-user is outside the overlap of the immediate circles of the owners of the unit;
  - (iii) the unit is used to supply designated content services (other than point-to-multipoint services) to one or more end-users, where at least one end-user is outside the overlap of the immediate circles of the owners of the unit;

the unit is used to supply a carriage service to the public.

- (4) If:
  - (a) a nominated carrier declaration is in force in relation to a network unit; and
  - (b) any of the following conditions is satisfied:
    - (i) the unit is used for the carriage of communications between 2 end-users, where each end-user is outside the immediate circle of the nominated carrier in relation to the unit;
    - (ii) the unit is used to supply point-to-multipoint services to end-users, where at least one end-user is outside the immediate circle of the nominated carrier in relation to the unit;
    - (iii) the unit is used to supply designated content services (other than point-to-multipoint services) to one or more end-users, where at least one end-user is outside the immediate circle of the nominated carrier in relation to the unit;

the unit is used to supply a carriage service to the public.

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- (5) For the purposes of this section, a person is outside the overlap of the immediate circles of the owners of a network unit unless the person is:
- (a) within the immediate circles of each of the owners of the unit; or
  - (b) the owner, or one of the owners, of the unit.
- (6) For the purposes of this section, a *designated content service* is a content service of a kind specified in a written determination made by the Minister.
- (7) A determination under subsection (6) is a legislative instrument.

**45 Exemption—defence**

- (1) If the sole use of a network unit is use by, or on behalf of, a defence organisation to carry communications necessary or desirable for defence purposes, section 42 does not apply to the unit.
- (2) If:
- (a) the principal use of a network unit is use by, or on behalf of, a defence organisation to carry communications necessary or desirable for defence purposes; and
  - (b) the remaining use of the unit is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;
- section 42 does not apply to the unit.
- (3) In this section:
- defence organisation* means:
- (a) the Defence Department; or
  - (b) the Australian Defence Force; or
  - (c) an organisation of a foreign country, so far as the organisation:

- (i) has functions corresponding to functions of, or of a part of, the Defence Department or the Australian Defence Force; and
  - (ii) is authorised by the Commonwealth to operate or train in Australia or an external Territory; or
- (d) a part of such an organisation or body.

#### **46 Exemption—intelligence operations**

Section 42 does not apply to a network unit that is used wholly or principally:

- (a) by the Australian Secret Intelligence Service; or
- (b) by the Australian Security Intelligence Organisation; or
- (c) by the Australian Signals Directorate.

#### **47 Exemption—transport authorities**

- (1) Section 42 does not apply to a network unit if the sole use of the unit is use by Airservices Australia to carry communications necessary or desirable for the workings of aviation services.
- (3) Section 42 does not apply to a network unit if the sole use of the unit is use by a State or Territory transport authority to carry communications necessary or desirable for the workings of any or all of the following services:
  - (a) train services of a kind provided by the authority;
  - (b) bus or other road services of a kind provided by the authority;
  - (c) tram services of a kind provided by the authority.
- (4) Section 42 does not apply to a network unit if the sole use of the unit is use by a rail corporation to carry communications necessary or desirable for the workings of train services.
- (5) Section 42 does not apply to a network unit if:
  - (a) the principal use of the unit is use by Airservices Australia to carry communications necessary or desirable for the workings of aviation services; and

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- (b) the remaining use of the unit is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services.
- (7) Section 42 does not apply to a network unit if:
- (a) the principal use of the unit is use by a State or Territory transport authority to carry communications necessary or desirable for the workings of any or all of the following services:
    - (i) train services of a kind provided by the authority;
    - (ii) bus or other road services of a kind provided by the authority;
    - (iii) tram services of a kind provided by the authority; and
  - (b) the remaining use of the unit is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services.
- (8) Section 42 does not apply to a network unit if:
- (a) the principal use of the unit is use by a rail corporation to carry communications necessary or desirable for the workings of train services; and
  - (b) the remaining use of the unit is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services.
- (9) In this section:
- rail corporation* means a body corporate that manages or operates either or both of the following:
- (a) rail transport services;
  - (b) rail transport infrastructure.

**48 Exemption—broadcasting services**

- (1) If:
- (a) the sole use of a network unit is use to carry communications that are necessary or desirable for either or both of the following purposes:
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- (i) the supply of broadcasting services to the public;
  - (ii) the supply of a secondary carriage service by means of the main carrier signal of a primary broadcasting service; and
- (b) the unit does not consist of, or include, a facility used to carry communications between:
- (i) the head end of a cable transmission system; and
  - (ii) the equipment used by an end-user to receive a broadcasting service; and
- (c) the unit does not consist of a broadcasting transmitter transmitting a signal of a broadcasting service to its intended audience;
- section 42 does not apply to the unit.

(2) If:

- (a) the principal use of a network unit is use to carry communications that are necessary or desirable for either or both of the following purposes:
    - (i) the supply of broadcasting services to the public;
    - (ii) the supply of a secondary carriage service by means of the main carrier signal of a primary broadcasting service; and
  - (b) the unit does not consist of, or include, a facility used to carry communications between:
    - (i) the head end of a cable transmission system; and
    - (ii) the equipment used by an end-user to receive a broadcasting service; and
  - (c) the unit does not consist of a broadcasting transmitter transmitting a signal of a broadcasting service to its intended audience; and
  - (d) the remaining use of the unit is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;
- section 42 does not apply to the unit.

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- (3) If the sole use of a line link is use for the purpose of a re-transmission of a kind mentioned in paragraph 212(1)(a) or (b) of the *Broadcasting Services Act 1992*, section 42 of this Act does not apply to the line link.
- (4) If:
- (a) the principal use of a line link is use for the purpose of a re-transmission of a kind mentioned in paragraph 212(1)(a) or (b) of the *Broadcasting Services Act 1992*; and
  - (b) the remaining use of the line link is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;
- section 42 of this Act does not apply to the line link.
- (4A) For the purposes of this section, disregard subsection 212(3) of the *Broadcasting Services Act 1992*.
- (5) In this section:
- broadcasting transmitter*** means a radiocommunications transmitter used, or for use, to deliver a broadcasting service.
- head end of a cable transmission system*** means a facility that:
- (a) is connected to a line link; and
  - (b) is used, or for use, in connection with the delivery of a broadcasting service; and
  - (c) processes signals for delivery by the line link to end-users having equipment appropriate for receiving the service.

#### 49 Exemption—electricity supply bodies

- (1) If the sole use of a network unit is use by an electricity supply body to carry communications necessary or desirable for:
- (a) managing the generation, transmission, distribution or supply of electricity; or
  - (b) charging for the supply of electricity;
- section 42 does not apply to the unit.

- (2) If:
- (a) the principal use of a network unit is use by an electricity supply body to carry communications necessary or desirable for:
    - (i) managing the generation, transmission, distribution or supply of electricity; or
    - (ii) charging for the supply of electricity; and
  - (b) the remaining use of the unit is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;
- section 42 does not apply to the unit.
- (3) In this section:
- electricity supply body*** means an authority, or a body corporate, that carries on a business, or performs a function, of:
- (a) generating, transmitting, distributing or supplying electricity; or
  - (b) managing the generation, transmission, distribution or supply of electricity.

### **50 Exemption—line links authorised by or under previous laws**

- (1) If:
- (a) a line link consists of facilities in relation to which an authorisation was in force under paragraph 13(1)(a) of the *Telecommunications Act 1975* immediately before the repeal of that Act; and
  - (b) the sole use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation;
- section 42 of this Act does not apply to the line link.
- (2) If:
- (a) a line link consists of facilities in relation to which an authorisation was in force under paragraph 13(1)(a) of the

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*Telecommunications Act 1975* immediately before the repeal of that Act; and

- (b) the principal use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation; and
- (c) the remaining use of the line link is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;

section 42 of this Act does not apply to the line link.

- (3) If a line link consists of facilities that:

- (a) were installed before the repeal of section 45 of the *Telecommunications Act 1989*; and
- (b) immediately before that repeal, were permitted by that section to be maintained and operated;

section 42 of this Act does not apply to the line link.

- (4) If:

- (a) a line link consists of facilities in relation to which an authorisation was in force under section 46 of the *Telecommunications Act 1989* immediately before the repeal of that Act; and
- (b) the sole use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation;

section 42 of this Act does not apply to the line link.

- (5) If:

- (a) a line link consists of facilities in relation to which an authorisation was in force under section 46 of the *Telecommunications Act 1989* immediately before the repeal of that Act; and
- (b) the principal use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation; and



(c) the remaining use of the line link is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;  
section 42 of this Act does not apply to the line link.

(6) If:

- (a) a line link consists of facilities in relation to which an authorisation was in force under section 108 of the *Telecommunications Act 1991* immediately before the repeal of that Act; and
- (b) the sole use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation;

section 42 of this Act does not apply to the line link.

(7) If:

- (a) a line link consists of facilities in relation to which an authorisation was in force under section 108 of the *Telecommunications Act 1991* immediately before the repeal of that Act; and
- (b) the principal use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation; and
- (c) the remaining use of the line link is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;

section 42 of this Act does not apply to the line link.

### **51 Exemption—Ministerial determination**

- (1) The Minister may, by legislative instrument, determine that section 42 does not apply in relation to:
  - (a) a specified network unit; or
  - (b) a specified person; or
  - (c) a specified use of a network unit.

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- (2) A determination under this section may be unconditional or subject to such conditions (if any) as are specified in the determination.
- (3) A determination under this section has effect accordingly.

## **Division 3—Carrier licences**

### **52 Applications for carrier licence**

A person may apply to the ACMA for a carrier licence, so long as the person is:

- (a) a constitutional corporation; or
- (b) an eligible partnership; or
- (c) a public body.

### **53 Form of application etc.**

An application must be:

- (a) in writing; and
- (b) in accordance with the form approved in writing by the ACMA.

### **53A Copy of application to be given to Communications Access Co-ordinator**

- (1) The ACMA must give a copy of the application to the Communications Access Co-ordinator.
- (2) For the purposes of sections 56A and 59, the application is taken not to have been received by the ACMA until the copy is received by the Communications Access Co-ordinator.

### **54 Application to be accompanied by charge**

An application must be accompanied by the charge (if any) imposed on the application by Part 2 of the *Telecommunications (Carrier Licence Charges) Act 1997*.

### 55 Further information

- (1) The ACMA may, within 20 business days after an application is made, request the applicant to give the ACMA, within the period specified in the request, further information about the application.
- (2) The ACMA may refuse to consider the application until the applicant gives the ACMA the information.
- (3) In this section:

*business day* means a day on which the ACMA is open for business in the Australian Capital Territory and in Victoria.

### 56 Grant of licence

- (1) After considering an application, the ACMA may grant a carrier licence in accordance with the application.
- (2) If the ACMA grants a carrier licence to a person, the ACMA must give the person a written notice stating that the licence has been granted.
- (3) If the ACMA grants a carrier licence, the ACMA must cause to be published in the *Gazette* a notice stating that the licence has been granted.

### 56A Consultation with Communications Access Co-ordinator

- (1) The ACMA must not grant a carrier licence unless it has consulted the Communications Access Co-ordinator about the licence application.
- (2) Within 15 business days after the date on which the ACMA received the licence application, the Communications Access Co-ordinator may give a written notice to the ACMA, stating that the Communications Access Co-ordinator does not require any further consultation about the application. The notice cannot be revoked.

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Note: Under section 53A, the application is treated as not being received by the ACMA until a copy has been received by the Communications Access Co-ordinator.

- (3) Within 15 business days after the date on which the ACMA received the licence application, the Communications Access Co-ordinator may give a written notice to the ACMA:
- (a) stating that, while the notice remains in force, the ACMA must not grant the carrier licence; and
  - (b) specifying the period during which the notice remains in force (unless earlier revoked), which period cannot end more than 3 months after the date of the notice.

However, the Communications Access Co-ordinator cannot give such a notice if the Communications Access Co-ordinator has earlier given a notice under subsection (2) in relation to the application.

- (4) At any time while a notice is in force under subsection (3), or under this subsection, the Communications Access Co-ordinator may give a further written notice to the ACMA:
- (a) stating that, while the notice remains in force, the ACMA must not grant the carrier licence; and
  - (b) specifying the period during which the notice remains in force (unless earlier revoked), which period cannot end more than 3 months after the date of the notice or more than 12 months after the date of the notice under subsection (3).
- (5) The Communications Access Co-ordinator may, by notice in writing to the ACMA, revoke a notice under subsection (3) or (4).
- (6) The Communications Access Co-ordinator cannot issue a further notice under subsection (3) or (4) in respect of the application after it has revoked such a notice.
- (7) The ACMA must give the applicant a copy of each notice that the ACMA receives from the Communications Access Co-ordinator under subsection (3), (4) or (5).
- (8) The ACMA must not grant the carrier licence while a notice is in force under subsection (3) or (4).

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(9) In this section:

*business day* means a day on which the ACMA is open for business in the Australian Capital Territory and in Victoria.

**57 Carrier licence has effect subject to this Act**

(1) A carrier licence has effect subject to this Act.

(2) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**58 Refusal of carrier licence—disqualified applicant**

(1) The ACMA may refuse to grant a carrier licence to an applicant if, immediately before the ACMA makes its decision on the application, the applicant is disqualified.

*When body corporate is disqualified*

(2) For the purposes of this section, a body corporate is *disqualified* at a particular time (the *test time*) if:

- (a) at any time before the test time, a carrier licence held by the body corporate was cancelled under subsection 72(1) or (2A); or
- (b) at any time before the test time, a carrier licence held by a partnership in which the body corporate was a partner was cancelled under subsection 72(1) or (2A); or
- (c) at the test time, any of the following individuals is disqualified:
  - (i) a director of the body corporate;
  - (ii) the secretary of the body corporate;
  - (iii) a person (by whatever name called and whether or not a director of the body corporate) who is concerned in, or takes part in, the management of the body corporate.

*When individual is disqualified—failure to pay annual charge*

- (3) For the purposes of subsection (2), an individual is **disqualified** at a particular time (the **test time**) if:
- (a) at any time before the test time, a carrier licence held by a body corporate or partnership was cancelled under subsection 72(1) because of a failure by the body corporate or partnership to pay in full the charge referred to in that subsection; and
  - (b) in the case of a body corporate—at the time when the charge referred to in subsection 72(1) was due and payable, the individual was:
    - (i) a director of the body corporate; or
    - (ii) the secretary of the body corporate; or
    - (iii) a person (by whatever name called and whether or not a director of the body corporate) who was concerned in, or took part in, the management of the body corporate; and
  - (c) in the case of a partnership—at the time when the charge referred to in subsection 72(1) was due and payable, the individual:
    - (i) was an employee of the partnership; and
    - (ii) was concerned in, or took part in, the management of the partnership; and
  - (d) the individual:
    - (i) aided, abetted, counselled or procured the failure of the body corporate or partnership; or
    - (ii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the failure of the body corporate or partnership.

*When individual is disqualified—failure to pay industry levy*

- (4A) For the purposes of subsection (2), an individual is **disqualified** at a particular time (the **test time**) if:
- (a) at any time before the test time, a carrier licence held by a body corporate or partnership was cancelled under
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subsection 72(2A) because of a failure by the body corporate or partnership to pay in full the industry levy referred to in that subsection; and

- (b) in the case of a body corporate—at the time when the industry levy referred to in subsection 72(2A) was due and payable, the individual was:
  - (i) a director of the body corporate; or
  - (ii) the secretary of the body corporate; or
  - (iii) a person (by whatever name called and whether or not a director of the body corporate) who was concerned in, or took part in, the management of the body corporate; and
- (c) in the case of a partnership—at the time when the industry levy referred to in subsection 72(2A) was due and payable, the individual:
  - (i) was an employee of the partnership; and
  - (ii) was concerned in, or took part in, the management of the partnership; and
- (d) the individual:
  - (i) aided, abetted, counselled or procured the failure of the body corporate or partnership; or
  - (ii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the failure of the body corporate or partnership.

*When partnership is disqualified*

- (5) For the purposes of this section, a partnership is **disqualified** at a particular time (the **test time**) if:
  - (a) at any time before the test time, a carrier licence held by the partnership was cancelled under subsection 72(1) or (2A); or
  - (b) at the test time, any of the partners is disqualified; or
  - (c) at the test time, an individual who:
    - (i) is an employee of the partnership; and
    - (ii) is concerned in, or takes part in, the management of the partnership;



is disqualified.

*This section does not limit grounds for refusal to grant carrier licence*

- (6) This section does not, by implication, limit the grounds on which the ACMA may refuse to grant a carrier licence.

### **58A Refusal of carrier licence—security**

- (1) If the Home Affairs Minister, after consulting the Prime Minister and the Minister administering this Act, considers that the grant of a carrier licence to a particular person would be prejudicial to security, the Home Affairs Minister may give a written direction to the ACMA not to grant a carrier licence to the person.
- (2) The ACMA must comply with a direction under subsection (1).
- (3) While a direction is in force under this section:
- (a) the ACMA cannot reconsider a non-compulsory refusal to grant a carrier licence to the person; and
  - (b) the Administrative Appeals Tribunal cannot consider an application for review of a non-compulsory refusal to grant a carrier licence to the person.
- (4) If an application for a carrier licence is pending at the time when the Home Affairs Minister gives a direction to the ACMA under this section, then the application lapses.

Note: Section 73A provides for refund of the application charge.

- (5) In this section:

***non-compulsory refusal*** means a refusal to grant a carrier licence, other than a refusal that is required by section 56A or this section.

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

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**59 Time limit on licence decision**

*Deemed refusal of licence application if no decision by deadline*

- (1) If the ACMA neither grants, nor refuses to grant, a carrier licence before the end of the deadline day worked out under the following subsections, then the ACMA is taken, at the end of that day, to have refused to grant the licence.

*Case 1: no section 55 request and no section 56A notice in force*

- (2) If:
- (a) the ACMA did not give a section 55 request; and
  - (b) there is no section 56A notice in force at the end of the 20th business day after the application day;
- then the deadline day is the 20th business day after the application day.

*Case 2: no section 55 request but section 56A notice in force*

- (3) If:
- (a) the ACMA did not give a section 55 request; and
  - (b) there is a section 56A notice in force at the end of the 20th business day after the application day;
- then the deadline day is the fifth business day after the section 56A expiration day. For this purpose, the **section 56A expiration day** is the first day after the end of that 20th business day on which there is no notice in force under section 56A.

*Case 3: section 55 request complied with and no section 56A notice in force*

- (4) If:
- (a) the ACMA gave a section 55 request; and
  - (b) the request was complied with; and
  - (c) there is no section 56A notice in force at the end of the tenth business day after the day on which the request was complied with;

then the deadline day is the tenth business day after the day on which the request was complied with.

*Case 4: section 55 request complied with and section 56A notice in force*

- (5) If:
- (a) the ACMA gave a section 55 request; and
  - (b) the request was complied with; and
  - (c) there is a section 56A notice in force at the end of the tenth business day after the day on which the request was complied with;

then the deadline day is the fifth business day after the section 56A expiration day. For this purpose, the **section 56A expiration day** is the first day after the end of that tenth business day on which there is no notice in force under section 56A.

*Case 5: section 55 request not complied with and no section 56A notice in force*

- (6) If:
- (a) the ACMA gave a section 55 request; and
  - (b) the request was not complied with; and
  - (c) there is no section 56A notice in force at the end of the tenth business day after the day specified in the section 55 request;
- then the deadline day is the tenth business day after the day specified in the section 55 request.

*Case 6: section 55 request not complied with and section 56A notice in force*

- (7) If:
- (a) the ACMA gave a section 55 request; and
  - (b) the request was not complied with; and
  - (c) there is a section 56A notice in force at the end of the tenth business day after the day specified in the section 55 request;

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then the deadline day is the fifth business day after the section 56A expiration day. For this purpose, the *section 56A expiration day* is the first day after the end of that tenth business day on which there is no notice in force under section 56A.

(8) In this section:

*application day* means the day on which the ACMA received the licence application.

Note: Under section 53A, the application is treated as not being received by the ACMA until a copy has been received by the Communications Access Co-ordinator.

*business day* means a day on which the ACMA is open for business in the Australian Capital Territory and in Victoria.

*section 55 request* means a request under section 55 in relation to the licence application.

*section 56A notice* means a notice under subsection 56A(3) or (4) in relation to the licence application.

## 60 Notification of refusal of application

If the ACMA refuses to grant a carrier licence, the ACMA must give written notice of the refusal to the applicant.

## 61 Conditions of carrier licence specified in Schedule 1

A carrier licence is subject to the conditions specified in Schedule 1.

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

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

Note: Section 152AZ of the *Competition and Consumer Act 2010* deals with standard access obligations.

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

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

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

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

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

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

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

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

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

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

A carrier licence held by an NBN corporation is subject to the condition set out in section 152CJC of the *Competition and Consumer Act 2010*.

Note: Section 152CJC of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.

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**62E Condition of carrier licence set out in section 37 of the *National Broadband Network Companies Act 2011***

A carrier licence held by an NBN corporation is subject to the condition set out in section 37 of the *National Broadband Network Companies Act 2011*.

Note: Section 37 of the *National Broadband Network Companies Act 2011* deals with rules about:

- (a) the supply of goods and services by NBN corporations; and
- (b) the investment of money by NBN corporations; and
- (c) the functional separation of NBN corporations; and
- (d) the divestment of assets by NBN corporations.

**63 Conditions of carrier licence declared by Minister**

*Conditions applying to each carrier licence*

- (1) The Minister may, by legislative instrument, declare that each carrier licence is subject to such conditions as are specified in the instrument.

*Conditions applying to specified existing carrier licences*

- (2) The Minister may, by legislative instrument, declare that a specified carrier licence is subject to such conditions as are specified in the instrument.

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

*Conditions applying to specified future carrier licences*

- (3) The Minister may, by legislative instrument, declare that, in the event that a carrier licence is granted to a specified person during a specified period, the carrier licence is subject to such conditions as are specified in the instrument.

*Declarations have effect*

- (4) A declaration under this section has effect accordingly.

*Variation of conditions*

- (5) The Minister may, by legislative instrument, vary an instrument under subsection (1), (2) or (3).

*Revocation of conditions*

- (6) The Minister may, by legislative instrument, revoke an instrument under subsection (1), (2) or (3).

*Notification of conditions—existing licences*

- (7) As soon as practicable after the Minister makes an instrument under subsection (1), (2), (5) or (6) that relates to a licence, the Minister must give the holder of the licence a copy of the instrument.

*Notification of conditions—future licences*

- (8) As soon as practicable after the Minister makes an instrument under subsection (3) that relates to a licence, the Minister must give the applicant for the licence a copy of the instrument.

*Validity not affected by failure to notify conditions*

- (9) A contravention of subsection (7) or (8) does not affect the validity of an instrument.

*Date of effect—future licences*

- (12) An instrument under subsection (3) relating to a licence takes effect when the licence is granted.

**64 Consultation about declared licence conditions**

- (1) Before making an instrument under subsection 63(1), (2), (5) or (6) that relates to a licence, the Minister must first:
- (a) cause the holder of the licence to be given a written notice setting out a draft version of the instrument and inviting the holder to make submissions to the Minister on the draft; and

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- (b) consider any submissions that were received within the time limit specified in the notice.
- (2) The time limit specified in a notice under subsection (1) must be at least 30 days.
- (3) Before making an instrument under subsection 63(3) that relates to a licence, the Minister must first:
  - (a) cause the applicant for the licence to be given a written notice setting out a draft version of the instrument and inviting the applicant to make submissions to the Minister on the draft; and
  - (b) consider any submissions that were received within the time limit specified in the notice.

**65 Conditions about foreign ownership or control**

- (1) A condition of a carrier licence may relate to the extent of foreign ownership or control (whether direct or indirect) of the holder.
- (2) Subsection (1) does not, by implication, limit the conditions that may be declared under section 63.

**67 Carrier licence conditions—special provisions**

- (1) A condition of a carrier licence held by a carrier has effect subject to the provisions of a licence under the *Radiocommunications Act 1992* under which the carrier is authorised to do something.
- (2) A condition of a carrier licence held by a carrier may remove or restrict a right or privilege that the carrier would otherwise have under a provision of this Act (whether or not in the carrier's capacity as a carrier).



(3) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

## **68 Compliance with conditions**

- (1) A carrier must not contravene a condition of the carrier licence held by the carrier.
- (2) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).
- (3) Subsections (1) and (2) are *civil penalty provisions*.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

## **69 Remedial directions—breach of condition**

- (1) This section applies if a carrier has contravened, or is contravening, a condition of the carrier licence held by the carrier.
- (2) The ACMA may give the carrier a written direction requiring the carrier to take specified action directed towards ensuring that the carrier does not contravene the condition, or is unlikely to contravene the condition, in the future.
- (3) The following are examples of the kinds of direction that may be given to a carrier under subsection (2):
  - (a) a direction that the carrier implement effective administrative systems for monitoring compliance with a condition of the licence;

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- (b) a direction that the carrier implement a system designed to give the carrier's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the licence, in so far as those requirements affect the employees, agents or contractors concerned.
- (4) A carrier must not contravene a direction under subsection (2).
- (5) Subsection (1) does not apply to a condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369.
- Note: Section 369 deals with Rules of Conduct under section 367.
- (5A) Subsection (1) does not apply to a condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED.
- Note: Sections 577AD, 577CD and 577ED deal with undertakings given by Telstra.
- (6) Subsection (1) does not apply to a condition set out in Part 3, 4 or 5 of Schedule 1.
- Note: Parts 3, 4 and 5 of Schedule 1 deal with access to network information and access to facilities.
- (6B) Subsection (1) does not apply to the condition set out in clause 84 of Schedule 1.
- Note: Clause 84 of Schedule 1 deals with control by Telstra of certain spectrum licences.
- (7) Subsection (1) does not apply to the condition set out in section 152AZ of the *Competition and Consumer Act 2010*.
- Note: Section 152AZ of the *Competition and Consumer Act 2010* deals with standard access obligations.
- (7A) Subsection (1) does not apply to the condition set out in section 152BCO of the *Competition and Consumer Act 2010*.
- Note: Section 152BCO of the *Competition and Consumer Act 2010* deals with access determinations.

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

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

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

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

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

Note: Section 152CJC of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.

(7E) Subsection (1) does not apply to the condition set out in section 37 of the *National Broadband Network Companies Act 2011*.

Note: Section 37 of the *National Broadband Network Companies Act 2011* deals with rules about:

- (a) the supply of goods and services by NBN corporations; and
- (b) the investment of money by NBN corporations; and
- (c) the functional separation of NBN corporations; and
- (d) the divestment of assets by NBN corporations.

(7F) Subsection (1) does not apply to a condition covered by section 41 of the *National Broadband Network Companies Act 2011*.

Note: Section 41 of the *National Broadband Network Companies Act 2011* deals with rules about the supply of services by NBN corporations.

(8) A direction under subsection (2) is not a legislative instrument.

## **69AA Remedial directions—breach of conditions relating to access**

### *Scope*

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

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

### *Direction*

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

## **70 Formal warnings—breach of condition**

- (1) The ACMA may issue a formal warning if a carrier contravenes a condition of the carrier licence held by the carrier.
- (2) Subsection (1) does not apply to a condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369.

Note: Section 369 deals with Rules of Conduct under section 367.

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

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

- (3) Subsection (1) does not apply to a condition set out in Part 3, 4 or 5 of Schedule 1.

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

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

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

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

Note: Section 152AZ of the *Competition and Consumer Act 2010* deals with standard access obligations.

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

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

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

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

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

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

- (4D) Subsection (1) does not apply to the condition set out in section 152CJC of the *Competition and Consumer Act 2010*.
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Note: Section 152CJC of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.

- (4E) Subsection (1) does not apply to the condition set out in section 37 of the *National Broadband Network Companies Act 2011*.

Note: Section 37 of the *National Broadband Network Companies Act 2011* deals with rules about:

- (a) the supply of goods and services by NBN corporations; and
- (b) the investment of money by NBN corporations; and
- (c) the functional separation of NBN corporations; and
- (d) the divestment of assets by NBN corporations.

- (4F) Subsection (1) does not apply to a condition covered by section 41 of the *National Broadband Network Companies Act 2011*.

Note: Section 41 of the *National Broadband Network Companies Act 2011* deals with rules about the supply of services by NBN corporations.

- (5) The ACCC may issue a formal warning if a carrier contravenes any of the following conditions of the carrier licence held by the carrier:

- (a) the condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369;
- (aa) the condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED;
- (b) a condition set out in Part 3, 4 or 5 of Schedule 1;
- (c) the condition set out in section 152AZ of the *Competition and Consumer Act 2010*;
- (d) the condition set out in section 152BCO of the *Competition and Consumer Act 2010*;
- (e) the condition set out in section 152BDF of the *Competition and Consumer Act 2010*;
- (f) the condition set out in section 152BEC of the *Competition and Consumer Act 2010*;
- (g) the condition set out in section 152CJC of the *Competition and Consumer Act 2010*;
- (h) the condition set out in section 37 of the *National Broadband Network Companies Act 2011*;

- (i) a condition covered by section 41 of the *National Broadband Network Companies Act 2011*.

## 71 Surrender of carrier licence

A carrier may, by written notice given to the ACMA, surrender the carrier licence held by the carrier.

## 72 Cancellation of carrier licence

### *Failure to pay annual charge*

- (1) The ACMA may cancel a carrier licence held by a carrier if the carrier fails to pay in full any annual charge on or before the date on which the charge becomes due and payable. For this purpose, **annual charge** means charge imposed by Part 3 of the *Telecommunications (Carrier Licence Charges) Act 1997*.

### *Failure to pay industry levy*

- (2A) The ACMA may cancel a carrier licence held by a carrier if the carrier fails to pay in full any industry levy on or before the date on which the industry levy becomes due and payable.

Note: **Industry levy** is defined by section 7 to mean levy imposed by the *Telecommunications (Industry Levy) Act 2012*.

### *Becoming a disqualified body corporate*

- (3) If the holder of a carrier licence becomes a disqualified body corporate (within the meaning of section 58), the ACMA may cancel the licence.

### *Becoming a disqualified partnership*

- (4) If the holder of a carrier licence becomes a disqualified partnership (within the meaning of section 58), the ACMA may cancel the licence.

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*Ceasing to be a constitutional corporation, eligible partnership or public body*

- (5) If, at a particular time, the holder of a carrier licence is none of the following:
- (a) a constitutional corporation;
  - (b) an eligible partnership;
  - (c) a public body;
- the licence is taken to have been cancelled at that time.

*Submissions relating to proposed cancellation*

- (6) The ACMA must not cancel a carrier licence under subsection (1), (2), (3) or (4) unless the ACMA has first:
- (a) given the carrier a written notice:
    - (i) setting out a proposal to cancel the licence; and
    - (ii) inviting the carrier to make a submission to the ACMA on the proposal; and
  - (b) considered any submission that was received within the time limit specified in the notice.

*Time limit*

- (7) A time limit specified in the notice under subsection (6) must run for at least 7 days.

*Notification of cancellation*

- (8) If a carrier licence held by a person is cancelled, the ACMA must give written notice of the cancellation to the person.

## 73 Collection of charges relating to carrier licences

*Definitions*

- (1) In this section:

**annual charge** means charge imposed by Part 3 of the *Telecommunications (Carrier Licence Charges) Act 1997*.



***application charge*** means charge imposed by Part 2 of the *Telecommunications (Carrier Licence Charges) Act 1997*.

***late payment penalty*** means an amount that is payable by way of penalty in accordance with a determination under subsection (4).

*When application charge due and payable*

- (2) Application charge imposed on an application for a carrier licence is due and payable when the application is made.

*When annual charge due and payable*

- (3) Annual charge is due and payable at the time ascertained in accordance with a written determination made by the ACMA.

*Late payment penalty*

- (4) The ACMA may, by written instrument, determine that, if any annual charge payable by a person remains unpaid after the time when it became due for payment, the person is liable to pay to the Commonwealth, by way of penalty, an amount calculated at the rate of:
- (a) 20% per annum; or
  - (b) if the determination specifies a lower percentage—that lower percentage per annum;
- on the amount unpaid, computed from that time.

*Determination has effect*

- (5) A determination under subsection (4) has effect accordingly.

*Remission of penalty*

- (6) A determination under subsection (4) may authorise the ACMA to make decisions about the remission of the whole or a part of an amount of late payment penalty.

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*Payment of charge and late payment penalty*

- (7) Annual charge, application charge and late payment penalty are payable to the ACMA on behalf of the Commonwealth.

*Recovery of charge and penalty*

- (8) Annual charge, application charge and late payment penalty may be recovered by the ACMA, on behalf of the Commonwealth, as debts due to the Commonwealth.

*Payment to the Commonwealth*

- (9) Amounts received by way of annual charge, application charge or late payment penalty must be paid to the Commonwealth.

*Legislative instrument*

- (10) A determination under subsection (3) or (4) is a legislative instrument.

**73A Refund of application charge**

- (1) This section applies to application charge that has been paid in respect of an application for a carrier licence if:
- (a) the application lapses under section 58A; or
  - (b) the application has been refused and there is no longer any possibility of the refusal decision being set aside.
- (2) The ACMA, on behalf of the Commonwealth, must refund the application charge to the applicant.
- (3) The Consolidated Revenue Fund is appropriated for payments under this section.
- (4) In this section:

***application charge*** means charge imposed by Part 2 of the *Telecommunications (Carrier Licence Charges) Act 1997*.

#### **74 Collection of charges on behalf of the Commonwealth**

The ACMA may enter into an arrangement with a person under which the person may, on behalf of the Commonwealth, collect payments of charge imposed by the *Telecommunications (Carrier Licence Charges) Act 1997*.

#### **75 Cancellation of certain exemptions from charge**

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

#### **76 Commonwealth not liable to charge**

- (1) The Commonwealth is not liable to pay charge imposed by the *Telecommunications (Carrier Licence Charges) Act 1997*.
- (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.

## Division 4—Nominated carrier declarations

### 77 Applications for nominated carrier declarations

A carrier may apply to the ACMA for a nominated carrier declaration in relation to one or more specified network units.

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

### 78 Application to be accompanied by charge etc.

- (1) An application must be accompanied by:
  - (a) the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*; and
  - (b) the consent of the owner, or each of the owners, of the network units; and
  - (c) the election of the applicant accepting responsibility for the units for the purposes of this Act.
- (2) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

### 79 Form of application etc.

The application, consent and election must be:

- (a) in writing; and
- (b) in accordance with a form approved in writing by the ACMA.

### 80 Further information

- (1) The ACMA may request the applicant to give the ACMA, within the period specified in the request, further information about the application.

- (2) The ACMA may refuse to consider the application until the applicant gives the ACMA the information.

### **81 Making a nominated carrier declaration**

- (1) After considering the application, the ACMA may declare in writing that the applicant is the nominated carrier in relation to the network units if the ACMA is satisfied that:
  - (a) if the declaration were made, the applicant would be in a position to comply with all of the obligations imposed on the applicant in the applicant's capacity as the nominated carrier in relation to the units; and
  - (b) the making of the declaration will not impede the efficient administration of this Act.
- (2) The ACMA may only declare one carrier to be the nominated carrier in relation to the network units.
- (3) The ACMA must give a copy of the declaration to:
  - (a) the applicant; and
  - (b) the owner, or each of the owners, of the network units.
- (4) A copy of the declaration is to be published in the *Gazette*.
- (5) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

### **81A Obligations of nominated carrier**

- (1) If at any time the nominated carrier does not own or operate the network units, this Act nevertheless applies to the nominated carrier in relation to the network units as if they were owned or operated by the nominated carrier.
- (2) Subsection (1) does not affect the application of this Act in relation to any other person who owns or operates the network units.

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(3) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

## 82 Notification of refusal of application

If the ACMA refuses to make a nominated carrier declaration, the ACMA must give written notice of the refusal to:

- (a) the applicant; and
- (b) the owner, or each of the owners, of the network units.

## 83 Revocation of nominated carrier declaration

- (1) The ACMA may, by writing, revoke a nominated carrier declaration relating to a nominated carrier if the ACMA is satisfied that, if it were assumed that the nominated carrier were to apply for the declaration, the ACMA would refuse to make the declaration.
- (2) The ACMA must, by writing, revoke the nominated carrier declaration relating to a nominated carrier and relating to one or more network units if:
  - (a) the owner, or any of the owners, of the network units gives the ACMA a written notice stating that the owner does not consent to the continued operation of the declaration; or
  - (b) the nominated carrier gives the ACMA a written notice stating that it does not accept responsibility for the units for the purposes of this Act.
- (3) The ACMA must give a copy of the revocation to:
  - (a) the former nominated carrier; and
  - (b) the owner, or each of the owners, of the network units concerned.
- (4) A copy of the revocation must be published in the *Gazette*.
- (5) A revocation under subsection (1) or (2) takes effect on the date specified in the revocation.

- (6) The ACMA must not revoke a nominated carrier declaration under subsection (1) unless the ACMA has first:
- (a) given the nominated carrier a written notice:
    - (i) setting out a proposal to revoke the declaration; and
    - (ii) inviting the nominated carrier to make a submission to the ACMA on the proposal; and
  - (b) considered any submission that was received within the time limit specified in the notice.
- (7) A time limit specified in a notice under subsection (6) must run for at least 7 days.
- (8) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

## **Division 5—Register of nominated carrier declarations and carrier licences**

### **84 Register of nominated carrier declarations and carrier licences**

- (1) The ACMA is to maintain a Register in which the ACMA includes:
  - (a) all nominated carrier declarations currently in force; and
  - (b) all carrier licences currently in force; and
  - (c) all conditions of such licences.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*:
  - (a) inspect the Register; and
  - (b) make a copy of, or take extracts from, the Register.
- (4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACMA gives the person a printout of, or of the relevant parts of, the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACMA may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.



## **Part 4—Service providers**

### **Division 1—Simplified outline**

#### **85 Simplified outline**

The following is a simplified outline of this Part:

- A *service provider* is:
  - (a) a carriage service provider; or
  - (b) a content service provider.
- A *carriage service provider* is a person who supplies, or proposes to supply, certain carriage services.
- A *content service provider* is a person who supplies, or proposes to supply, certain content services.
- Service providers must comply with the *service provider rules*.

## **Division 2—Service providers**

### **86 Service providers**

For the purposes of this Act, a *service provider* is:

- (a) a carriage service provider; or
- (b) a content service provider.

Note 1: *Carriage service provider* is defined by section 87.

Note 2: *Content service provider* is defined by section 97.

## **Division 3—Carriage service providers**

### **87 Carriage service providers**

#### *Basic definition*

- (1) For the purposes of this Act, if a person supplies, or proposes to supply, a listed carriage service to the public using:
- (a) a network unit owned by one or more carriers; or
  - (b) a network unit in relation to which a nominated carrier declaration is in force;
- the person is a ***carriage service provider***.

#### *International carriage service providers*

- (2) For the purposes of this Act, if:
- (a) a person supplies, or proposes to supply, a listed carriage service to the public using:
    - (i) a line link connecting a place in Australia and a place outside Australia; or
    - (ii) a satellite-based facility; and
  - (b) the carriage service is mentioned in paragraph 16(1)(b) or (c);
- the person is a ***carriage service provider***.

#### *Secondary users of exempt network units*

- (3) For the purposes of this Act, if:
- (a) a carrier or an exempt network-user supplies a carriage service as mentioned in any of the following provisions:
    - (i) paragraph 45(2)(b);
    - (ii) paragraph 47(5)(b);
    - (iii) paragraph 47(6)(b);
    - (iv) paragraph 47(7)(b);
    - (v) paragraph 47(8)(b);
    - (vi) paragraph 48(2)(d);

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- (vii) paragraph 48(4)(b);
- (viii) paragraph 49(2)(b);
- (ix) paragraph 50(2)(c);
- (x) paragraph 50(5)(c);
- (xi) paragraph 50(7)(c); and

(b) the carriage service is supplied to the public;  
the carrier or the exempt network-user, as the case may be, is a **carriage service provider**.

*Declared carriage service providers*

- (4) The Minister may, by legislative instrument, declare that a specified person who supplies, or proposes to supply, a specified listed carriage service is a **carriage service provider** for the purposes of this Act. A declaration under this subsection has effect accordingly.

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

*Intermediaries*

- (5) For the purposes of this Act, if:
- (a) a person (the **first person**), for reward, arranges, or proposes to arrange, for the supply of a listed carriage service by a carriage service provider to a third person; and
  - (b) the first person would be a carriage service provider under subsection (1) or (2) if the person had supplied that carriage service; and
  - (c) the commercial relationship between the first person and the third person is, or is to be, governed (in whole or in part) by an agreement between the first person and the third person that deals with one or more matters relating to the continuing supply of the service (whether or not that supply is, or is to be, for a readily ascertainable period); and
  - (d) the conditions (if any) specified in a determination under subsection (8) are satisfied;
- the person is a **carriage service provider**.

Note: Under section 7, *carriage service intermediary* is defined to mean a person who is a carriage service provider under this subsection.

- (6) For the purposes of paragraph (5)(a), it does not matter whether the first person makes arrangements as agent for:
  - (a) the carriage service provider; or
  - (b) the third person; or
  - (c) any other person.
- (7) The reference in paragraph (5)(a) to *reward* does not include a reference to remuneration received in the capacity of employee.
- (8) The Minister may, by legislative instrument, make a determination for the purposes of paragraph (5)(d).

## **88 Supply to the public**

- (1) This section sets out the circumstances in which a carriage service is taken, for the purposes of subsections 87(1), (2) and (3), to be supplied to the public.
- (2) If:
  - (a) a carriage service is used for the carriage of communications between 2 end-users; and
  - (b) each end-user is outside the immediate circle of the supplier of the service;the service is supplied to the public.
- (3) If:
  - (a) a carriage service is used to supply point-to-multipoint services to end-users; and
  - (b) at least one end-user is outside the immediate circle of the supplier of the service;the service is supplied to the public.
- (4) If:
  - (a) a carriage service is used to supply designated content services (other than point-to-multipoint services) to end-users; and

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- (b) at least one end-user is outside the immediate circle of the supplier of the service;  
the service is supplied to the public.
- (5) For the purposes of this section, a *designated content service* is a content service of a kind specified in a written determination made by the Minister.
- (6) A determination under subsection (5) is a legislative instrument.

**89 Exemption from definition—customers located on the same premises**

- (1) If:
  - (a) the supplier of a carriage service manages a business or other activity carried on at particular premises; and
  - (b) that business or activity is the sole or principal use of the premises; and
  - (c) all of the customers of the service are physically present on the premises;subsections 87(1) and (2) do not apply to the carriage service.
- (2) In this section:  
*premises* includes:
  - (a) land; and
  - (b) a group of buildings that is located in the same vicinity.

**90 Exemption from definition—defence**

- (1) If the sole or principal use of a carriage service is use by, or on behalf of, a defence organisation to carry communications necessary or desirable for defence purposes, subsections 87(1) and (2) do not apply to the service.
- (2) In this section:

***defence organisation*** means:

- (a) the Defence Department; or
- (b) the Australian Defence Force; or
- (c) an organisation of a foreign country, so far as the organisation:
  - (i) has functions corresponding to functions of, or of a part of, the Defence Department or the Australian Defence Force; and
  - (ii) is authorised by the Commonwealth to operate or train in Australia or an external Territory; or
- (d) a part of such an organisation or body.

### **91 Exemption from definition—intelligence operations**

Subsections 87(1) and (2) do not apply to a carriage service that is used wholly or principally:

- (a) by the Australian Secret Intelligence Service; or
- (b) by the Australian Security Intelligence Organisation; or
- (c) by the Australian Signals Directorate.

### **92 Exemption from definition—transport authorities**

- (1) Subsections 87(1) and (2) do not apply to a carriage service if the sole or principal use of the carriage service is use by Airservices Australia to carry communications necessary or desirable for the workings of aviation services.
- (3) Subsections 87(1) and (2) do not apply to a carriage service if the sole or principal use of the unit is use by a State or Territory transport authority to carry communications necessary or desirable for the workings of the following services:
  - (a) train services of a kind provided by the authority;
  - (b) bus or other road services of a kind provided by the authority;
  - (c) tram services of a kind provided by the authority.

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(4) Subsections 87(1) and (2) do not apply to a carriage service if the sole or principal use of the carriage service is use by a rail corporation to carry communications necessary or desirable for the workings of train services.

(5) In this section:

**rail corporation** means a body corporate that manages or operates either or both of the following:

- (a) rail transport services;
- (b) rail transport infrastructure.

**93 Exemption from definition—broadcasting services**

(1) If:

(a) the sole or principal use of a carriage service is use to carry communications that are necessary or desirable for either or both of the following purposes:

- (i) the supply of broadcasting services to the public;
- (ii) the supply of a secondary carriage service by means of the main carrier signal of a primary broadcasting service; and

(b) those communications are neither:

- (i) communications carried between the head end of a cable transmission system and the equipment used by an end-user to receive a broadcasting service; nor
- (ii) communications carried from a broadcasting transmitter transmitting a signal of a broadcasting service to its intended audience;

subsections 87(1) and (2) do not apply to the carriage service.

(2) If the sole or principal use of a carriage service is use for the purpose of a re-transmission of a kind mentioned in paragraph 212(1)(a) or (b) of the *Broadcasting Services Act 1992*, subsections 87(1) and (2) of this Act do not apply to the service.

(2A) For the purposes of this section, disregard subsection 212(3) of the *Broadcasting Services Act 1992*.



(3) In this section:

***broadcasting transmitter*** means a radiocommunications transmitter used, or for use, to deliver a broadcasting service.

***head end of a cable transmission system*** means a facility that:

- (a) is connected to a line link; and
- (b) is used, or for use, in connection with the delivery of a broadcasting service; and
- (c) processes signals for delivery by the line link to end-users having equipment appropriate for receiving the service.

#### **94 Exemption from definition—electricity supply bodies**

(1) If the sole or principal use of a carriage service is use by an electricity supply body to carry communications necessary or desirable for:

- (a) managing the generation, transmission, distribution or supply of electricity; or
  - (b) charging for the supply of electricity;
- subsection 87(1) does not apply to the service.

(2) In this section:

***electricity supply body*** means an authority, or a body corporate, that carries on a business, or performs a function, of:

- (a) generating, transmitting, distributing or supplying electricity; or
- (b) managing the generation, transmission, distribution or supply of electricity.

#### **95 Exemption from definition—Ministerial determination**

(1) The Minister may, by legislative instrument, determine that a specified eligible definition provision does not apply in relation to:

- (a) a specified carriage service; or
- (b) a specified person.

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

- (2) A determination under this section may be unconditional or subject to such conditions (if any) as are specified in the determination.
- (3) A determination under this section has effect accordingly.
- (5) For the purposes of this section, each of the following provisions is an **eligible definition provision**:
  - (a) subsection 87(1);
  - (b) subsection 87(2);
  - (c) subsection 87(3);
  - (d) subsection 87(5).

**96 Exemption from certain regulatory provisions—Ministerial determination**

- (1) The Minister may, by legislative instrument, determine that a specified regulatory provision does not apply to a specified person in the person's capacity as a designated carriage service provider. For this purpose, a **designated carriage service provider** is a person who is a carriage service provider under subsection 87(4) or (5).

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

- (2) A determination under this section may be unconditional or subject to such conditions (if any) as are specified in the determination.
- (3) A determination under this section has effect accordingly.
- (5) For the purposes of this section, a **regulatory provision** is a provision of:
  - (a) this Act; or
  - (b) any other law of the Commonwealth;that contains a reference to a carriage service provider or to carriage service providers.

## **Division 4—Content service providers**

### **97 Content service providers**

- (1) For the purposes of this Act, if a person uses, or proposes to use, a listed carriage service to supply a content service to the public, the person is a *content service provider*.
- (2) For the purposes of subsection (1), a content service is supplied to the public if, and only if, at least one end-user of the content service is outside the immediate circle of the supplier of the content service.

## Division 5—Service provider rules

### 98 Service provider rules

(1) For the purposes of this Act, the following are the *service provider rules*:

- (a) the rules set out in Schedule 2;
- (b) the rules (if any) set out in service provider determinations in force under section 99.

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

Note: Subsection 152BA(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any standard access obligations that are applicable to the provider.

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

Note: Subsection 152BCP(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any access determinations that are applicable to the provider.

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

Note: Subsection 152BDG(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any binding rules of conduct that are applicable to the provider.

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

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

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

Note: Subsection 152CJD(2) of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.

- (7) In addition to the rules mentioned in subsection (1), the rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011* is a service provider rule for the purposes of this Act.

Note: Subsection 38(2) of the *National Broadband Network Companies Act 2011* deals with rules about:

- (a) the supply of goods and services by NBN corporations; and
- (b) the investment of money by NBN corporations; and
- (c) the functional separation of NBN corporations; and
- (d) the divestment of assets by NBN corporations.

## 99 Service provider determinations

- (1) The ACMA may, by legislative instrument, make a determination setting out rules that apply to service providers in relation to the supply of either or both of the following:

- (a) specified carriage services;
- (b) specified content services.

The determination is called a *service provider determination*.

- (2) A service provider determination has effect only to the extent that:

- (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
- (b) both:
  - (i) it is authorised by section 122 of the Constitution; and
  - (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.

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- (3) The ACMA must not make a service provider determination unless the determination relates to a matter specified in the regulations or in section 346.
- (4) Before making a service provider determination, the ACMA must consult the ACCC.
- (5) A service provider determination may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

**100 Exemptions from service provider rules**

- (1) The Minister may, by legislative instrument, determine that a specified service provider is exempt from the service provider rules.
- (2) The Minister may, by legislative instrument, determine that a specified service provider is exempt from a specified service provider rule.
- (3) A determination under this section may be unconditional or subject to such conditions (if any) as are specified in the determination.
- (4) A determination under this section has effect accordingly.

**101 Service providers must comply with service provider rules**

- (1) A service provider must comply with the service provider rules that apply to the provider.

Note: *Service provider rules* is defined by section 98.

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

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

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

### **102 Remedial directions—breach of service provider rules**

- (1) This section applies if a service provider has contravened, or is contravening, a service provider rule.
- (2) The ACMA may give the provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene the rule, or is unlikely to contravene the rule, in the future.
- (3) The following are examples of the kinds of direction that may be given to a service provider under subsection (2):
  - (a) a direction that the provider implement effective administrative systems for monitoring compliance with a service provider rule;
  - (b) a direction that the provider implement a system designed to give the provider's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a service provider rule, in so far as those requirements affect the employees, agents or contractors concerned.
- (4) A service provider must not contravene a direction under subsection (2).
- (5) Subsection (1) does not apply to the rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369.

Note: Section 369 deals with Rules of Conduct under section 367.
- (6) Subsection (1) does not apply to the rule set out in subsection 152BA(2) of the *Competition and Consumer Act 2010*.

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Note: Subsection 152BA(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any standard access obligations that are applicable to the provider.

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

Note: Subsection 152BCP(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any access determinations that are applicable to the provider.

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

Note: Subsection 152BDG(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any binding rules of conduct that are applicable to the provider.

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

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

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

Note: Subsection 152CJD(2) of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.

(6E) Subsection (1) does not apply to the rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*.

Note: Subsection 38(2) of the *National Broadband Network Companies Act 2011* deals with rules about:

- (a) the supply of goods and services by NBN corporations; and
- (b) the investment of money by NBN corporations; and
- (c) the functional separation of NBN corporations; and
- (d) the divestment of assets by NBN corporations.

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



### **103 Formal warnings—breach of service provider rules**

(1) The ACMA may issue a formal warning if a person contravenes a service provider rule.

(2) Subsection (1) does not apply to the rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369.

Note: Section 369 deals with Rules of Conduct under section 367.

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

Note: Subsection 152BA(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any standard access obligations that are applicable to the provider.

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

Note: Subsection 152BCP(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any access determinations that are applicable to the provider.

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

Note: Subsection 152BDG(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any binding rules of conduct that are applicable to the provider.

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

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

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

Note: Subsection 152CJD(2) of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.

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- (3E) Subsection (1) does not apply to the rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*.

Note: Subsection 38(2) of the *National Broadband Network Companies Act 2011* deals with rules about:

- (a) the supply of goods and services by NBN corporations; and
  - (b) the investment of money by NBN corporations; and
  - (c) the functional separation of NBN corporations; and
  - (d) the divestment of assets by NBN corporations.
- (4) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152BA(2) of the *Competition and Consumer Act 2010*.
- (4A) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*.
- (4B) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*.
- (4C) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*.
- (4D) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*.
- (4E) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*.
- (5) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369.

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## **Part 5—Monitoring of the performance of carriers and carriage service providers**

### **104 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA is to monitor, and report each year to the Minister on, significant matters relating to the performance of carriers and carriage service providers.
- The ACMA may be directed by the Minister to monitor, and report on, specified matters relating to the performance of carriers and carriage service providers.
- The ACCC is to monitor, and report each financial year to the Minister on, breaches by Telstra of an undertaking about structural separation.

### **105 Monitoring of performance—annual report**

- (1) The ACMA must monitor, and report each financial year to the Minister on, all significant matters relating to the performance of:
  - (a) carriers; and
  - (b) carriage service providers;with particular reference to:
  - (c) consumer satisfaction; and
  - (d) consumer benefits; and
  - (e) quality of service.
- (2) In performing its functions under subsection (1), the ACMA must have regard to such world best practice performance indicators as the ACMA considers appropriate. This subsection does not, by implication, limit subsection (1).

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- (3) A report under subsection (1) must set out details of the following matters:
- (a) the efficiency with which carriers and carriage service providers supply:
    - (i) carriage services; or
    - (ii) ancillary goods; or
    - (iii) ancillary services;
  - (b) the adequacy and quality of the:
    - (i) carriage services; or
    - (ii) billing services; or
    - (iii) billing information services; or
    - (iv) ancillary goods; or
    - (v) ancillary services;supplied by carriers or carriage service providers;
  - (c) the adequacy of each carrier's and each carriage service provider's compliance with its obligations under Part 6;
  - (d) the adequacy of each carrier's and each carriage service provider's compliance with:
    - (i) codes registered under Part 6; and
    - (ii) standards determined under Part 6;
  - (e) if there are any obligations under Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*—the adequacy of compliance with those obligations;
  - (ea) the operation of Parts 2 and 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
  - (f) such other matters relating to the performance of carriers or carriage service providers as the ACMA thinks appropriate.
- (4) The ACMA must monitor, and report each financial year to the Minister on, the appropriateness and adequacy of the approaches taken by the carriage service providers in carrying out their obligations, and discharging their liabilities, under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

- (5A) The ACMA must monitor, and report each financial year to the Minister on:
- (a) the operation of Part 14 and on the costs of compliance with the requirements of that Part; and
  - (b) without limiting paragraph (a), the costs of compliance with the requirements of Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* (about data retention).
- (5B) Paragraph (5A)(a) does not apply in relation to Part 14 to the extent that Part 14 was amended by the *Telecommunications and Other Legislation Amendment Act 2017*.
- (6) The ACMA must give a report under subsection (1), (4) or (5A) to the Minister as soon as practicable after the end of the financial year concerned.
- (7) The Minister must cause a copy of a report under subsection (1), (4) or (5A) to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.
- (8) In this section:
- ancillary goods*** means goods for use in connection with a carriage service.
- ancillary service*** means a service for use in connection with a carriage service.

### **105A Monitoring of performance—additional report**

- (1) The ACMA must monitor, and report to the Minister on, specified matters relating to the performance of carriers and carriage service providers in accordance with any written direction given by the Minister to the ACMA.
- (2) The ACMA must give a report under subsection (1) to the Minister:
- (a) if paragraph (b) does not apply—as soon as practicable after the end of a period specified in the direction; or

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- (b) if the direction requires the report to be given before a specified time—before that time.

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

*Monitoring*

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

*Report*

- (2) The ACCC must give a report under subsection (1) to the Minister as soon as practicable after the end of the financial year concerned.
- (3) The Minister must cause a copy of a report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

## **Part 6—Industry codes and industry standards**

### **Division 1—Simplified outline**

#### **106 Simplified outline**

The following is a simplified outline of this Part.

- Bodies and associations that represent sections of the telecommunications industry, the telemarketing industry or the fax marketing industry may develop industry codes.
- Industry codes may be registered by the ACMA.
- Compliance with an industry code is voluntary unless the ACMA directs a particular participant in the telecommunications industry, the telemarketing industry or the fax marketing industry to comply with the code.
- The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is mandatory.

## Division 2—Interpretation

### 107 Industry codes

For the purposes of this Part, an *industry code* is a code developed under this Part (whether or not in response to a request under this Part).

### 108 Industry standards

For the purposes of this Part, an *industry standard* is a standard determined under this Part.

#### 108A Electronic messaging service provider

- (1) For the purposes of this Part, if a person supplies, or proposes to supply, an electronic messaging service to the public, the person is an *electronic messaging service provider*.
- (2) For the purposes of subsection (1), a service is supplied to the public if, and only if, at least one end-user of the service is outside the immediate circle of the supplier of the service.
- (3) In this section:

*electronic message* has the same meaning as in the *Spam Act 2003*.

*electronic messaging service* means a service that enables any or all of the following electronic messages to be sent or received:

- (a) web-based email;
- (b) instant messages;
- (c) text messages;
- (d) messages of a kind specified in the regulations.

*message* has the same meaning as in the *Spam Act 2003*.



### **108B Telecommunications industry**

For the purposes of this Part, the *telecommunications industry* includes an industry that involves carrying on business as an electronic messaging service provider.

### **109 Telecommunications activity**

For the purposes of this Part, a *telecommunications activity* is an activity that consists of:

- (a) carrying on business as a carrier; or
- (b) carrying on business as a carriage service provider; or
- (c) supplying goods or services for use in connection with the supply of a listed carriage service; or
- (d) supplying a content service using a listed carriage service; or
- (e) manufacturing or importing customer equipment or customer cabling; or
- (f) installing, maintaining, operating or providing access to:
  - (i) a telecommunications network; or
  - (ii) a facility;  
used to supply a listed carriage service; or
- (g) carrying on business as an electronic messaging service provider.

### **109B Telemarketing activity**

- (1) For the purposes of this Part, a *telemarketing activity* is an activity to which subsection (2), (3) or (4) applies.
- (2) This subsection applies to an activity that:
  - (a) is carried on by a person (the *first person*) under a contract or arrangement (other than a contract of employment); and
  - (b) consists of:
    - (i) using telemarketing calls to market, advertise or promote goods or services, where the first person is not the supplier or prospective supplier of the goods or services; or

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- (ii) using telemarketing calls to advertise or promote a supplier or prospective supplier of goods or services, where the first person is not the supplier or prospective supplier of the goods or services; or
  - (iii) using telemarketing calls to market, advertise or promote land or interests in land, where the first person is not the supplier or prospective supplier of the land or interests in land; or
  - (iv) using telemarketing calls to advertise or promote a supplier or prospective supplier of land or interests in land, where the first person is not the supplier or prospective supplier of the land or interests in land; or
  - (v) using telemarketing calls to market, advertise or promote business opportunities or investment opportunities, where the first person is not the provider or prospective provider of the business opportunities or investment opportunities; or
  - (vi) using telemarketing calls to advertise or promote a provider, or prospective provider, of business opportunities or investment opportunities, where the first person is not the provider or prospective provider of the business opportunities or investment opportunities.
- (3) This subsection applies to an activity carried on by a person if the activity consists of:
- (a) using telemarketing calls to market, advertise or promote goods or services, where the person is the supplier or prospective supplier of the goods or services; or
  - (b) using telemarketing calls to advertise or promote a supplier or prospective supplier of goods or services, where the person is the supplier or prospective supplier of the goods or services; or
  - (c) using telemarketing calls to market, advertise or promote land or interests in land, where the person is the supplier or prospective supplier of the land or interests in land; or

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- (d) using telemarketing calls to advertise or promote a supplier or prospective supplier of land or interests in land, where the person is the supplier or prospective supplier of the land or interests in land; or
  - (e) using telemarketing calls to market, advertise or promote business opportunities or investment opportunities, where the person is the provider or prospective provider of the business opportunities or investment opportunities; or
  - (f) using telemarketing calls to advertise or promote a provider, or prospective provider, of business opportunities or investment opportunities, where the person is the provider or prospective provider of the business opportunities or investment opportunities.
- (4) This subsection applies to an activity carried on by a person if the activity consists of:
- (a) using telemarketing calls to solicit donations; or
  - (b) using telemarketing calls to conduct opinion polling; or
  - (c) using telemarketing calls to carry out standard questionnaire-based research.
- (5) An expression (other than *telemarketing call*) used in this section and in section 5 of the *Do Not Call Register Act 2006* has the same meaning in this section as it has in that section.

### 109C Fax marketing activity

- (1) For the purposes of this Part, a *fax marketing activity* is an activity to which subsection (2), (3) or (4) applies.
- (2) This subsection applies to an activity that:
- (a) is carried on by a person (the *first person*) under a contract or arrangement (other than a contract of employment); and
  - (b) consists of:
    - (i) using marketing faxes to market, advertise or promote goods or services, where the first person is not the supplier or prospective supplier of the goods or services; or

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- (ii) using marketing faxes to advertise or promote a supplier or prospective supplier of goods or services, where the first person is not the supplier or prospective supplier of the goods or services; or
  - (iii) using marketing faxes to market, advertise or promote land or interests in land, where the first person is not the supplier or prospective supplier of the land or interests in land; or
  - (iv) using marketing faxes to advertise or promote a supplier or prospective supplier of land or interests in land, where the first person is not the supplier or prospective supplier of the land or interests in land; or
  - (v) using marketing faxes to market, advertise or promote business opportunities or investment opportunities, where the first person is not the provider or prospective provider of the business opportunities or investment opportunities; or
  - (vi) using marketing faxes to advertise or promote a provider, or prospective provider, of business opportunities or investment opportunities, where the first person is not the provider or prospective provider of the business opportunities or investment opportunities.
- (3) This subsection applies to an activity carried on by a person if the activity consists of:
- (a) using marketing faxes to market, advertise or promote goods or services, where the person is the supplier or prospective supplier of the goods or services; or
  - (b) using marketing faxes to advertise or promote a supplier or prospective supplier of goods or services, where the person is the supplier or prospective supplier of the goods or services; or
  - (c) using marketing faxes to market, advertise or promote land or interests in land, where the person is the supplier or prospective supplier of the land or interests in land; or

- (d) using marketing faxes to advertise or promote a supplier or prospective supplier of land or interests in land, where the person is the supplier or prospective supplier of the land or interests in land; or
  - (e) using marketing faxes to market, advertise or promote business opportunities or investment opportunities, where the person is the provider or prospective provider of the business opportunities or investment opportunities; or
  - (f) using marketing faxes to advertise or promote a provider, or prospective provider, of business opportunities or investment opportunities, where the person is the provider or prospective provider of the business opportunities or investment opportunities.
- (4) This subsection applies to an activity carried on by a person if the activity consists of:
- (a) using marketing faxes to solicit donations; or
  - (b) using marketing faxes to conduct opinion polling; or
  - (c) using marketing faxes to carry out standard questionnaire-based research.
- (5) An expression (other than *marketing fax*) used in this section and in section 5B of the *Do Not Call Register Act 2006* has the same meaning in this section as it has in that section.

## **110 Sections of the telecommunications industry**

- (1) For the purposes of this Part, *sections of the telecommunications industry* are to be ascertained in accordance with this section.
- (2) For the purposes of this Part, each of the following groups is a *section of the telecommunications industry*:
- (a) carriers;
  - (b) service providers;
  - (c) carriage service providers;
  - (d) carriage service providers who supply standard telephone services;

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- (e) carriage service providers who supply public mobile telecommunications services;
  - (f) content service providers;
  - (g) persons who perform cabling work (within the meaning of Division 9 of Part 21);
  - (h) persons who manufacture or import customer equipment or customer cabling;
  - (i) electronic messaging service providers;
  - (j) persons who install:
    - (i) optical fibre lines; or
    - (ii) facilities used, or for use, in or in connection with optical fibre lines.
- (3) The ACMA may, by written instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of telecommunications activity constitute a section of the telecommunications industry for the purposes of this Part.
- (4) The section must be identified in the determination by a unique name and/or number.
- (5) A determination under subsection (3) has effect accordingly.
- (6) Sections of the telecommunications industry determined under subsection (3):
- (a) need not be mutually exclusive; and
  - (b) may consist of the aggregate of any 2 or more sections of the telecommunications industry mentioned in subsection (2) or determined under subsection (3); and
  - (c) may be subsets of a section of the telecommunications industry mentioned in subsection (2) or determined under subsection (3).
- (7) Subsection (6) does not, by implication, limit subsection (3).
- (8) A copy of a determination under subsection (3) is to be published in the *Gazette*.

### **110B Sections of the telemarketing industry**

- (1) For the purposes of this Part, *sections of the telemarketing industry* are to be ascertained in accordance with this section.
- (2) If no determination is in force under subsection (3), all of the persons carrying on, or proposing to carry on, telemarketing activities constitute a single section of the telemarketing industry for the purposes of this Part.
- (3) The ACMA may, by legislative instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of telemarketing activity constitute a section of the telemarketing industry for the purposes of this Part.
- (4) The section must be identified in the determination by a unique name and/or number.
- (5) A determination under subsection (3) has effect accordingly.
- (6) Sections of the telemarketing industry determined under subsection (3):
  - (a) need not be mutually exclusive; and
  - (b) may consist of the aggregate of any 2 or more sections of the telemarketing industry mentioned in subsection (2) or determined under subsection (3); and
  - (c) may be subsets of a section of the telemarketing industry mentioned in subsection (2) or determined under subsection (3).
- (7) Subsection (6) does not, by implication, limit subsection (3).

### **110C Sections of the fax marketing industry**

- (1) For the purposes of this Part, *sections of the fax marketing industry* are to be ascertained in accordance with this section.
- (2) If no determination is in force under subsection (3), all of the persons carrying on, or proposing to carry on, fax marketing

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activities constitute a single section of the fax marketing industry for the purposes of this Part.

- (3) The ACMA may, by legislative instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of fax marketing activity constitute a section of the fax marketing industry for the purposes of this Part.
- (4) The section must be identified in the determination by a unique name and/or number.
- (5) A determination under subsection (3) has effect accordingly.
- (6) Sections of the fax marketing industry determined under subsection (3):
  - (a) need not be mutually exclusive; and
  - (b) may consist of the aggregate of any 2 or more sections of the fax marketing industry mentioned in subsection (2) or determined under subsection (3); and
  - (c) may be subsets of a section of the fax marketing industry mentioned in subsection (2) or determined under subsection (3).
- (7) Subsection (6) does not, by implication, limit subsection (3).

**111 Participants in a section of the telecommunications industry**

For the purposes of this Part, if a person is a member of a group that constitutes a section of the telecommunications industry, the person is a *participant* in that section of the telecommunications industry.

**111AA Participants in a section of the telemarketing industry**

For the purposes of this Part, if a person is a member of a group that constitutes a section of the telemarketing industry, the person is a *participant* in that section of the telemarketing industry.



**111AB Participants in a section of the fax marketing industry**

For the purposes of this Part, if a person is a member of a group that constitutes a section of the fax marketing industry, the person is a *participant* in that section of the fax marketing industry.

**111B Unsolicited commercial electronic messages**

- (1) For the purposes of this Part, an *unsolicited commercial electronic message* is a commercial electronic message that is sent:
  - (a) without the consent of the relevant electronic account-holder;  
or
  - (b) to a non-existent electronic address.
- (2) An expression used in this section and in the *Spam Act 2003* has the same meaning in this section as it has in that Act.

### **Division 3—General principles relating to industry codes and industry standards**

#### **112 Statement of regulatory policy**

- (1) The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the telecommunications industry should develop codes (*industry codes*) that are to apply to participants in the respective sections of the industry in relation to the telecommunications activities of the participants.
- (1B) The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the telemarketing industry should develop codes (*industry codes*) that are to apply to participants in the respective sections of the industry in relation to the telemarketing activities of the participants.
- (1C) The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the fax marketing industry should develop codes (*industry codes*) that are to apply to participants in the respective sections of the industry in relation to the fax marketing activities of the participants.
- (2) The Parliament intends that the ACMA, in exercising its powers under sections 117, 118, 119, 123, 124, 125, 125AA, 125A and 125B, will act in a manner that, in the opinion of the ACMA, enables public interest considerations to be addressed in a way that does not impose undue financial and administrative burdens on participants in sections of the telecommunications industry, the telemarketing industry or the fax marketing industry.
- (3) In determining whether public interest considerations are being addressed in a way that does not impose undue financial and administrative burdens on participants in sections of the telecommunications industry (other than electronic messaging service providers), the ACMA must have regard to:
  - (a) the number of customers who would be likely to benefit from the code or standard concerned; and

- (b) the extent to which those customers are residential or small business customers; and
  - (c) the legitimate business interests of participants in sections of the telecommunications industry; and
  - (d) the public interest, including the public interest in the efficient, equitable and ecologically sustainable supply of:
    - (i) carriage services; and
    - (ii) goods for use in connection with carriage services; and
    - (iii) services for use in connection with carriage services; in a manner that reflects the legitimate expectations of the Australian community.
- (3A) In determining whether public interest considerations are being addressed in a way that does not impose undue financial and administrative burdens on participants in the section of the telecommunications industry that consists of electronic messaging service providers, the ACMA must have regard to:
- (a) the number of end-users who would be likely to benefit from the code or standard concerned; and
  - (b) the extent to which those end-users are residential or small business end-users; and
  - (c) the legitimate business interests of electronic messaging service providers.
- (3C) In determining whether public interest considerations are being addressed in a way that does not impose undue financial and administrative burdens on participants in sections of the telemarketing industry, the ACMA must have regard to:
- (a) the number of persons who would be likely to benefit from the code or standard concerned; and
  - (b) the extent to which those persons are householders or small business operators; and
  - (c) the legitimate business interests of participants in sections of the telemarketing industry.
- (3D) In determining whether public interest considerations are being addressed in a way that does not impose undue financial and

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administrative burdens on participants in sections of the fax marketing industry, the ACMA must have regard to:

- (a) the number of persons who would be likely to benefit from the code or standard concerned; and
  - (b) the extent to which those persons are householders or small business operators; and
  - (c) the legitimate business interests of participants in sections of the fax marketing industry.
- (4) Subsections (3), (3A), (3B), (3C) and (3D) do not, by implication, limit the matters to which regard may be had.

**113 Examples of matters that may be dealt with by industry codes and industry standards**

- (1) This section sets out examples of matters that may be dealt with by industry codes and industry standards.
- (2) The applicability of a particular example will depend on which section of the telecommunications industry, the telemarketing industry or the fax marketing industry is involved.
- (3) The examples are as follows:
  - (a) telling customers about:
    - (i) goods or services on offer; and
    - (ii) the prices of those goods or services; and
    - (iii) the other terms and conditions on which those goods or services are offered;
  - (b) giving customers information about performance indicators customers can use to evaluate the quality of services;
  - (c) regular reporting to customers about performance against those performance indicators;
  - (d) the internal handling of customer complaints;
  - (e) reporting about customer complaints;
  - (f) privacy and, in particular:
    - (i) the protection of personal information; and

- (ii) the intrusive use of telecommunications by carriers or service providers; and
- (iii) the monitoring or recording of communications; and
- (iv) calling number display; and
- (v) the provision of directory products and services;
- (g) the “churning” of customers;
- (h) security deposits given by customers;
- (i) debt collection practices;
- (j) customer credit practices;
- (k) disconnection of customers;
- (l) ensuring that customers have an informed basis on which to enter into agreements of a kind mentioned in paragraph 22(2)(d) or (e) or (4)(a) (which deal with boundaries of telecommunications networks);
- (m) the quality of standard telephone services;
- (n) the accuracy of billing of customers of carriage service providers in relation to the supply of standard telephone services;
- (o) the timeliness and comprehensibility of bills;
- (p) the procedures to be followed in order to generate standard billing reports to assist in the investigation of customer complaints about bills;
- (pa) the design features of:
  - (i) optical fibre lines; or
  - (ii) facilities used, or for use, in or in connection with optical fibre lines;
- (pb) performance requirements to be met by:
  - (i) optical fibre lines; or
  - (ii) facilities used, or for use, in or in connection with optical fibre lines;
- (pc) the characteristics of carriage services supplied using optical fibre lines;
- (pd) performance requirements to be met by carriage services supplied using optical fibre lines;

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- (q) procedures to be followed by:
  - (i) internet service providers; and
  - (ii) electronic messaging service providers;in dealing with unsolicited commercial electronic messages (including procedures relating to the provision or use of regularly updated software for filtering unsolicited commercial electronic messages);
- (r) giving customers information about the availability, use and appropriate application of software for filtering unsolicited commercial electronic messages;
- (s) action to be taken to assist in the development and evaluation of software for filtering unsolicited commercial electronic messages;
- (t) action to be taken in order to minimise or prevent the sending or delivery of unsolicited commercial electronic messages, including:
  - (i) the configuration of servers so as to minimise or prevent the sending or delivery of unsolicited commercial electronic messages; and
  - (ii) the shutdown of open relay servers;
- (u) action to be taken to ensure responsible practices in relation to the use of commercial electronic messages to market, advertise or promote goods or services to individuals who are under 18 years of age;
- (v) procedures to be followed in relation to the giving of consent by relevant electronic account-holders (within the meaning of the *Spam Act 2003*) to the sending of commercial electronic messages;
- (w) record-keeping practices to be followed in relation to telemarketing calls made or attempted to be made;
- (x) action to be taken to limit the total number of telemarketing calls attempted to be made, by a particular participant in a section of the telemarketing industry, during a particular period, where the recipient answers the attempted call, but the attempted call does not have any content;

- (y) action to be taken to limit the total number of telemarketing calls made, or attempted to be made, by a particular participant in a section of the telemarketing industry, during a particular period to a particular Australian number;
- (z) record-keeping practices to be followed in relation to marketing faxes sent or attempted to be sent;
- (za) action to be taken to limit the total number of marketing faxes sent or attempted to be sent, by a particular participant in a section of the fax marketing industry, during a particular period to a particular Australian number.

#### **114 Industry codes and industry standards may confer powers on the Telecommunications Industry Ombudsman**

- (1) If the Telecommunications Industry Ombudsman consents, an industry code or industry standard may confer functions and powers on the Telecommunications Industry Ombudsman.
- (2) The continuity of a consent under subsection (1) is not affected by:
  - (a) a change in the occupancy of the position of Telecommunications Industry Ombudsman; or
  - (b) a vacancy in the position of Telecommunications Industry Ombudsman that does not continue for more than 4 months.

#### **115 Industry codes and industry standards not to deal with certain design features and performance requirements**

- (1) For the purposes of this Part, an industry code or an industry standard has no effect:
  - (a) to the extent (if any) to which compliance with the code or standard is likely to have the effect (whether direct or indirect) of requiring customer equipment, customer cabling, a telecommunications network or a facility:
    - (i) to have particular design features; or
    - (ii) to meet particular performance requirements; or
  - (b) to the extent (if any) to which it deals with the content of content services.

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- (2) The rule in subsection (1) does not apply to an industry code or an industry standard to the extent (if any) to which compliance with the code or standard is likely:
- (a) to have the indirect effect of requiring customer equipment, customer cabling, a telecommunications network or a facility to have particular design features that relate to:
    - (i) the accuracy of billing of customers of carriage service providers in relation to the supply of standard telephone services; or
    - (ii) the quality of standard telephone services; or
    - (iii) a matter specified in the regulations; or
  - (b) to have the direct or indirect effect of requiring customer equipment, customer cabling, a telecommunications network or a facility to meet performance requirements that relate to:
    - (i) the accuracy of billing of customers of carriage service providers in relation to the supply of standard telephone services; or
    - (ii) the quality of standard telephone services; or
    - (iii) a matter specified in the regulations.
- (3) The rule in subsection (1) does not apply to an industry code or an industry standard to the extent (if any) to which the code or standard deals with a matter referred to in paragraph 113(3)(f) or (t).
- (4) The rule in subsection (1) does not apply to an industry code made for the purposes of Division 2AA of Part V of the *Copyright Act 1968*.
- (5) The rule in subsection (1) does not apply to an industry code or an industry standard to the extent (if any) to which compliance with the code or standard is likely to have the effect (whether direct or indirect) of requiring:
- (a) optical fibre lines; or
  - (b) facilities used, or for use, in or in connection with optical fibre lines;
- to:



- (c) have particular design features; or
- (d) meet particular performance requirements.

**116 Industry codes and industry standards not to deal with matters dealt with by codes and standards under Part 9 of the Broadcasting Services Act**

For the purposes of this Part, an industry code or an industry standard that deals with a matter relating to a content service has no effect to the extent (if any) to which the matter is dealt with by a code registered, or standard determined, under Part 9 of the *Broadcasting Services Act 1992*.

**116A Industry codes and standards do not affect *Privacy Act 1988***

Neither an industry code nor an industry standard derogates from a requirement made by or under the *Privacy Act 1988* or a registered APP code (as defined in that Act).

## Division 4—Industry codes

### 117 Registration of industry codes

- (1) This section applies if:
  - (a) the ACMA is satisfied that a body or association represents a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry; and
  - (b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, of those participants; and
  - (c) the body or association gives a copy of the code to the ACMA; and
  - (d) the ACMA is satisfied that:
    - (i) in a case where the code deals with matters of substantial relevance to the community—the code provides appropriate community safeguards for the matters covered by the code; or
    - (ii) in a case where the code does not deal with matters of substantial relevance to the community—the code deals with the matters covered by the code in an appropriate manner; and
  - (e) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
    - (i) the body or association published a draft of the code on its website, and invited participants in that section of the industry to make submissions to the body or association about the draft within a specified period; and
    - (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and
    - (iii) the body or association complied with the section 119B publication requirements in relation to any submissions

- that were received from participants in that section of the industry within that period; and
- (f) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
- (i) the body or association published a draft of the code on its website, and invited members of the public to make submissions to the body or association about the draft within a specified period; and
  - (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
  - (iii) the body or association complied with the section 119B publication requirements in relation to any submissions that were received from members of the public within that period; and
- (g) the ACMA is satisfied that the ACCC has been consulted about the development of the code; and
- (h) except in a case where:
- (i) the code applies to participants in a section of the telemarketing industry and deals with one or more matters relating to the telemarketing activities of those participants; or
  - (ii) the code applies to participants in a section of the fax marketing industry and deals with one or more matters relating to the fax marketing activities of those participants;
- the ACMA is satisfied that the Telecommunications Industry Ombudsman has been consulted about the development of the code; and
- (i) the ACMA is satisfied that at least one body or association that represents the interests of consumers has been consulted about the development of the code; and
- (j) in a case where the code deals with a matter set out in paragraph 113(3)(f)—the ACMA is satisfied that the Information Commissioner has been consulted by the body or association about the development of the code before the

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- body or association gave the copy of the code to the ACMA;  
and
- (k) the ACMA has consulted the Information Commissioner about the code and consequently believes that he or she is satisfied with the code, if the code deals directly or indirectly with a matter dealt with by:
- (i) the Australian Privacy Principles; or
  - (ii) other provisions of the *Privacy Act 1988* that relate to those principles; or
  - (iii) a registered APP code (as defined in that Act) that binds a participant in that section of the telecommunications industry, the telemarketing industry or the fax marketing industry; or
  - (iv) provisions of that Act that relate to the registered APP code
- (2) The ACMA must register the code by including it in the Register of industry codes kept under section 136.
- (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.
- (4) If:
- (a) an industry code (the *new code*) is registered under this Part; and
  - (b) the new code is expressed to replace another industry code;
- the other code ceases to be registered under this Part when the new code is registered.

Note: An industry code also ceases to be registered when it is removed from the Register of industry codes under section 122A.

### 118 ACMA may request codes

- (1) If the ACMA is satisfied that a body or association represents a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry, the ACMA may, by written notice given to the body or association, request the body or association to:
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- (a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, of those participants; and
- (b) give the ACMA a copy of the code within the period specified in the notice.

Note: The ACMA may request the body or association to develop the industry code to replace an earlier industry code that the Information Commissioner (exercising functions under the *Privacy Act 1988*) has advised the ACMA is inconsistent with the Australian Privacy Principles or a relevant registered APP code (as defined in that Act).

- (2) The period specified in a notice under subsection (1) must run for at least 120 days.
- (3) The ACMA must not make a request under subsection (1) in relation to a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry unless the ACMA is satisfied that:
  - (a) the development of the code is necessary or convenient in order to:
    - (i) provide appropriate community safeguards; or
    - (ii) otherwise deal with the performance or conduct of participants in that section of the industry; and
  - (b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period.
- (4) The ACMA must not make a request under subsection (1) in relation to a code if:
  - (a) the code would deal with a matter referred to in paragraph 113(3)(f) (which relates to privacy); and
  - (b) compliance with the code would be likely to have the effect (whether direct or indirect) of requiring customer equipment, customer cabling, a telecommunications network or a facility:
    - (i) to have particular design features; or
    - (ii) to meet particular performance requirements.

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However, this rule does not apply if the ACMA is satisfied that the benefits to the community from the operation of the code would outweigh the costs of compliance with the code.

- (4AA) The rule in subsection (4) does not apply to a code to the extent (if any) to which compliance with the code is likely to have the effect (whether direct or indirect) of requiring:
- (a) optical fibre lines; or
  - (b) facilities used, or for use, in or in connection with optical fibre lines;
- to:
- (c) have particular design features; or
  - (d) meet particular performance requirements.
- (4A) The ACMA must consult the Information Commissioner before making a request under subsection (1) for the development of an industry code that could reasonably be expected to deal directly or indirectly with a matter dealt with by:
- (a) the Australian Privacy Principles; or
  - (b) other provisions of the *Privacy Act 1988* relating to those principles; or
  - (c) a registered APP code (as defined in that Act) that binds one or more participants in the section of the telecommunications industry, the telemarketing industry or the fax marketing industry to which the request relates; or
  - (d) provisions of that Act that relate to the registered APP code.
- (5) The ACMA may vary a notice under subsection (1) by extending the period specified in the notice.
- (6) Subsection (5) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.
- (7) A notice under subsection (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

**119 Publication of notice where no body or association represents a section of the telecommunications industry, the telemarketing industry or the fax marketing industry**

- (1) If the ACMA is satisfied that a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry is not represented by a body or association, the ACMA may publish a notice in the *Gazette*:
  - (a) stating that, if such a body or association were to come into existence within a specified period, the ACMA would be likely to give a notice to that body or association under subsection 118(1); and
  - (b) setting out the matter or matters relating to telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, that would be likely to be specified in the subsection 118(1) notice.
- (2) The period specified in a notice under subsection (1) must run for at least 60 days.

**119A Variation of industry codes***Scope*

- (1) This section applies if:
  - (a) an industry code is registered under this Part; and
  - (b) the code:
    - (i) applies to participants in a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry; and
    - (ii) deals with one or more matters relating to the telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, of those participants; and
  - (c) the body or association that developed the code gives a draft variation of the code to the ACMA; and

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- (d) disregarding any provisions of the code that are not affected (whether directly or indirectly) by the variation, the ACMA is satisfied that:
  - (i) in a case where the code (as proposed to be varied) deals with matters of substantial relevance to the community—the code (as proposed to be varied) provides appropriate community safeguards for the matters covered by the code (as proposed to be varied); or
  - (ii) in a case where the code (as proposed to be varied) does not deal with matters of substantial relevance to the community—the code (as proposed to be varied) deals with the matters covered by the code (as proposed to be varied) in an appropriate manner; and
- (e) except in a case where the draft variation is of a minor nature—the ACMA is satisfied that, before giving the copy of the draft variation to the ACMA:
  - (i) the body or association published the draft variation on its website and invited participants in that section of the industry to make submissions to the body or association about the draft variation within a specified period; and
  - (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and
  - (iii) the body or association complied with the section 119B publication requirements in relation to any submissions that were received from participants in that section of the industry within that period; and
- (f) except in a case where the draft variation is of a minor nature—the ACMA is satisfied that, before giving the copy of the draft variation to the ACMA:
  - (i) the body or association published the draft variation on its website and invited members of the public to make submissions to the body or association about the draft variation within a specified period; and



- (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
  - (iii) the body or association complied with the section 119B publication requirements in relation to any submissions that were received from members of the public within that period; and
- (g) the ACMA is satisfied that the ACCC has been consulted about the development of the draft variation; and
- (h) except in a case where:
- (i) the code (as proposed to be varied) applies to participants in a section of the telemarketing industry and deals with one or more matters relating to the telemarketing activities of those participants; or
  - (ii) the code (as proposed to be varied) applies to participants in a section of the fax marketing industry and deals with one or more matters relating to the fax marketing activities of those participants;
- the ACMA is satisfied that the Telecommunications Industry Ombudsman has been consulted about the development of the draft variation; and
- (i) the ACMA is satisfied that at least one body or association that represents the interests of consumers has been consulted about the development of the draft variation; and
- (j) in a case where the draft variation deals with a matter set out in paragraph 113(3)(f)—the ACMA is satisfied that the Information Commissioner has been consulted by the body or association about the development of the draft variation before the body or association gave the copy of the draft variation to the ACMA; and
- (k) the ACMA has consulted the Information Commissioner about the draft variation and consequently believes that he or she is satisfied with the draft variation, if the draft variation deals directly or indirectly with a matter dealt with by:
- (i) the Australian Privacy Principles; or

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- (ii) other provisions of that Act that relate to those Principles; or
- (iii) an approved privacy code (as defined in that Act) that binds a participant in that section of the telecommunications industry, the telemarketing industry or the fax marketing industry; or
- (iv) provisions of that Act that relate to the approved privacy code.

*Approval of variation*

- (2) The ACMA must, by written notice given to the body or association, approve the draft variation.
- (3) If the ACMA approves the draft variation, the code is varied accordingly.

*Period for making submissions*

- (4) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.

**119B Publication requirements for submissions**

- (1) This section sets out the publication requirements that apply to submissions that:
  - (a) are about a particular draft; and
  - (b) were received by a body or association as mentioned in:
    - (i) subparagraph 117(1)(e)(iii); or
    - (ii) subparagraph 117(1)(f)(iii); or
    - (iii) subparagraph 119A(1)(e)(iii); or
    - (iv) subparagraph 119A(1)(f)(iii).

*Publication of submissions*

- (2) The body or association must publish those submissions on its website.

- (3) Subsection (2) has effect subject to subsections (4) and (6).

*Confidential or commercially sensitive material*

- (4) If:

- (a) a submission made by a person consists wholly or partly of material that is claimed by the person to be confidential or commercially sensitive; and
- (b) the person has requested the body or association not to publish the material; and
- (c) the body or association is satisfied that the material is confidential or commercially sensitive;

then:

- (d) if the submission consists wholly of the material—the body or association is not required to publish the submission on its website; or

- (e) if:

- (i) the submission consists partly of the material; and
- (ii) it is practicable for the body or association to remove the material from the submission;

the body or association may remove the material from the submission before publishing the submission on its website; or

- (f) if:

- (i) the submission consists partly of the material; and
- (ii) it is not practicable for the body or association to remove the material from the submission;

the body or association is not required to publish the submission on its website.

- (5) If, under subsection (4), the body or association removes material from a submission before publishing the submission on its website, the body or association must publish on its website a statement to the effect that confidential or commercially sensitive material in the submission has not been published.

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*Defamatory material*

- (6) If the body or association considers that a submission consists wholly or partly of material that is, or is likely to be, defamatory:
- (a) if the submission consists wholly of the material—the body or association is not required to publish the submission on its website; or
  - (b) if:
    - (i) the submission consists partly of the material; and
    - (ii) it is practicable for the body or association to remove the material from the submission;the body or association may remove the material from the submission before publishing the submission on its website; or
  - (c) if:
    - (i) the submission consists partly of the material; and
    - (ii) it is not practicable for the body or association to remove the material from the submission;the body or association is not required to publish the submission on its website.
- (7) If, under subsection (6), the body or association removes material from a submission before publishing the submission on its website, the body or association must publish on its website a statement to the effect that material in the submission has not been published on the grounds that the material is, or is likely to be, defamatory.

*Statistical statement*

- (8) The body or association must publish on its website a statement that sets out:
- (a) the total number of those submissions; and
  - (b) if a number of those submissions have not been published, or have been published in a modified form, because of subsection (4) or (6)—that number.

**120 Replacement of industry codes**

Changes to an industry code may be achieved by replacing the code instead of varying the code. However, this does not prevent the ACMA from removing under section 122A an industry code, or a provision of an industry code, from the Register of industry codes kept under this Part.

**121 Directions about compliance with industry codes**

- (1) If:
- (a) a person is a participant in a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry; and
  - (b) the ACMA is satisfied that the person has contravened or is contravening an industry code that:
    - (i) is registered under this Part; and
    - (ii) applies to participants in that section of the industry;
- the ACMA may, by written notice given to the person, direct the person to comply with the industry code.
- (1A) If the ACMA is satisfied that the contravention of the industry code relates directly or indirectly to a matter dealt with by the Australian Privacy Principles or by a registered APP code (within the meaning of the *Privacy Act 1988*), the ACMA must consult the Information Commissioner before giving the direction.
- (1B) If:
- (a) at a time when an industry code (the ***original code***) was registered under this Part, a direction could have been given to a person under subsection (1) in respect of the original code; and
  - (b) the original code has been replaced by another code that is registered under this Part; and
  - (c) the person could have been given a direction under subsection (1) in respect of the replacement code, if the conduct concerned had occurred after the replacement code was registered;

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then, during the period when the replacement code is registered under this Part, the person may be given a direction under subsection (1) in respect of the replacement code.

- (2) A person must comply with a direction under subsection (1).
- (3) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).
- (4) Subsections (2) and (3) are *civil penalty provisions*.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.
- (5) A direction under subsection (1) is not a legislative instrument.

**122 Formal warnings—breach of industry codes**

- (1) This section applies to a person who is a participant in a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry.
- (2) The ACMA may issue a formal warning if the person contravenes an industry code registered under this Part.
- (3) If the ACMA is satisfied that the contravention of the industry code relates directly or indirectly to a matter dealt with by the Australian Privacy Principles or by a registered APP code (within the meaning of the *Privacy Act 1988*), the ACMA must consult the Information Commissioner before issuing the warning.
- (4) If:

- (a) at a time when an industry code (the *original code*) was registered under this Part, a formal warning could have been given to a person under subsection (2) in respect of the original code; and
- (b) the original code has been replaced by another code that is registered under this Part; and
- (c) the person could have been given a formal warning under subsection (2) in respect of the replacement code, if the conduct concerned had occurred after the replacement code was registered;

then, during the period when the replacement code is registered under this Part, the person may be given a formal warning under subsection (2) in respect of the replacement code.

### **122A De-registering industry codes and provisions of industry codes**

- (1) The ACMA may remove from the Register of industry codes kept under section 136:
  - (a) an industry code; or
  - (b) a provision of an industry code.
- (2) An industry code ceases to be registered when it is removed from the Register.
- (3) If the ACMA removes a provision of an industry code from the Register, this Part has effect in relation to things occurring after the removal of the provision as if the code registered under this Part did not include the provision removed.

## Division 5—Industry standards

### 123 ACMA may determine an industry standard if a request for an industry code is not complied with

- (1) This section applies if:
  - (a) the ACMA has made a request under subsection 118(1) in relation to the development of a code that is to:
    - (i) apply to participants in a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry; and
    - (ii) deal with one or more matters relating to the telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, of those participants; and
  - (b) any of the following conditions is satisfied:
    - (i) the request is not complied with;
    - (ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;
    - (iii) the request is complied with, but the ACMA subsequently refuses to register the code; and
  - (c) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
    - (i) provide appropriate community safeguards in relation to that matter or those matters; or
    - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an *industry standard*.



- (3) Before determining an industry standard under this section, the ACMA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.

**124 ACMA may determine industry standard where no industry body or association formed**

- (1) This section applies if:
- (a) the ACMA is satisfied that a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry is not represented by a body or association; and
  - (b) the ACMA has published a notice under subsection 119(1) relating to that section of the industry; and
  - (c) that notice:
    - (i) states that, if such a body or association were to come into existence within a particular period, the ACMA would be likely to give a notice to that body or association under subsection 118(1); and
    - (ii) sets out one or more matters relating to the telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, of the participants in that section of the industry; and
  - (d) no such body or association comes into existence within that period; and
  - (e) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
    - (i) provide appropriate community safeguards in relation to that matter or those matters; or
    - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an ***industry standard***.

**125 ACMA may determine industry standards where industry codes fail**

- (1) This section applies if:
  - (a) an industry code that:
    - (i) applies to participants in a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry; and
    - (ii) deals with one or more matters relating to the telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, of those participants;  
has been registered under this Part for at least 180 days; and
  - (b) the ACMA is satisfied that the code is deficient (as defined by subsection (7)); and
  - (c) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
  - (d) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.
- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an *industry standard*.
- (4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subsection (3).
- (6) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.

- (7) For the purposes of this section, an industry code that applies to participants in a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry and deals with one or more matters relating to the telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, of those participants is **deficient** if, and only if:
- (a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or
  - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.

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

- (1) The ACMA may, by legislative instrument, determine a standard that:
- (a) applies to participants in a particular section of the telecommunications industry; and
  - (b) deals with one or more matters relating to the telecommunications activities of those participants.
- Note 1: For examples of matters that may be dealt with by industry standards, see section 113.
- Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) A standard under subsection (1) is to be known as an **industry standard**.
- (3) If the ACMA is satisfied that a body or association represents that section of the telecommunications industry, the ACMA must consult the body or association before determining a standard under subsection (1).
- (4) The Minister may, in writing, direct the ACMA to:
- (a) determine a standard under subsection (1) that:

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- (i) applies to participants in a specified section of the telecommunications industry; and
  - (ii) deals with one or more specified matters relating to the telecommunications activities of those participants; and
  - (b) do so within a specified period.
- (5) The ACMA must not determine a standard under subsection (1) unless it does so in accordance with a direction under subsection (4).

**125A ACMA must determine certain industry standards relating to the telemarketing industry**

- (1) Before the commencement of Part 2 of the *Do Not Call Register Act 2006*, the ACMA must, by legislative instrument, determine a standard that:
- (a) applies to participants in each section of the telemarketing industry; and
  - (b) deals with the following matters relating to the telemarketing activities of those participants:
    - (i) restricting the hours and/or days during which telemarketing calls may be made or attempted to be made;
    - (ii) requiring that a telemarketing call must contain specified information about the relevant participant;
    - (iii) requiring that, if a person other than the relevant participant caused a telemarketing call to be made, the call must contain specified information about the person who caused the call to be made;
    - (iv) requiring the relevant participant to terminate a telemarketing call if a specified event happens;
    - (v) requiring the relevant participant to ensure that calling line identification is enabled in respect of the making of a telemarketing call; and
  - (c) is expressed to commence at the same time as the commencement of Part 2 of the *Do Not Call Register Act 2006*.

- (2) A standard under subsection (1) is to be known as an ***industry standard***.
- (3) If the ACMA is satisfied that a body or association represents a section of the telemarketing industry, the ACMA must consult the body or association before determining a standard under subsection (1).
- (4) The ACMA must ensure that a standard is in force under subsection (1) at all times after the commencement of Part 2 of the *Do Not Call Register Act 2006*.

### **125B ACMA must determine certain industry standards relating to the fax marketing industry**

- (1) The ACMA may, by legislative instrument, determine a standard that:
  - (a) applies to participants in each section of the fax marketing industry; and
  - (b) deals with the following matters relating to the fax marketing activities of those participants:
    - (i) restricting the hours and/or days during which marketing faxes may be sent, or attempted to be sent, to an Australian number;
    - (ii) requiring that a marketing fax sent to an Australian number must contain specified information about the person who authorised the sending of the fax;
    - (iii) restricting the total number of marketing faxes sent, or attempted to be sent, by the relevant participant during a particular period to a particular Australian number;
    - (iv) requiring that, if a marketing fax sent to an Australian number is authorised by a particular person (the ***authorising person***), the fax must contain information about how the recipient of the fax may send a message to the effect that the recipient does not want to receive any marketing faxes authorised by the authorising person.

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

- (2) A standard under subsection (1) is to be known as an ***industry standard***.
- (3) If the ACMA is satisfied that a body or association represents a section of the fax marketing industry, the ACMA must consult the body or association before determining a standard under subsection (1).
- (4) The ACMA must ensure that a standard is in force under subsection (1) at all times after the commencement of this section.
- (5) For the purposes of this section, ***authorise***, when used in relation to a marketing fax, has the same meaning as in the *Do Not Call Register Act 2006*.

**126 Industry standards not to be determined for certain privacy matters**

The ACMA must not determine an industry standard if:

- (a) the standard would deal with a matter referred to in paragraph 113(3)(f) (which relates to privacy); and
- (b) compliance with the standard would be likely to have the effect (whether direct or indirect) of requiring customer equipment, customer cabling, a telecommunications network or a facility:
  - (i) to have particular design features; or
  - (ii) to meet particular performance requirements.

However, this rule does not apply if the ACMA is satisfied that the benefits to the community from the operation of the standard would outweigh the costs of compliance with the standard.

**128 Compliance with industry standards**

- (1) If an industry standard that applies to participants in a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry is registered under this Part,

each participant in that section of the industry must comply with the standard.

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).
- (3) Subsections (1) and (2) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

### **129 Formal warnings—breach of industry standards**

- (1) This section applies to a person who is a participant in a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry.
- (2) The ACMA may issue a formal warning if the person contravenes an industry standard registered under this Part.

### **130 Variation of industry standards**

The ACMA may, by legislative instrument, vary an industry standard that applies to participants in a particular section of the telecommunications industry, the telemarketing industry or the fax marketing industry if it is satisfied that it is necessary or convenient to do so to:

- (a) provide appropriate community safeguards in relation to one or more matters relating to the telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, of those participants; and

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- (b) otherwise regulate adequately those participants in relation to one or more matters relating to the telecommunications activities, telemarketing activities or fax marketing activities, as the case may be, of those participants.

Note: The ACMA may be satisfied that it is necessary or convenient to vary an industry standard that is inconsistent with the Australian Privacy Principles or a registered APP code (as defined in the *Privacy Act 1988*), following advice given by the Information Commissioner in the exercise of his or her functions under that Act.

### 131 Revocation of industry standards

- (1) The ACMA may, by legislative instrument, revoke an industry standard.
- (2) If:
  - (a) an industry code is registered under this Part; and
  - (b) the code is expressed to replace an industry standard;the industry standard is revoked when the code is registered.

### 132 Public consultation on industry standards

- (1) Before determining or varying an industry standard, the ACMA must:
  - (a) cause to be published in a newspaper circulating in each State a notice:
    - (i) stating that the ACMA has prepared a draft of the industry standard or variation; and
    - (ii) stating that free copies of the draft will be made available to members of the public during normal office hours throughout the period specified in the notice; and
    - (iii) specifying the place or places where the copies will be available; and
    - (iv) inviting interested persons to give written comments about the draft to the ACMA within the period specified under subparagraph (ii); and
  - (b) make copies of the draft available in accordance with the notice.



- (2) The period specified under subparagraph (1)(a)(ii) must run for at least 30 days after the publication of the notice.
- (3) Subsection (1) does not apply to a variation if the variation is of a minor nature.
- (4) If interested persons have given comments in accordance with a notice under subsection (1), the ACMA must have due regard to those comments in determining or varying the industry standard, as the case may be.
- (5) In this section:

*State* includes the Northern Territory and the Australian Capital Territory.

### **133 Consultation with ACCC and the Telecommunications Industry Ombudsman**

- (1) Before determining or varying an industry standard, the ACMA must consult the ACCC.
- (1A) Before determining or varying an industry standard (other than an industry standard under section 125A or 125B), the ACMA must consult the Telecommunications Industry Ombudsman.
- (2) Before revoking an industry standard under subsection 131(1), the ACMA must consult the ACCC and the Telecommunications Industry Ombudsman.

### **134 Consultation with Information Commissioner**

- (1) This section applies to an industry standard that deals with a matter set out in paragraph 113(3)(f), including a matter dealt with by:
  - (a) the Australian Privacy Principles; or
  - (b) other provisions of the *Privacy Act 1988* relating to those principles; or
  - (c) a registered APP code (as defined in that Act); or
  - (d) provisions of that Act that relate to a registered APP code.

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- (2) Before determining or varying the industry standard, the ACMA must consult the Information Commissioner.
- (3) Before revoking the industry standard under subsection 131(1), the ACMA must consult the Information Commissioner.

**135 Consultation with consumer body**

- (1) Before determining or varying an industry standard, the ACMA must consult at least one body or association that represents the interests of consumers.
- (2) Before revoking an industry standard under subsection 131(1), the ACMA must consult at least one body or association that represents the interests of consumers.

**135A Consultation with the States and Territories**

Before determining or varying an industry standard under section 125A or 125B, the ACMA must consult:

- (a) each State; and
- (b) the Australian Capital Territory; and
- (c) the Northern Territory.

## **Division 6—Register of industry codes and industry standards**

### **136 ACMA to maintain Register of industry codes and industry standards**

- (1) The ACMA is to maintain a Register in which the ACMA includes:
  - (a) all industry codes required to be registered under this Part, as those codes are in force from time to time; and
  - (b) all industry standards; and
  - (c) all requests made under section 118; and
  - (d) all notices under section 119; and
  - (e) all directions given under section 121.
- (1A) Paragraph (1)(a) does not require the ACMA to continue to include in the Register an industry code, or a provision of an industry code, removed from the Register under section 122A.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*:
  - (a) inspect the Register; and
  - (b) make a copy of, or take extracts from, the Register.
- (4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACMA gives the person a printout of, or of the relevant parts of, the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACMA may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.

## **Division 6A—Reimbursement of costs of development or variation of consumer-related industry codes**

### **136A Application for eligibility for reimbursement of costs of development or variation of consumer-related industry code**

- (1) If a body or association proposes to develop or vary an industry code that:
- (a) applies to participants in a particular section of the telecommunications industry; and
  - (b) deals with one or more matters relating to the telecommunications activities of those participants; and
  - (c) deals wholly or mainly with one or more matters relating to the relationship between carriage service providers and their retail customers;

the body or association may apply to the ACMA for a declaration that the body or association is eligible for reimbursement of refundable costs incurred by it in developing the code or varying the code, as the case may be.

Note: For *refundable cost*, see section 136E.

*Form of application etc.*

- (2) An application must be:
- (a) in writing; and
  - (b) in accordance with the form approved in writing by the ACMA; and
  - (c) accompanied by:
    - (i) an estimate of the total of the refundable costs likely to be incurred by the body or association in developing the code or varying the code, as the case may be; and
    - (ii) a statement breaking down that estimate into categories of refundable costs.

*Further information*

- (3) The ACMA may, within 20 business days after an application is made, request the applicant to give the ACMA, within the period specified in the request, further information about the application.
- (4) The ACMA may refuse to consider the application until the applicant gives the ACMA the information.

*Definition*

- (5) In this section:

***business day*** means a day on which the ACMA is open for business in the Australian Capital Territory and in Victoria.

**136B Declaration of eligibility for reimbursement of costs of development or variation of consumer-related industry code**

*Development of code*

- (1) If a body or association makes an application under subsection 136A(1) for a declaration in relation to the development of a code, the ACMA must make the declaration if it is satisfied that:
  - (a) the body or association represents the section of the telecommunications industry referred to in paragraph 136A(1)(a); and
  - (b) the code will deal wholly or mainly with one or more matters relating to the relationship between carriage service providers and their retail customers; and
  - (c) the process for developing the code, as outlined in the application, is likely to ensure that the interests of those retail customers are adequately represented in relation to the development of the code; and

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- (d) the total of the refundable costs likely to be incurred by the body or association in developing the code, as set out in the estimate that accompanied the application, is reasonable.
- (2) If the ACMA is not satisfied as to the matters set out in subsection (1), the ACMA must, by written notice given to the applicant, refuse to make the declaration.

*Variation of code*

- (2A) If a body or association makes an application under subsection 136A(1) for a declaration in relation to the variation of a code, the ACMA must make the declaration if it is satisfied that:
  - (a) the body or association represents the section of the telecommunications industry referred to in paragraph 136A(1)(a); and
  - (b) the code is registered under this Part; and
  - (c) the code deals wholly or mainly with one or more matters relating to the relationship between carriage service providers and their retail customers; and
  - (d) the process for varying the code, as outlined in the application, is likely to ensure that the interests of those retail customers are adequately represented in relation to the variation of the code; and
  - (e) the total of the refundable costs likely to be incurred by the body or association in varying the code, as set out in the estimate that accompanied the application, is reasonable.
- (2B) If the ACMA is not satisfied as to the matters set out in subsection (2A), the ACMA must, by written notice given to the applicant, refuse to make the declaration.

*General provisions*

- (3) A declaration under this section is irrevocable, and remains in force for 2 years.
- (4) A declaration under this section is not a legislative instrument.

**136C Reimbursement of costs of developing or varying  
consumer-related industry code**

*Reimbursement of costs—development of code*

- (1) If:
- (a) a section 136B declaration was made in relation to the development of an industry code by a body or association; and
  - (b) when the section 136B declaration was in force, the body or association gave a copy of the code to the ACMA under section 117; and
  - (c) the ACMA is satisfied that the code deals wholly or mainly with one or more matters relating to the relationship between carriage service providers and their retail customers; and
  - (d) the ACMA is satisfied that the process for the development of the code ensured that the interests of those retail customers were adequately represented in relation to the development of the code; and
  - (e) the copy of the code was accompanied by:
    - (i) a written statement itemising one or more costs incurred by the body or association in developing the code; and
    - (ii) a written claim for reimbursement of those costs; and
    - (iii) a written declaration by an approved auditor that he or she is of the opinion that the subparagraph (i) statement complies with the approved auditing requirements; and
    - (iv) a written statement describing the process for the development of the code; and
  - (f) the ACMA is satisfied that each of the costs itemised in the subparagraph (e)(i) statement:
    - (i) is a refundable cost incurred by the body or association in developing the code; and
    - (ii) was incurred when the section 136B declaration was in force;

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the ACMA must, by written notice given to the body or association, determine that the body or association is entitled to be paid a specified amount.

Note: For *refundable cost*, see section 136E.

- (2) The specified amount must be equal to whichever is the lesser of the following:
  - (a) the total of the costs itemised in the subparagraph (1)(e)(i) statement;
  - (b) the estimate that accompanied the application for the section 136B declaration.
- (3) The ACMA, on behalf of the Commonwealth, must pay the specified amount to the body or association within 30 days after the day on which the body or association was notified under subsection (1) of its entitlement to be paid that amount.

*Reimbursement of costs—variation of code*

- (3A) If:
  - (a) a section 136B declaration was made in relation to the variation of an industry code by a body or association; and
  - (b) when the section 136B declaration was in force, the body or association gave a copy of the variation to the ACMA under section 119A; and
  - (c) the ACMA is satisfied that the code deals wholly or mainly with one or more matters relating to the relationship between carriage service providers and their retail customers; and
  - (d) the ACMA is satisfied that the process for the variation of the code ensured that the interests of those retail customers were adequately represented in relation to the variation of the code; and
  - (e) the copy of the variation was accompanied by:
    - (i) a written statement itemising one or more costs incurred by the body or association in varying the code; and
    - (ii) a written claim for reimbursement of those costs; and



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- (iii) a written declaration by an approved auditor that he or she is of the opinion that the subparagraph (i) statement complies with the approved auditing requirements; and
- (iv) a written statement describing the process for the variation of the code; and
- (f) the ACMA is satisfied that each of the costs itemised in the subparagraph (e)(i) statement:
  - (i) is a refundable cost incurred by the body or association in varying the code; and
  - (ii) was incurred when the section 136B declaration was in force;

the ACMA must, by written notice given to the body or association, determine that the body or association is entitled to be paid a specified amount.

Note: For *refundable cost*, see section 136E.

- (3B) The specified amount must be equal to whichever is the lesser of the following:
  - (a) the total of the costs itemised in the subparagraph (3A)(e)(i) statement;
  - (b) the estimate that accompanied the application for the section 136B declaration.
- (3C) The ACMA, on behalf of the Commonwealth, must pay the specified amount to the body or association within 30 days after the day on which the body or association was notified under subsection (3A) of its entitlement to be paid that amount.

*Appropriation*

- (4) The Consolidated Revenue Fund is appropriated for payments under this section.

*Approved auditors and approved auditing requirements*

- (5) The ACMA may make a written determination specifying:

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- (a) the persons who are to be *approved auditors* for the purposes of this section; and
- (b) the requirements that are to be *approved auditing requirements* for the purposes of this section.

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

- (6) A determination under subsection (5) has effect accordingly.
- (7) A determination under subsection (5) is a legislative instrument.

**136D Costs—transactions between persons not at arm's length**

If:

- (a) a body or association has incurred a cost in connection with a transaction where the parties to the transaction are not dealing with each other at arm's length in relation to the transaction; and
  - (b) apart from this section, the cost is counted for the purposes of the application of this Division to the body or association; and
  - (c) the amount of the cost is greater than is reasonable;
- the amount of the cost is taken, for the purposes of the application of this Division in relation to the body or association, to be the amount that would have been reasonable if the parties were dealing with each other at arm's length.

**136E Refundable cost**

- (1) For the purposes of this Division, a *refundable cost* incurred by a body or association in developing or varying a code is a cost incurred by the body or association in developing the code or varying the code, as the case may be, other than a cost specified in a written determination made by the ACMA under this subsection.

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

- (2) A determination under subsection (1) is a legislative instrument.
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## **Division 7—Miscellaneous**

### **137 Protection from civil proceedings**

Civil proceedings do not lie against:

- (a) an internet service provider; or
- (b) an electronic messaging service provider;

in respect of anything done by the provider in connection with:

- (c) an industry code registered under this Part; or
- (d) an industry standard;

in so far as the code or standard deals with the procedures referred to in paragraph 113(3)(q).

### **138 Implied freedom of political communication**

This Part does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

### **139 Agreements for the carrying on of telemarketing activities or fax marketing activities must require compliance with this Part**

- (1) A person (the *first person*) must not enter into a contract or arrangement, or arrive at an understanding, with another person, if:
  - (a) under the contract, arrangement or understanding, the other person undertakes to carry on one or more telemarketing activities or fax marketing activities; and
  - (b) the contract, arrangement or understanding does not contain an express provision to the effect that the other person will comply with this Part in relation to the telemarketing activities or fax marketing activities covered by the contract, arrangement or understanding.

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*Ancillary contraventions*

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

*Civil penalty provisions*

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Validity of contracts, arrangements or understandings*

- (4) A failure to comply with subsection (1) does not affect the validity of any contract, arrangement or understanding.

## **Part 7—Layer 2 bitstream services**

### **140 Simplified outline**

The following is a simplified outline of this Part:

- A local access line that belongs to a telecommunications network (other than the national broadband network) must not be used to supply a fixed-line carriage service if:
  - (a) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
  - (b) no Layer 2 bitstream service is available for supply to those customers or prospective customers using the network; and
  - (c) the network came into existence, or was upgraded, on or after 1 January 2011.

### **141 Supply of Layer 2 bitstream services**

#### *Scope*

- (1) This section applies to a local access line if:
  - (a) the local access line is:
    - (i) part of the infrastructure of a telecommunications network in Australia; or
    - (ii) used, or for use, in or in connection with a telecommunications network in Australia; and
  - (b) the network is not the national broadband network; and

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- (c) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
- (d) no Layer 2 bitstream service is available for supply to those customers or prospective customers using the network; and
- (e) either:
  - (i) the network came into existence on or after 1 January 2011; or
  - (ii) the network was altered or upgraded on or after 1 January 2011 and, as a result of the alteration or upgrade, the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia.

Note 1: See also section 141B (deemed networks).

Note 2: For exemptions, see section 141A.

### *Sole owner of local access line*

- (2) If there is only one owner of the local access line, the owner of the local access line must not:
  - (a) use the local access line, either alone or jointly with one or more other persons, to supply a fixed-line carriage service; or
  - (b) allow or permit another person to use the local access line to supply a fixed-line carriage service.

### *Multiple owners of local access line*

- (3) If there are 2 or more owners of the local access line, an owner of the local access line must not:
  - (a) use the local access line, either alone or jointly with one or more other persons, to supply a fixed-line carriage service; or
  - (b) either alone or together with one or more other owners, allow or permit another person to use the local access line to supply a fixed-line carriage service.

*Offence*

- (4) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2) or (3); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty: 20,000 penalty units.

*Definitions*

- (10) In this section:

**alter**, in relation to a telecommunications network, has a meaning affected by section 141E.

**fixed-line carriage service** means:

- (a) a carriage service that is supplied using a line to premises occupied or used by an end-user; or
- (b) a service that facilitates the supply of a carriage service covered by paragraph (a).

**local access line** has the meaning given by section 141D.

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

**small business customer** has the meaning given by section 141G.

**superfast carriage service** means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the download transmission speed of the carriage service is normally more than 25 megabits per second; and
- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

**upgrade**, in relation to a telecommunications network, has a meaning affected by section 141F.

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### 141A Exemptions

- (1) The Minister may, by written instrument, exempt a specified network from section 141.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (2) The Minister may, by written instrument, exempt a specified local access line from section 141.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (3) The Minister may, by written instrument, exempt a specified owner from subsections 141(2) and (3).

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (4) An instrument under subsection (1), (2) or (3) may be:

- (a) unconditional; or
- (b) subject to such conditions (if any) as are specified in the instrument.

- (5) Before making an instrument under subsection (1), (2) or (3), the Minister must consult:

- (a) the ACCC; and
- (b) the ACMA.

- (6) An instrument under subsection (1), (2) or (3) is not a legislative instrument.

- (7) In this section:

***local access line*** has the meaning given by section 141D.

### 141B Deemed networks

- (1) For the purposes of this Part, if:
- (a) a telecommunications network is altered or upgraded on or after 1 January 2011; and
  - (b) as a result of the alteration or upgrade, a part of the network became capable of being used to supply a superfast carriage



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service to residential or small business customers, or prospective residential or small business customers, in Australia;

then:

- (c) that part is taken to be a network in its own right; and
- (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(2) For the purposes of this Part, if:

- (a) a telecommunications network is extended on or after 1 January 2011; and
- (b) the extended part of the network is capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;

then:

- (c) the extended part is taken to be a network in its own right; and
- (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(3) If:

- (a) a part of the infrastructure of a telecommunications network is situated in a particular area that is being or was developed as a particular stage of a real estate development project (within the ordinary meaning of that expression); and
- (b) the network is extended to another area that is being, or is to be, developed as another stage of the project;

subsection (2) does not apply to the extension.

(4) If:

- (a) a telecommunications network was in existence immediately before 1 January 2011; and
- (b) the network is extended on or after 1 January 2011; and
- (c) no point on the infrastructure of the extension is located more than:
  - (i) 1 kilometre; or

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- (ii) if a longer distance is specified in the regulations—that longer distance;  
from a point on the infrastructure of the network as the network stood immediately before 1 January 2011;  
subsection (2) does not apply to the extension.
- (5) The regulations may provide that subsection (2) does not apply to a specified extension of a telecommunications network.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

### **141C Certain installations and connections are not taken to be an extension, alteration or upgrade**

For the purposes of this Part, if:

- (a) a line is or was installed for the purposes of connecting particular premises to a telecommunications network; and
  - (b) the installation of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the network; and
  - (c) the premises are in close proximity to a line that forms part of the infrastructure of the network; and
  - (d) the network is capable of being used to supply a superfast carriage service; and
  - (e) the network came into existence before 1 January 2011;
- neither the installation of the line mentioned in paragraph (a), nor the connection of the premises, is taken to be an extension, alteration or upgrade of the network.

### **141D Local access line**

- (1) For the purposes of this Part, a **local access line** is a line that is part of the infrastructure of a local access network.
- (2) However, a line does not form part of a **local access line** to the extent that the line is on the customer side of the boundary of a telecommunications network.

- (3) For the purposes of this section, the ***boundary of a telecommunications network*** is to be determined in the same manner in which it is determined under section 22 for the purposes of sections 20, 21 and 30.
- (4) For the purposes of this section, ***local access network*** has the meaning generally accepted within the telecommunications industry.

**141E Alteration**

For the purposes of this Part, an ***alteration*** of a telecommunications network does not include an extension of the network.

**141F Upgrade of telecommunications network**

For the purposes of this Part, an ***upgrade*** of a telecommunications network does not include an extension of the network.

**141G Small business customer**

For the purposes of this Part, ***small business customer*** means:

- (a) a customer who is a small business employer (within the meaning of the *Fair Work Act 2009*); or
- (b) a customer who:
  - (i) carries on a business; and
  - (ii) does not have any employees.

For the purposes of paragraph (a) of this section, it is to be assumed that each reference in section 23 of the *Fair Work Act 2009* to a national system employer were a reference to an employer (within the ordinary meaning of that expression).

## Part 8—Superfast fixed-line networks

### Division 1—Introduction

#### 142 Simplified outline

The following is a simplified outline of this Part:

- A controller of a telecommunications network (other than the national broadband network) must not use a local access line to supply an eligible service to a person other than a carrier or a service provider, if:
  - (a) the local access line is part of the infrastructure of the network; and
  - (b) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
  - (c) the network came into existence, or was upgraded, on or after 1 January 2011.

#### 142A Definitions

In this Part:

***alter***, in relation to a telecommunications network, has a meaning affected by section 159.

***electricity supply body*** has the same meaning as in the *National Broadband Network Companies Act 2011*.

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

**gas supply body** has the same meaning as in the *National Broadband Network Companies Act 2011*.

**local access line** has the meaning given by section 158.

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

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

**sewerage services body** has the same meaning as in the *National Broadband Network Companies Act 2011*.

**small business customer** means:

- (a) a customer who is a small business employer (within the meaning of the *Fair Work Act 2009*); or
- (b) a customer who:
  - (i) carries on a business; and
  - (ii) does not have any employees.

For the purposes of paragraph (a) of this definition, it is to be assumed that each reference in section 23 of the *Fair Work Act 2009* to a national system employer were a reference to an employer (within the ordinary meaning of that expression).

**State or Territory road authority** has the same meaning as in the *National Broadband Network Companies Act 2011*.

**storm water drainage services** has the same meaning as in the *National Broadband Network Companies Act 2011*.

**storm water drainage services body** has the same meaning as in the *National Broadband Network Companies Act 2011*.

**superfast carriage service** means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the download transmission speed of the carriage service is normally more than 25 megabits per second; and

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- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

***upgrade***, in relation to a telecommunications network, has a meaning affected by section 160.

***water supply body*** has the same meaning as in the *National Broadband Network Companies Act 2011*.

## **Division 2—Supply of eligible services to be on wholesale basis**

### **143 Supply of eligible services to be on wholesale basis**

#### *Scope*

- (1) This section applies to a local access line if:
  - (a) the local access line is part of the infrastructure of a telecommunications network in Australia; and
  - (b) the network is used, or proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
  - (c) the network is not the national broadband network; and
  - (d) either:
    - (i) the network came into existence on or after 1 January 2011; or
    - (ii) the network was altered or upgraded on or after 1 January 2011 and, as a result of the alteration or upgrade, the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia.

Note 1: See also section 156 (deemed networks).

Note 2: For exemptions, see sections 144 to 151.

#### *Person in position to exercise control of network*

- (2) A person who is in a position to exercise control of the network, or a person who is an associate of such a person, must not use the local access line, either alone or jointly with one or more other persons, to supply an eligible service unless the service is supplied to:
  - (a) a carrier; or

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(b) a service provider.

Note 1: For when a person is in a position to exercise control of a network, see section 155.

Note 2: For control of a company, see section 154.

*Offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty: 20,000 penalty units.

**144 Exemptions—Ministerial instrument**

- (1) The Minister may, by written instrument, exempt a specified network from section 143.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (2) The Minister may, by written instrument, exempt a specified local access line from section 143.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (3) The Minister may, by written instrument, exempt a specified person from subsection 143(2).

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (4) An instrument under subsection (1), (2) or (3) may be:
- (a) unconditional; or
  - (b) subject to such conditions (if any) as are specified in the instrument.

- (5) Before making an instrument under subsection (1), (2) or (3), the Minister must consult:

(a) the ACCC; and



- (b) the ACMA.
- (6) An instrument under subsection (1), (2) or (3) is not a legislative instrument.

### **145 Exemption—transport authorities**

- (1) Subsection 143(2) does not apply if:
  - (a) both:
    - (i) the eligible service is a carriage service; and
    - (ii) the sole use of the carriage service is use by Airservices Australia to carry communications necessary or desirable for the workings of aviation services; or
  - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to Airservices Australia unless the carriage service is supplied on the basis that Airservices Australia must not re-supply the carriage service.
- (3) Subsection 143(2) does not apply if:
  - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a State or Territory transport authority to carry communications necessary or desirable for the workings of the following services:
    - (i) train services of a kind provided by the authority;
    - (ii) bus or other road services of a kind provided by the authority;
    - (iii) tram services of a kind provided by the authority; or
  - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.
- (4) Paragraph (3)(a) does not apply to a carriage service supplied to a State or Territory transport authority unless the carriage service is supplied on the basis that the State or Territory transport authority must not re-supply the carriage service.

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- (5) Subsection 143(2) does not apply if:
- (a) both:
    - (i) the eligible service is a carriage service; and
    - (ii) the sole use of the carriage service is use by a rail corporation to carry communications necessary or desirable for the workings of train services; or
  - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.
- (6) Paragraph (5)(a) does not apply to a carriage service supplied to a rail corporation unless the carriage service is supplied on the basis that the rail corporation must not re-supply the carriage service.

**146 Exemption—electricity supply bodies**

- (1) Subsection 143(2) does not apply if:
- (a) the eligible service is a carriage service, and the sole use of the carriage service is use by an electricity supply body to carry communications necessary or desirable for:
    - (i) managing the generation, transmission, distribution or supply of electricity; or
    - (ii) charging for the supply of electricity; or
  - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to an electricity supply body unless the carriage service is supplied on the basis that the electricity supply body must not re-supply the carriage service.

**147 Exemption—gas supply bodies**

- (1) Subsection 143(2) does not apply if:
- (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a gas supply body to carry communications necessary or desirable for:

- (i) managing the transmission or distribution of natural gas in a pipeline; or
  - (ii) charging for the supply of natural gas transmitted or distributed in a pipeline; or
  - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a gas supply body unless the carriage service is supplied on the basis that the gas supply body must not re-supply the carriage service.

#### **148 Exemption—water supply bodies**

- (1) Subsection 143(2) does not apply if:
- (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a water supply body to carry communications necessary or desirable for:
    - (i) managing the distribution of water in a pipeline; or
    - (ii) charging for the supply of water distributed in a pipeline; or
  - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a water supply body unless the carriage service is supplied on the basis that the water supply body must not re-supply the carriage service.

#### **149 Exemption—sewerage services bodies**

- (1) Subsection 143(2) does not apply if:
- (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a sewerage services body to carry communications necessary or desirable for:
    - (i) managing the supply of sewerage services; or
    - (ii) charging for the supply of sewerage services; or

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- (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a sewerage services body unless the carriage service is supplied on the basis that the sewerage services body must not re-supply the carriage service.

**150 Exemption—storm water drainage services bodies**

- (1) Subsection 143(2) does not apply if:
  - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a storm water drainage services body to carry communications necessary or desirable for:
    - (i) managing the supply of storm water drainage services; or
    - (ii) charging for the supply of storm water drainage services; or
  - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a storm water drainage services body unless the carriage service is supplied on the basis that the storm water drainage services body must not re-supply the carriage service.

**151 Exemption—State or Territory road authorities**

- (1) Subsection 143(2) does not apply if:
  - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a State or Territory road authority to carry communications necessary or desirable for the management or control of road traffic; or
  - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a State or Territory road authority unless the carriage service is

supplied on the basis that the State or Territory road authority must not re-supply the carriage service.

## Division 3—Other provisions

### 152 Associate

- (1) For the purposes of this Part, an *associate* of a person (the *controller*) in relation to control of:
- (a) a telecommunications network; or
  - (b) a company;
- is:
- (c) a partner of the controller; or
  - (d) if the controller or another person who is an associate of the controller under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
  - (e) a person (whether a company or not) who:
    - (i) acts, or is accustomed to act; or
    - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;  
in accordance with the directions, instructions or wishes of, or in concert with:
      - (iii) the controller; or
      - (iv) the controller and another person who is an associate of the controller under another paragraph; or
  - (f) another company if:
    - (i) the other company is a related body corporate of the controller for the purposes of the *Corporations Act 2001*; or
    - (ii) the controller, or the controller and another person who is an associate of the controller under another paragraph, is or are in a position to exercise control of the other company.
- (2) However, persons are not *associates* of each other if the ACCC is satisfied that:

- (a) they do not act together in any relevant dealings relating to the network or company; and
- (b) neither of them is in a position to exert influence over the business dealings of the other in relation to the network or company.

### **153 Control**

In this Part, *control* includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

### **154 Control of a company**

- (1) For the purposes of this Part, the question of whether a person is in a position to exercise control of a company is to be determined under Schedule 1 to the *Broadcasting Services Act 1992*.
- (2) However, in determining that question:
  - (a) the definition of *associate* in subsection 6(1) of the *Broadcasting Services Act 1992* does not apply; and
  - (b) the definition of *associate* in section 152 of this Act applies instead.

### **155 When a person is in a position to exercise control of a network**

- (1) For the purposes of this Part, a person (the *controller*) is in a position to exercise control of a telecommunications network if:
  - (a) the controller legally or beneficially owns the network (whether alone or together with one or more other persons);  
or
  - (b) the controller is in a position, either alone or together with an associate of the controller and whether directly or indirectly:
    - (i) to exercise control of the operation of all or part of the network; or

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- (ii) to exercise control of the selection of the kinds of services that are supplied using the network; or
- (iii) to exercise control of the supply of services using the network; or
- (c) a company other than the controller legally or beneficially owns the network (whether alone or together with one or more other persons), and:
  - (i) the controller is in a position, either alone or together with an associate of the controller, to exercise control of the company; or
  - (ii) the controller, either alone or together with an associate of the controller, is in a position to veto any action taken by the board of directors of the company; or
  - (iii) the controller, either alone or together with an associate of the controller, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
  - (iv) the controller, either alone or together with an associate of the controller, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
  - (v) the company or more than 50% of its directors act, or are accustomed to act, in accordance with the directions, instructions or wishes of, or in concert with, the controller, the controller and an associate of the controller acting together, or the directors of the controller; or
  - (vi) the company or more than 50% of its directors, under a contract or an arrangement or understanding (whether formal or informal), are intended or expected to act in accordance with the directions, instructions or wishes of, or in concert with, the controller, the controller and an associate of the controller acting together, or the directors of the controller.



- (2) An employee is not, except through an association with another person, to be regarded as being in a position to exercise control of a network under subsection (1) purely because of being an employee.
- (3) More than one person may be in a position to exercise control of a network.

### **156 Deemed networks**

- (1) For the purposes of this Part, if:
  - (a) a telecommunications network is altered or upgraded on or after 1 January 2011; and
  - (b) as a result of the alteration or upgrade, a part of the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;then:
  - (c) that part is taken to be a network in its own right; and
  - (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.
- (2) For the purposes of this Part, if:
  - (a) a telecommunications network is extended on or after 1 January 2011; and
  - (b) the extended part of the network is capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;then:
  - (c) the extended part is taken to be a network in its own right; and
  - (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.
- (3) If:

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- (a) a part of the infrastructure of a telecommunications network is situated in a particular area that is being or was developed as a particular stage of a real estate development project (within the ordinary meaning of that expression); and
  - (b) the network is extended to another area that is being, or is to be, developed as another stage of the project;
- subsection (2) does not apply to the extension.
- (4) If:
- (a) a telecommunications network was in existence immediately before 1 January 2011; and
  - (b) the network is extended on or after 1 January 2011; and
  - (c) no point on the infrastructure of the extension is located more than:
    - (i) 1 kilometre; or
    - (ii) if a longer distance is specified in the regulations—that longer distance;from a point on the infrastructure of the network as the network stood immediately before 1 January 2011;
- subsection (2) does not apply to the extension.
- (5) The regulations may provide that subsection (2) does not apply to a specified extension of a telecommunications network.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

**157 Certain installations and connections are not taken to be an extension, alteration or upgrade**

For the purposes of this Part, if:

- (a) a line is or was installed for the purposes of connecting particular premises to a telecommunications network; and
- (b) the installation of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the network; and
- (c) the premises are in close proximity to a line that forms part of the infrastructure of the network; and

- (d) the network is capable of being used to supply a superfast carriage service; and
- (e) the network came into existence before 1 January 2011; neither the installation of the line mentioned in paragraph (a), nor the connection of the premises, is taken to be an extension, alteration or upgrade of the network.

### **158 Local access line**

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

### **159 Alteration**

For the purposes of this Part, an **alteration** of a telecommunications network does not include an extension of the network.

### **160 Upgrade of telecommunications network**

For the purposes of this Part, an **upgrade** of a telecommunications network does not include an extension of the network.

## Part 13—Protection of communications

### Division 1—Introduction

#### 270 Simplified outline

The following is a simplified outline of this Part:

- Carriers, carriage service providers, number-database operators, emergency call persons and their respective associates must protect the confidentiality of information that relates to:
  - (a) the contents of communications that have been, or are being, carried by carriers or carriage service providers; and
  - (b) carriage services supplied by carriers and carriage service providers; and
  - (c) the affairs or personal particulars of other persons.
- The disclosure or use of protected information is authorised in limited circumstances (for example, disclosure or use for purposes relating to the enforcement of the criminal law).
- An authorised recipient of protected information may only disclose or use the information for an authorised purpose.
- Certain record-keeping requirements are imposed in relation to authorised disclosures or uses of information.

#### 271 Eligible person

For the purposes of this Part, an *eligible person* is a person who is:

- (a) a carrier; or

- (b) a carriage service provider; or
- (c) an employee of a carrier; or
- (d) an employee of a carriage service provider; or
- (e) a telecommunications contractor; or
- (f) an employee of a telecommunications contractor.

### **272 Number-database operator and eligible number-database person**

- (1) For the purposes of this Part, a *number-database operator* is a person in respect of which a determination is in force under subsection 472(1).
- (2) For the purposes of this Part, an *eligible number-database person* is a person who is:
  - (a) a number-database operator; or
  - (b) an employee of a number-database operator; or
  - (c) a number-database contractor; or
  - (d) an employee of a number-database contractor.

### **273 Information**

A reference in this Part to *information* includes a reference to opinion.

### **274 Telecommunications contractor**

A reference in this Part to a *telecommunications contractor* is a reference to a person who performs services for or on behalf of:

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

but does not include a reference to a person who performs such services in the capacity of an employee of the carrier or provider.

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**275 Number-database contractor**

A reference in this Part to a *number-database contractor* is a reference to a person who performs services for or on behalf of a number-database operator, but does not include a reference to a person who performs such services in the capacity of an employee of the operator.

**275A Location information**

- (1) For the purposes of this Part, information about the location of:
  - (a) a mobile telephone handset; or
  - (b) any other mobile communications device;is taken to be information that relates to the affairs of the customer responsible for the handset or device.
- (2) For the purposes of this Part, a document about the location of:
  - (a) a mobile telephone handset; or
  - (b) any other mobile communications device;is taken to be a document that relates to the affairs of the customer responsible for the handset or device.
- (3) This section is enacted for the avoidance of doubt.

**275B Emergency management person**

- (1) In this Part:

*emergency management person* means a person who holds, occupies or performs the duties of an office or position specified under subsection (2).
- (2) The AFP Minister may, by legislative instrument, specify either or both of the following for the purposes of the definition of *emergency management person* in subsection (1) of this section:
  - (a) offices;
  - (b) positions.

- (3) Offices or positions established by or under a law of a State or Territory may be specified under subsection (2).
- (4) Subsection (3) does not limit subsection (2).
- (5) Before making an instrument under subsection (2), the AFP Minister must consult the Minister administering this Act.

**275C Emergency**

In this Part:

***emergency*** means an emergency or disaster (however described) within the meaning of an emergency law.

**275D Emergency law**

- (1) In this Part:

***emergency law*** means a law specified under subsection (2).

- (2) The AFP Minister may, by legislative instrument, specify a law of a State or a Territory for the purposes of the definition of ***emergency law*** in subsection (1) of this section.

**275E Relevant information**

In this Part:

***relevant information*** means information, or the contents of a document, disclosed as permitted by section 285A.

## **Division 2—Primary disclosure/use offences**

### **276 Primary disclosure/use offence—eligible persons**

#### *Current eligible persons*

- (1) An eligible person must not disclose or use any information or document that:
  - (a) relates to:
    - (i) the contents or substance of a communication that has been carried by a carrier or carriage service provider; or
    - (ii) the contents or substance of a communication that is being carried by a carrier or carriage service provider (including a communication that has been collected or received by such a carrier or provider for carriage by it but has not been delivered by it); or
    - (iii) carriage services supplied, or intended to be supplied, to another person by a carrier or carriage service provider; or
    - (iv) the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
  - (b) comes to the person's knowledge, or into the person's possession:
    - (i) if the person is a carrier or carriage service provider—in connection with the person's business as such a carrier or provider; or
    - (ii) if the person is an employee of a carrier or carriage service provider—because the person is employed by the carrier or provider in connection with its business as such a carrier or provider; or
    - (iii) if the person is a telecommunications contractor—in connection with the person's business as such a contractor; or



- (iv) if the person is an employee of a telecommunications contractor—because the person is employed by the contractor in connection with its business as such a contractor.

*Former eligible persons*

- (2) A person who has been an eligible person must not disclose or use any information or document that:
  - (a) relates to a matter mentioned in paragraph (1)(a); and
  - (b) came to the person's knowledge, or into the person's possession:
    - (i) if the person was a carrier or carriage service provider—in connection with the person's business as such a carrier or provider; or
    - (ii) if the person was an employee of a carrier or carriage service provider—because the person was employed by the carrier or provider in connection with its business as such a carrier or provider; or
    - (iii) if the person was a telecommunications contractor—in connection with the person's business as such a contractor; or
    - (iv) if the person was an employee of a telecommunications contractor—because the person was employed by the contractor in connection with its business as such a contractor.

*Offence*

- (3) A person who contravenes this section commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

Note 1: This section is subject to the exceptions in Division 3 of this Part and in Chapter 4 of the *Telecommunications (Interception and Access) Act 1979*.

Note 2: See also sections 4AA and 4B of the *Crimes Act 1914*.

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*Scope of subsection (1)—carriage by means of electromagnetic energy*

- (4) Subparagraphs (1)(a)(i) and (ii) do not apply to a communication that is or has been carried by a carrier or carriage service provider unless the carriage was by means of, is by means of, or is proposed to be delivered by means of, guided and/or unguided electromagnetic energy.

**277 Primary disclosure/use offence—eligible number-database persons**

*Current eligible number-database persons*

- (1) An eligible number-database person must not disclose or use any information or document that:
- (a) relates to:
    - (i) carriage services supplied, or intended to be supplied, to another person by a carrier or carriage service provider; or
    - (ii) the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
  - (b) comes to the person's knowledge, or into the person's possession:
    - (i) if the person is a number-database operator—in connection with the person's business as such an operator; or
    - (ii) if the person is an employee of a number-database operator—because the person is employed by the operator in connection with its business as such an operator; or
    - (iii) if the person is a number-database contractor—in connection with the person's business as such a contractor; or
    - (iv) if the person is an employee of a number-database contractor—because the person is employed by the

contractor in connection with its business as such a contractor.

*Former eligible number-database persons*

- (2) A person who has been an eligible number-database person must not disclose or use any information or document that:
- (a) relates to a matter mentioned in paragraph (1)(a); and
  - (b) came to the person's knowledge, or into the person's possession:
    - (i) if the person was a number-database operator—in connection with the person's business as such an operator; or
    - (ii) if the person was an employee of a number-database operator—because the person was employed by the operator in connection with its business as such an operator; or
    - (iii) if the person was a number-database contractor—in connection with the person's business as such a contractor; or
    - (iv) if the person was an employee of a number-database contractor—because the person was employed by the contractor in connection with its business as such a contractor.

*Offence*

- (3) A person who contravenes this section commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

Note 1: This section is subject to the exceptions in Division 3 of this Part and in Chapter 4 of the *Telecommunications (Interception and Access) Act 1979*.

Note 2: See also sections 4AA and 4B of the *Crimes Act 1914*.

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**278 Primary disclosure/use offence—emergency call persons**

*Current emergency call persons*

- (1) An emergency call person must not disclose or use any information or document that:
- (a) relates to:
    - (i) the contents or substance of a communication that has been carried by a carrier or carriage service provider; or
    - (ii) the contents or substance of a communication that is being carried by a carrier or carriage service provider; or
    - (iii) the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
  - (b) comes to the person's knowledge, or into the person's possession, in connection with the operation of an emergency call service.

*Former emergency call persons*

- (2) A person who has been an emergency call person must not disclose or use any information or document that:
- (a) relates to a matter mentioned in paragraph (1)(a); and
  - (b) came to the person's knowledge, or into the person's possession, in connection with the operation of an emergency call service.

*Offence*

- (3) A person who contravenes this section commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

Note 1: This section is subject to the exceptions in Division 3 of this Part and in Chapter 4 of the *Telecommunications (Interception and Access) Act 1979*.

Note 2: See also sections 4AA and 4B of the *Crimes Act 1914*.

*Scope of subsection (1)—carriage by means of electromagnetic energy*

- (4) Subparagraphs (1)(a)(i) and (ii) do not apply to a communication that is or has been carried by a carrier or carriage service provider unless the carriage was by means of, is by means of, or is proposed to be delivered by means of, guided and/or unguided electromagnetic energy.

## **Division 3—Exceptions to primary disclosure/use offences**

### **Subdivision A—Exceptions**

#### **279 Performance of person's duties**

- (1) Section 276 does not prohibit a disclosure or use by a person of information or a document if:
  - (a) the person is an employee of:
    - (i) a carrier; or
    - (ii) a carriage service provider; or
    - (iii) a telecommunications contractor; and
  - (b) the disclosure or use is made in the performance of the person's duties as such an employee.
- (2) Section 276 does not prohibit a disclosure or use by a person of information or a document if:
  - (a) the person is a telecommunications contractor; and
  - (b) the disclosure or use is made in the performance of the person's duties as such a contractor.
- (3) Section 277 does not prohibit a disclosure or use by a person of information or a document if:
  - (a) the person is an employee of:
    - (i) a number-database operator; or
    - (ii) a number-database contractor; and
  - (b) the disclosure or use is made in the performance of the person's duties as such an employee.
- (4) Section 277 does not prohibit a disclosure or use by a person of information or a document if:
  - (a) the person is a number-database contractor; and
  - (b) the disclosure or use is made in the performance of the person's duties as such a contractor.

- (5) Section 278 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the person is an employee of:
    - (i) a recognised person who operates an emergency call service; or
    - (ii) an emergency call contractor; and
  - (b) the disclosure or use is made in the performance of the person's duties as such an employee.
- (6) Section 278 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the person is an emergency call contractor; and
  - (b) the disclosure or use is made in the performance of the person's duties as such a contractor.

## **280 Authorisation by or under law**

- (1) Division 2 does not prohibit a disclosure or use of information or a document if:
- (a) in a case where the disclosure or use is in connection with the operation of an enforcement agency—the disclosure or use is required or authorised under a warrant; or
  - (b) in any other case—the disclosure or use is required or authorised by or under law.
- (1A) In applying paragraph (1)(a) to the Australian Commission for Law Enforcement Integrity, the reference in that paragraph to the operation of an enforcement agency is taken to be a reference to the performance of the functions of the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*).
- (1B) Subject to subsection (1C), paragraph (1)(b) does not apply to a disclosure of information or a document if:
- (a) the disclosure is required or authorised because of:
    - (i) a subpoena; or
    - (ii) a notice of disclosure; or

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- (iii) an order of a court;  
in connection with a civil proceeding; and
  - (b) the information or document is kept, by a service provider (within the meaning of the *Telecommunications (Interception and Access) Act 1979*), solely for the purpose of complying with Part 5-1A of that Act; and
  - (c) the information or document is not used or disclosed by the service provider for any purpose other than one or more of the following purposes:
    - (i) complying with Part 5-1A of that Act;
    - (ii) complying with the requirements of warrants under Chapters 2 and 3 of that Act or authorisations under Chapter 4 of that Act;
    - (iii) complying with requests or requirements to make disclosures provided for by sections 284 to 288 of this Act;
    - (iv) providing persons with access to their personal information in accordance with the *Privacy Act 1988*;
    - (v) a purpose prescribed by the regulations;
    - (vi) a purpose incidental to any of the purposes referred to in subparagraphs (i) to (v).
- (1C) Subsection (1B) does not apply:
- (a) in circumstances of a kind prescribed by the regulations; or
  - (b) to a disclosure to an enforcement agency (within the meaning of the *Telecommunications (Interception and Access) Act 1979*); or
  - (c) to a disclosure that occurs during the implementation phase (within the meaning of that Act).

(2) In this section:

**enforcement agency** has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.



## 281 Witnesses

- (1) Division 2 does not prohibit a disclosure by a person of information or a document if the person makes the disclosure as a witness summoned to give evidence or to produce documents.
- (2) Subject to subsection (3), this section does not apply to a disclosure of information or a document by a person as a witness in a civil proceeding if the information or document:
  - (a) is kept, by a service provider (within the meaning of the *Telecommunications (Interception and Access) Act 1979*), solely for the purpose of complying with Part 5-1A of that Act; and
  - (b) is not used or disclosed by the service provider for any purpose other than one or more of the following purposes:
    - (i) complying with Part 5-1A of that Act;
    - (ii) complying with the requirements of warrants under Chapters 2 and 3 of that Act or authorisations under Chapter 4 of that Act;
    - (iii) complying with requests or requirements to make disclosures provided for by sections 284 to 288 of this Act;
    - (iv) providing persons with access to their personal information in accordance with the *Privacy Act 1988*;
    - (v) a purpose prescribed by the regulations;
    - (vi) a purpose incidental to any of the purposes referred to in subparagraphs (i) to (v).
- (3) Subsection (2) does not apply:
  - (a) in circumstances of a kind prescribed by the regulations; or
  - (b) to a disclosure to an enforcement agency (within the meaning of the *Telecommunications (Interception and Access) Act 1979*); or
  - (c) to a disclosure that occurs during the implementation phase (within the meaning of that Act).

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**284 Assisting the ACMA, the eSafety Commissioner, the ACCC or the Telecommunications Industry Ombudsman**

- (1) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:
  - (a) the disclosure is made to, or to a member of the staff of, the ACMA; and
  - (b) the information or document may assist the ACMA to carry out its functions or powers.
- (1A) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:
  - (a) the disclosure is made to:
    - (i) the eSafety Commissioner; or
    - (ii) a member of the staff of the ACMA whose duties relate to the performance of the eSafety Commissioner's functions; and
  - (b) the information or document may assist the eSafety Commissioner to carry out his or her functions or powers.
- (2) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:
  - (a) the disclosure is made to, or to a member of the staff of, the ACCC; and
  - (b) the information or document may assist the ACCC to carry out its telecommunications functions and powers.
- (3) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:
  - (a) the disclosure is made to the Telecommunications Industry Ombudsman, or to an employee of the Telecommunications Industry Ombudsman; and
  - (b) the information or document may assist the Telecommunications Industry Ombudsman in the consideration of a complaint made to the Telecommunications Industry Ombudsman.

## **285 Integrated public number database**

### *Permitted uses*

- (1) Sections 276 and 277 do not prohibit a use by a person of information or a document if:
- (a) the information or document relates to information (other than information relating to an unlisted telephone number) contained in an integrated public number database; and
  - (b) the information or document relates to:
    - (i) carriage services supplied, or intended to be supplied, to another person by a carrier or carriage service provider; or
    - (ii) the affairs or personal particulars of another person (other than an address relating to an unlisted telephone number); and
  - (c) the use is made for purposes connected with:
    - (i) the provision of directory assistance services by or on behalf of a carriage service provider; or
    - (ii) the publication and maintenance of a public number directory; or
    - (iii) dealing with the matter or matters raised by a call to an emergency service number.

### *Permitted disclosures*

- (1A) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:
- (a) the information or document relates to information (other than information relating to an unlisted telephone number) contained in an integrated public number database; and
  - (b) the information or document relates to:
    - (i) carriage services supplied, or intended to be supplied, to another person by a carrier or carriage service provider; or

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- (ii) the affairs or personal particulars of another person (other than an address relating to an unlisted telephone number); and
- (c) the disclosure is made to another person for purposes connected with:
  - (i) the provision of directory assistance services by or on behalf of a carriage service provider; or
  - (ii) the publication and maintenance of a public number directory; or
  - (iii) dealing with the matter or matters raised by a call to an emergency service number; or
  - (iv) the conduct of research of a kind specified in an instrument under subsection (3); and
- (d) if the disclosure to the other person is for a purpose covered by subparagraph (c)(ii) or (iv)—the other person holds an authorisation in force under the integrated public number database scheme permitting the other person to use and disclose the information or document.

*Definitions*

- (2) In this section:

**business** includes a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis.

**educational institution** includes:

- (a) a pre-school; and
- (b) a school; and
- (c) a college; and
- (d) a university.

**integrated public number database** means:

- (a) an integrated public number database maintained by Telstra as mentioned in Part 4 of Schedule 2; or

- (b) an integrated public number database maintained by a person as mentioned in section 472.

**public number** means a number specified in the numbering plan as mentioned in subsection 455(3), but does not include an unlisted number.

**public number directory** means a record:

- (a) that contains either or both of the following:
- (i) the names of persons and their public numbers (whether or not it also contains their addresses);
  - (ii) the names of bodies and their public numbers (whether or not it also contains their addresses); and
- (b) that, in relation to a person or body that is not a qualifying entity, contains no other information about the person or body; and
- (c) that, in relation to a person or body that is a qualifying entity, contains no other information about the person or body apart from information:
- (i) that is of a kind specified in an instrument under subsection (4); and
  - (ii) that is applicable in relation to the person or body; and
- (d) that:
- (i) does not enable a person who only knows the public number of an end-user of a carriage service to readily identify the end-user's name and/or address; and
  - (ii) does not enable a person who only knows the whole or a part of the address of an end-user of a carriage service to readily identify the end-user's name and/or public number; and
- (e) that satisfies each requirement specified in an instrument under subsection (5).

**qualifying entity** means:

- (a) a person, or body, that is:
- (i) carrying on a business; and

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- (ii) registered under the *Australian Charities and Not-for-profits Commission Act 2012*, or not an ACNC type of entity; or
- (b) a registered charity; or
- (c) an educational institution that is:
  - (i) registered under the *Australian Charities and Not-for-profits Commission Act 2012*; or
  - (ii) not an ACNC type of entity; or
- (e) a department of the Commonwealth, a State or a Territory; or
- (f) an agency, authority or instrumentality of the Commonwealth, a State or a Territory; or
- (g) any other person or body of a kind specified in an instrument under subsection (6) that is:
  - (i) registered under the *Australian Charities and Not-for-profits Commission Act 2012*; or
  - (ii) not an ACNC type of entity.

*Research*

- (3) The Minister may, by legislative instrument, specify kinds of research for the purposes of subparagraph (1A)(c)(iv). The Minister must not specify a kind of research unless the Minister is satisfied that the kind of research is in the public interest.

*Additional information in public number directory*

- (4) The Minister may, by legislative instrument, specify kinds of information for the purposes of subparagraph (c)(i) of the definition of **public number directory** in subsection (2). The Minister may specify different kinds of information in relation to different kinds of qualifying entities.

*Further requirements for public number directory*

- (5) The Minister may, by legislative instrument, specify requirements for the purposes of paragraph (e) of the definition of **public number directory** in subsection (2).

*Qualifying entities*

- (6) The Minister may, by legislative instrument, specify kinds of persons or bodies for the purposes of paragraph (g) of the definition of *qualifying entity* in subsection (2).

**285A Data for emergency warnings**

- (1) Sections 276 and 277 do not prohibit a disclosure by a person (the *discloser*) of information or a document if:
- (a) the information is, or the document consists of, information (including unlisted telephone numbers) contained in an integrated public number database; and
  - (b) the disclosure is made to an emergency management person; and
  - (c) the emergency management person has given the discloser a written notice stating that the disclosure is for the purpose of the information, or the contents of the document, being later used or disclosed for either or both of the following:
    - (i) for a purpose connected with persons being alerted to an emergency or a likely emergency;
    - (ii) for the purpose of reasonable testing of whether, in the event of an emergency occurring, persons would be able to be alerted to that emergency.
- (1A) A notice given as mentioned in paragraph (1)(c) may cover one or more disclosures (including each disclosure in a series of disclosures under an arrangement between the discloser and the emergency management person).
- (1B) A notice given as mentioned in paragraph (1)(c) is not a legislative instrument.
- (2) In this section:
- integrated public number database* means:
- (a) an integrated public number database maintained by Telstra as mentioned in Part 4 of Schedule 2; or

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- (b) an integrated public number database maintained by a person as mentioned in section 472.

**286 Calls to emergency service number**

Division 2 does not prohibit a disclosure by a person of information or a document if:

- (a) the information or document came to the person's knowledge, or into the person's possession, because of a call to an emergency service number; and
- (b) the information, or the contents of the document, consists of any or all of the following:
  - (i) a name;
  - (ii) a telephone number;
  - (iii) an address;
  - (iv) a location;
  - (v) the matter or matters raised by the call; and
- (c) the disclosure is made to:
  - (i) a member of a police force or service; or
  - (ii) a member of a fire service; or
  - (iii) a member of an ambulance service; or
  - (iv) an emergency call person; or
  - (v) a member of a service specified in the numbering plan for the purposes of this subparagraph; or
  - (vi) a service for despatching a force or service referred to in subparagraph (i), (ii), (iii) or (v);for purposes connected with dealing with the matter or matters raised by the call.

**287 Threat to person's life or health**

Division 2 does not prohibit a disclosure or use by a person (the *first person*) of information or a document if:

- (a) the information or document relates to the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and



- (b) the first person believes on reasonable grounds that the disclosure or use is reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person.

### **288 Communications for maritime purposes**

Division 2 does not prohibit a disclosure or use of information or a document if:

- (a) the disclosure or use is reasonably necessary for the purpose of the preservation of human life at sea; or
- (b) the disclosure or use:
  - (i) relates to the location of a vessel at sea; and
  - (ii) is made for maritime communications purposes.

### **289 Knowledge or consent of person concerned**

Division 2 does not prohibit a disclosure or use by a person of information or a document if:

- (a) the information or document relates to the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
- (b) the other person:
  - (i) is reasonably likely to have been aware or made aware that information or a document of that kind is usually disclosed, or used, as the case requires, in the circumstances concerned; or
  - (ii) has consented to the disclosure, or use, as the case requires, in the circumstances concerned.

### **290 Implicit consent of sender and recipient of communication**

Section 276 does not prohibit a disclosure or use by a person if:

- (a) the information or document relates to the contents or substance of a communication made by another person; and
- (b) having regard to all the relevant circumstances, it might reasonably be expected that the sender and the recipient of

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the communication would have consented to the disclosure or use, if they had been aware of the disclosure or use.

**291 Business needs of other carriers or service providers**

- (1) Section 276 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the disclosure or use is made by or on behalf of:
    - (i) a carrier (the *first carrier*); or
    - (ii) a carriage service provider (the *first provider*); and
  - (b) the disclosure or use is made for a purpose of, or is connected with, any other carrier or service provider carrying on its business as such a carrier or provider; and
  - (c) the information or document relates to a person (the *third person*) who is a customer or former customer of:
    - (i) the first carrier or the first provider; or
    - (ii) the other carrier or the other provider; and
  - (d) the disclosure or use is made for a purpose of, or is connected with:
    - (i) the supply, or proposed supply, by the other carrier or other provider to the third person of a carriage service or a content service; or
    - (ii) the supply, or proposed supply, by the other carrier or other provider to the third person of goods or services for use in connection with the supply of a carriage service or a content service; or
    - (iii) the installation, maintenance, operation or provision of access to a telecommunications network or a facility, where the network or facility is used, or for use, by the other carrier or the other provider to supply a carriage service or a content service to the third person; and
  - (e) if the information or document relates to the location of:
    - (i) a mobile telephone handset; or
    - (ii) any other mobile communications device;the third person has consented to the disclosure, or use, as the case requires, in the circumstances concerned.

- (2) Section 276 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the disclosure or use is made by or on behalf of a carriage service provider; and
  - (b) the disclosure or use is made for a purpose of, or is connected with, an arrangement, or proposed arrangement, made by a carriage service intermediary for the supply of a carriage service by the provider to a third person; and
  - (c) the information or document relates to the third person; and
  - (d) the disclosure or use is made for a purpose of, or is connected with:
    - (i) the supply, or proposed supply, by the provider to the third person of that service; or
    - (ii) the supply, or proposed supply, by the provider to the third person of goods or services for use in connection with the supply of the first-mentioned service; or
    - (iii) the installation, maintenance, operation or provision of access to a telecommunications network or a facility, where the network or facility is used, or for use, by the provider to supply the first-mentioned service to the third person; and
  - (e) if the information or document relates to the location of:
    - (i) a mobile telephone handset; or
    - (ii) any other mobile communications device;the third person has consented to the disclosure, or use, as the case requires, in the circumstances concerned.
- (3) Section 276 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the disclosure or use is made by or on behalf of a carriage service intermediary; and
  - (b) the disclosure or use is made for a purpose of, or is connected with, an arrangement, or proposed arrangement, made by the intermediary for the supply of a carriage service by a carriage service provider to a third person; and
  - (c) the information or document relates to the third person; and

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- (d) the disclosure or use is made for a purpose of, or is connected with:
  - (i) the supply, or proposed supply, by the provider to the third person of that service; or
  - (ii) the supply, or proposed supply, by the provider to the third person of goods or services for use in connection with the supply of the first-mentioned service; or
  - (iii) the installation, maintenance, operation or provision of access to a telecommunications network or a facility, where the network or facility is used, or for use, by the provider to supply the first-mentioned service to the third person; and
- (e) if the information or document relates to the location of:
  - (i) a mobile telephone handset; or
  - (ii) any other mobile communications device;the third person has consented to the disclosure, or use, as the case requires, in the circumstances concerned.

**291A Location dependent carriage services**

- (1) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:
  - (a) the information or document relates to information (other than information relating to an unlisted telephone number) contained in an integrated public number database; and
  - (b) the disclosure is to a carrier or a carriage service provider; and
  - (c) the disclosure is made for a purpose of, or is connected with, the supply, or proposed supply, by a person of a location dependent carriage service.
- (2) Sections 276 and 277 do not prohibit a disclosure or use by a carrier or a carriage service provider of information or a document if:
  - (a) the information or document relates to information (other than information relating to an unlisted telephone number) contained in an integrated public number database; and

- (b) the disclosure or use is made for a purpose of, or is connected with, the supply, or proposed supply, by a person of a location dependent carriage service.
- (3) In this section:
- integrated public number database*** means:
- (a) an integrated public number database maintained by Telstra as mentioned in Part 4 of Schedule 2; or
  - (b) an integrated public number database maintained by a person as mentioned in section 472.

***location dependent carriage service*** means a carriage service that depends for its provision on the availability of information about the addresses of end users of the carriage service.

## **292 Circumstances prescribed in the regulations**

- (1) Section 276 does not prohibit a disclosure or use of information or a document in circumstances specified in the regulations.
- (2) Section 277 does not prohibit a disclosure or use of information or a document in circumstances specified in the regulations.
- (3) Section 278 does not prohibit a disclosure or use of information or a document in circumstances specified in the regulations.

## **293 Uses connected with exempt disclosures**

- (1) Section 276 does not prohibit a use of information or a document if:
  - (a) the use is made for the purposes of, or in connection with, a disclosure of the information or document by the person; and
  - (b) because of this Division, the disclosure is not prohibited by section 276.
- (2) Section 277 does not prohibit a use of information or a document if:

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- (a) the use is made for the purposes of, or in connection with, a disclosure of the information or document by the person; and
  - (b) because of this Division, the disclosure is not prohibited by section 277.
- (3) Section 278 does not prohibit a use of information or a document if:
- (a) the use is made for the purposes of, or in connection with, a disclosure of the information or document by the person; and
  - (b) because of this Division, the disclosure is not prohibited by section 278.

**294 Effect of this Subdivision**

Nothing in this Subdivision limits the generality of anything else in it or in Divisions 3 to 5 of Part 4-1 of the *Telecommunications (Interception and Access) Act 1979*.

**Subdivision B—Burden of proof**

**295 Burden of proof**

- (1) For the purposes of determining the persuasive burden of proof in proceedings for an offence against Division 2, the exceptions set out in this Division or in Chapter 4 of the *Telecommunications (Interception and Access) Act 1979* are taken to be part of the description of the offence.
- (2) In proceedings for an offence against Division 2, the defendant bears the evidential burden in relation to an exception set out in this Division or in Chapter 4 of the *Telecommunications (Interception and Access) Act 1979*.
- (3) In this section:  
  
*evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

## **Division 3A—Integrated public number database authorisations**

### **Subdivision A—ACMA scheme for the granting of authorisations**

#### **295A ACMA to make integrated public number database scheme**

The ACMA must, by legislative instrument, make a scheme (the *integrated public number database scheme*) for the granting of authorisations for the purposes of paragraph 285(1A)(d).

Note 1: The ACMA may make determinations fixing charges for any matter in relation to which expenses are incurred by the ACMA under the scheme: see section 60 of the *Australian Communications and Media Authority Act 2005*.

Note 2: Various decisions under the scheme are reviewable: see section 555 and paragraphs 1(ma) to (md) of Schedule 4.

#### **295B Scheme must deal with certain matters**

- (1) The scheme must make provision for and in relation to the following matters:
  - (a) the making of applications for authorisations;
  - (b) the assessment of applications;
  - (c) the period for which authorisations are to be in force;
  - (d) the notification of decisions under the scheme (including to the person who maintains the integrated public number database referred to in paragraph 285(1A)(a)).
- (2) The scheme must require an applicant for an authorisation to specify the purpose for which the authorisation is sought.

Note: The relevant purposes are purposes connected with the publication and maintenance of a public number directory or with the conduct of particular research.

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**295C Applications may be treated differently**

The scheme may make different provision for different kinds of authorisation applications.

**295D Scope of authorisations**

The scheme may make provision for authorisations to be in respect of:

- (a) all information or documents that satisfy the matters referred to in paragraphs 285(1A)(a) and (b); or
- (b) specified information or specified documents that satisfy those matters.

**295E Provisional and final authorisations**

The scheme may make provision for provisional authorisations and final authorisations.

**295F Conditions**

The scheme may make provision for the imposition of conditions on the grant of authorisations.

Note 1: Section 295P also allows the Minister to determine that authorisations are granted subject to conditions.

Note 2: Section 295R creates an offence for breaching a condition of an authorisation.

**295G Varying or revoking authorisations**

The scheme may make provision for the variation or revocation of authorisations. For example, the variation may be the imposition of new conditions or the variation or removal of existing conditions.



### **295H Scheme may confer administrative powers on the ACMA**

The scheme may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

Note: Sections 50 and 51 of the *Australian Communications and Media Authority Act 2005* deal with the delegation of the ACMA's powers.

### **295J Ancillary or incidental provisions**

The scheme may contain such ancillary or incidental provisions as the ACMA considers appropriate.

### **295K Scheme-making power not limited**

Sections 295B to 295J do not, by implication, limit section 295A.

### **295L Variation of scheme**

- (1) The scheme may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) Subsection (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

### **295M Consultation**

*Making the scheme*

- (1) Before making the scheme, the ACMA:
  - (a) must consult the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*) and have regard to any submissions made by the Information Commissioner because of that consultation; and
  - (b) must consult the Secretary of the Department that is administered by the Minister administering the *Privacy Act*

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1988 and have regard to any submissions made by that Secretary because of that consultation; and

- (c) may consult such other persons as the ACMA considers appropriate and have regard to any submissions made by those persons because of that consultation.

*Decisions under the scheme*

- (2) Before making a decision under the scheme, the ACMA may consult such persons as the ACMA considers appropriate and have regard to any submissions made by those persons because of that consultation.

**Subdivision B—Ministerial instruments**

**295N Criteria for deciding authorisation applications**

- (1) The Minister must, by legislative instrument, specify criteria for deciding authorisation applications made under the integrated public number database scheme.
- (2) The Minister may specify different criteria for different kinds of authorisation applications.
- (3) In deciding an authorisation application, the ACMA:
  - (a) must apply the criteria applicable to that application; and
  - (b) may have regard to any other matters that it thinks are relevant.

**295P Conditions**

- (1) The Minister may, by legislative instrument, do either or both of the following:
  - (a) determine that all authorisations under the integrated public number database scheme are granted subject to specified conditions;
  - (b) determine that a specified kind of authorisation under that scheme is granted subject to specified conditions.

- (2) An authorisation under that scheme is granted subject to any condition specified in an instrument under this section that is applicable to that authorisation.

Note 1: An authorisation may also be granted subject to conditions imposed in accordance with that scheme: see section 295F.

Note 2: Section 295R creates an offence for breaching a condition of an authorisation.

### **295Q Other reviewable decisions**

The Minister may, by legislative instrument, specify decisions under the integrated public number database scheme for the purposes of paragraph 1(md) of Schedule 4.

### **Subdivision C—Enforcing compliance with conditions of authorisations**

#### **295R Offence of breaching a condition**

A person commits an offence if:

- (a) the person is the holder of an authorisation under the integrated public number database scheme; and
- (b) the person does an act or omits to do an act; and
- (c) the act or omission breaches a condition of the authorisation.

Penalty: 60 penalty units.

#### **295S Remedial directions for breaching a condition**

- (1) This section applies if the ACMA is satisfied that a person has contravened, or is contravening, a condition of an authorisation in force under the integrated public number database scheme.
- (2) The ACMA may give the person a written direction requiring the person to take specified action directed towards ensuring that the person does not contravene the condition, or is unlikely to contravene the condition, in the future.

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(3) A person must not contravene a direction under subsection (2).

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

(5) A direction given under subsection (2) is not a legislative instrument.

**295T Formal warnings for breaching a condition**

The ACMA may issue a formal warning if the ACMA is satisfied that a person has contravened, or is contravening, a condition of an authorisation in force under the integrated public number database scheme.

**Subdivision D—Report to Minister**

**295U Report to Minister**

(1) At the time an annual report prepared by the Chair of the ACMA is given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013*, the ACMA must give the Minister a separate report on the following matters:

- (a) the compliance by persons with authorisations granted under the integrated public number database scheme;
- (b) any other matter relating to the operation of that scheme that the ACMA considers appropriate.

(2) The ACMA is not required to include in the separate report any material:

- (a) that is of a confidential nature; or
- (b) the disclosure of which is likely to prejudice the fair trial of a person.

(3) The Minister must cause a copy of the separate report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the separate report.

## **Division 3B—Emergency warnings**

### **295V Use or disclosure of information by emergency management persons**

#### *Likely emergencies*

- (1) If an emergency management person believes on reasonable grounds that an emergency is likely to occur, the person may use or disclose relevant information (other than the names of persons) for a purpose connected with persons being alerted to that likely emergency.

#### *Actual emergencies*

- (2) If an emergency occurs, an emergency management person may use or disclose relevant information (other than the names of persons) for a purpose connected with persons being alerted to that emergency.

#### *Testing*

- (3) An emergency management person may use or disclose relevant information (other than the names of persons) for the purpose of reasonable testing of whether, in the event of an emergency occurring, persons would be able to be alerted to that emergency.

#### *Other*

- (4) An emergency management person may disclose relevant information (other than the names of persons) to another person for the purpose of the information being later used or disclosed for a purpose connected with persons being alerted to an emergency or a likely emergency.

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**295W Use or disclosure of information by other persons**

*Actual or likely emergencies*

- (1) If information is disclosed to a person as permitted by subsection 295V(1) or (2) or this subsection, the person may use or disclose the information for a purpose connected with persons being alerted to the emergency or likely emergency concerned.

*Testing*

- (2) If information is disclosed to a person as permitted by subsection 295V(3) or this subsection, the person may use or disclose the information for the purpose of reasonable testing of whether, in the event of an emergency occurring, persons would be able to be alerted to that emergency.

*Other*

- (3) If information is disclosed to a person as permitted by subsection 295V(4) or this subsection, the person may use or disclose the information for a purpose connected with persons being alerted to an emergency or a likely emergency.

**295X Effect on telecommunications network**

In using or disclosing information that is permitted by section 295V or 295W, a person must take reasonable steps to ensure that the use or disclosure does not adversely affect the operation of a telecommunications network.

**295Y Coronial and other inquiries**

The disclosure of relevant information to:

- (a) a coronial inquiry; or  
(b) another inquiry specified by the AFP Minister, by legislative instrument, for the purposes of this paragraph;

in relation to an emergency or likely emergency is taken, for the purposes of this Division, to be a disclosure for a purpose

connected with persons being alerted to the emergency or likely emergency concerned.

**295Z Offence—use or disclosure of information by emergency management persons**

An emergency management person commits an offence if:

- (a) the person uses or discloses relevant information; and
- (b) the use or disclosure is not permitted under section 295V.

Penalty: Imprisonment for 2 years.

**295ZA Offence—use or disclosure of information by other persons**

(1) A person commits an offence if:

- (a) information is disclosed to the person as permitted by subsection 295V(1) or (2) or 295W(1); and
- (b) the person uses or discloses the information; and
- (c) the use or disclosure referred to in paragraph (b) of this subsection is not for a purpose connected with persons being alerted to the emergency or likely emergency concerned.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

- (a) information is disclosed to the person as permitted by subsection 295V(3) or 295W(2); and
- (b) the person uses or discloses the information; and
- (c) the use or disclosure referred to in paragraph (b) of this subsection is not for the purpose of reasonable testing of whether, in the event of an emergency occurring, persons would be able to be alerted to that emergency.

Penalty: Imprisonment for 2 years.

(3) A person commits an offence if:

- (a) information is disclosed to the person as permitted by subsection 295V(4) or 295W(3); and

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- (b) the person uses or discloses the information; and
- (c) the use or disclosure referred to in paragraph (b) of this subsection is not for a purpose connected with persons being alerted to an emergency or a likely emergency.

Penalty: Imprisonment for 2 years.

**295ZB Reports of access**

- (1) If an emergency management person discloses relevant information, the person must give a written report to the AFP Minister and to the ACMA that covers the following matters:
  - (a) if the disclosure occurred under subsection 295V(1) or (2)—a description of the emergency or likely emergency concerned and its location;
  - (b) in any case—the number of telephone numbers that were disclosed and the day that disclosure occurred;
  - (c) in any case—the number of persons to whom the emergency management person disclosed those numbers and the purpose of each disclosure.
- (2) The emergency management person must give the report to the AFP Minister and to the ACMA as soon as practicable after the last disclosure referred to in paragraph (1)(c) of this section occurs (disregarding section 295Y).

**295ZC Annual reports to the ACMA and Information Commissioner**

If an emergency management person discloses relevant information during a financial year, the person must, within 2 months after the end of that financial year, give a written report to the ACMA and to the Information Commissioner that covers the following matters in relation to each such disclosure:

- (a) if the disclosure occurred under subsection 295V(1) or (2)—a description of the emergency or likely emergency concerned and its location;



- (b) in any case—the number of telephone numbers that were disclosed and the day that disclosure occurred;
- (c) in any case—the number of persons to whom the emergency management person disclosed those numbers and the purpose of each disclosure (whether the disclosure occurred in that financial year or the following financial year).

### **295ZD Arrangements with States and Territories**

- (1) The AFP Minister may make arrangements with a Minister of a State or a Territory with respect to the performance of functions or duties, or the exercise of powers, by an emergency management person under this Division.
- (2) An instrument by which an arrangement under this section is made is not a legislative instrument.

### **295ZE Commonwealth immunity**

No action, suit or proceeding lies against the Commonwealth in relation to loss, damage or injury to any person or property as a result of the use or disclosure of relevant information:

- (a) for a purpose connected with persons being alerted to an emergency or a likely emergency; or
- (b) for the purpose of reasonable testing of whether, in the event of an emergency occurring, persons would be able to be alerted to that emergency.

## **Division 4—Secondary disclosure/use offences**

### **296 Performance of person’s duties**

If:

- (a) information or a document is disclosed to a person for a particular purpose as permitted by section 279 or this section; and
  - (b) the information or the contents of the document does not relate to the person’s affairs or personal particulars;
- the person must not disclose or use the information or document except for that purpose.

### **297 Authorisation by or under law**

If information or a document is disclosed to a person for a particular purpose as permitted by section 280 or this section, the person must not disclose or use the information or document unless the disclosure or use is required or authorised by or under law.

### **299 Assisting the ACMA, the eSafety Commissioner, the ACCC or the Telecommunications Industry Ombudsman**

- (1) If information or a document is disclosed to a person as permitted by subsection 284(1) or this subsection, the person must not disclose or use the information or document except for the purpose of, or in connection with, the carrying out of the ACMA’s functions and powers.
- (1A) If information or a document is disclosed to a person as permitted by subsection 284(1A) or this subsection, the person must not disclose or use the information or document except for the purpose of, or in connection with, the carrying out of the eSafety Commissioner’s functions and powers.
- (2) If information or a document is disclosed to a person as permitted by subsection 284(2) or this subsection, the person must not

disclose or use the information or document except for the purpose of, or in connection with, the carrying out of the ACCC's telecommunications functions and powers.

- (3) If information or a document is disclosed to a person as permitted by subsection 284(3) or this subsection, the person must not disclose or use the information or document except for the purpose of, or in connection with, assisting the Telecommunications Industry Ombudsman in the consideration of a complaint made to the Telecommunications Industry Ombudsman.

Note: Section 284 deals with the disclosure or use of information or documents to assist the ACMA, the eSafety Commissioner, the ACCC or the Telecommunications Industry Ombudsman.

## **299A Integrated public number database**

### *Public number directory*

- (1) If:
- (a) information or a document is disclosed to a person as permitted by subsection 285(1A); and
  - (b) the disclosure is for a purpose covered by subparagraph 285(1A)(c)(ii);
- then:
- (c) during the period the person holds an authorisation in force under the integrated public number database scheme in relation to the information or document—the person must not disclose or use the information or document except for that purpose; and
  - (d) if the person does not hold such an authorisation—the person must not disclose or use the information or document.

### *Research*

- (2) If:
- (a) information or a document is disclosed to a person as permitted by subsection 285(1A); and

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- (b) the disclosure is for a purpose covered by subparagraph 285(1A)(c)(iv);
- then:
- (c) during the period the person holds an authorisation in force under the integrated public number database scheme in relation to the information or document—the person must not disclose or use the information or document except for that purpose; and
  - (d) if the person does not hold such an authorisation—the person must not disclose or use the information or document.
- (3) If information or a document is disclosed to a person for a particular purpose as permitted by subsection (2) or this subsection, the person must not disclose or use the information or document except for that purpose.

**300 Threat to person's life or health**

If information or a document is disclosed to a person (the *first person*) as permitted by section 287 or this section, the first person must not disclose or use the information or document unless:

- (a) the disclosure or use is for the purpose of, or in connection with, preventing or lessening a serious and imminent threat to the life or health of another person; or
- (b) the first person believes on reasonable grounds that the disclosure or use is reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of another person.

Note: Section 287 deals with the disclosure or use of information or documents by a person where the person believes on reasonable grounds that the disclosure or use is reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of another person.

### **301 Communications for maritime purposes**

If information or a document is disclosed to a person as permitted by section 288 or this section, the person must not disclose or use the information or document unless:

- (a) the disclosure or use is reasonably necessary for the purpose of the preservation of human life at sea; or
- (b) the disclosure or use:
  - (i) relates to the location of a vessel at sea; and
  - (ii) is made for maritime communications purposes.

Note: Section 288 deals with the disclosure or use of information or documents where the disclosure or use is made for certain maritime purposes.

### **302 Business needs of other carriers or service providers**

If information or a document is disclosed to a person as permitted by section 291 or this section, a person must not disclose or use the information or document except for:

- (a) the purpose of, or in connection with, the carrying on by:
  - (i) a carrier; or
  - (ii) a service provider;of its business as such a carrier or provider; and
- (b) the purpose of, or in connection with:
  - (i) the supply, or proposed supply, by a carrier or service provider of a carriage service or a content service; or
  - (ii) the supply, or proposed supply, by a carrier or service provider of goods or services for use in connection with the supply of a carriage service or a content service; or
  - (iii) the installation, maintenance, operation or provision of access to a telecommunications network or a facility, where the network or facility is used, or for use, by a carrier or service provider to supply a carriage service or a content service to a person.

Note: Section 291 deals with the disclosure or use of information or documents for the purposes of a carrier or a service provider carrying on its business as such a carrier or provider.

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**302A Location dependent carriage services**

- (1) If information or a document is disclosed to a person as permitted by section 291A or this subsection, a person must not disclose or use the information or document except for the purpose of, or in connection with, the supply, or proposed supply, by a person of a location dependent carriage service.

Note: Section 291A deals with the disclosure or use of information or documents for the purposes of the supply, or proposed supply, by a person of a location dependent carriage service.

- (2) In this section:

*location dependent carriage service* means a carriage service that depends for its provision on the availability of information about the addresses of end users of the carriage service.

**303 Secondary offence—contravening this Division**

A person who contravenes this Division commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

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

**303A Generality of Division not limited**

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

## **Division 4A—Relationship with the Privacy Act 1988**

### **303B Acts taken to be authorised by this Act for purposes of Privacy Act**

- (1) If a disclosure or use of information by a person would be prohibited by Division 2 apart from a provision of Division 3, the disclosure or use is taken for the purposes of the *Privacy Act 1988*, and of a registered APP code (as defined in that Act), to be authorised by this Act.
- (2) If a disclosure or use of information by a person would be prohibited by a provision of Division 4 apart from the fact that the disclosure or use is covered by an exception in that provision to the prohibition, the disclosure or use is taken for the purposes of the *Privacy Act 1988*, and of a registered APP code (as defined in that Act), to be authorised by this Act.

### **303C Prosecution of an offence against this Part does not affect proceedings under the *Privacy Act 1988***

- (1) The prosecution of an offence against Division 2 or 4 of this Part for disclosure or use of information or a document does not prevent civil proceedings or administrative action from being taken under the *Privacy Act 1988* or a registered APP code (as defined in that Act) in relation to the disclosure or use.
- (2) This section applies regardless of the outcome of the prosecution.
- (3) This section does not affect the operation of section 49 of the *Privacy Act 1988*.

## Division 5—Record-keeping requirements

### 304 Associate

A reference in this Division to an *associate* of a carrier, carriage service provider or number-database operator is a reference to:

- (a) an employee of the carrier, provider or operator; or
- (b) a person (other than an employee) who performs services for or on behalf of the carrier, provider or operator; or
- (c) an employee of a person covered by paragraph (b).

### 305 Authorisations under the *Telecommunications (Interception and Access) Act 1979*

(1) This section applies if:

- (a) a carrier, carriage service provider or number-database operator; or
- (b) an associate of a carrier, carriage service provider or number-database operator;

is notified of an authorisation made under Division 4 or 4A of Part 4-1 of the *Telecommunications (Interception and Access) Act 1979*.

Note: Section 184 of the *Telecommunications (Interception and Access) Act 1979* deals with notification of such authorisations.

(2) The carrier, carriage service provider or number-database operator must retain the notification for 3 years.

### 306 Record of disclosures—general

(1) This section applies if:

- (a) an eligible person or an eligible number-database person discloses information or a document; and
- (b) the disclosure is authorised by:
  - (i) a provision of Division 3 (other than section 279, 285, 285A, 290, 291 or 291A); or



- (ii) section 177, 178 or 179, subsection 180(3) or section 180A of the *Telecommunications (Interception and Access) Act 1979*.
- (2) If the person is a carrier, carriage service provider or number-database operator, the carrier, provider or operator must:
- (a) make a record of the disclosure as soon as practicable after the disclosure and, in any event, within 5 days after the disclosure; and
  - (b) retain that record for 3 years.
- (3) If the person is an associate of a carrier, carriage service provider or number-database operator, the person must:
- (a) make a record of the disclosure as soon as practicable after the disclosure and, in any event, within 5 days after the disclosure; and
  - (b) give a copy of that record to the carrier, provider or operator within 5 days after the making of the record.
- (4) If a copy of a record is given to a carrier, carriage service provider or number-database operator under subsection (3), the carrier, provider or operator must retain that copy for 3 years.
- (5) A record made under subsection (2) or (3) must set out:
- (a) the name of the person who disclosed the information or document concerned; and
  - (b) the date of the disclosure; and
  - (c) a statement of the grounds for the disclosure; and
  - (d) if the disclosure is made on the grounds of an authorisation under the *Telecommunications (Interception and Access) Act 1979*:
    - (i) the name of the person who made the authorisation; and
    - (ii) the date of the making of the authorisation; and
  - (e) if paragraph (d) does not apply and the disclosure was at the request of another body or person:
    - (i) the name of the body or person; and
    - (ii) the date of the request; and
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- (f) if the information or document relates to the contents or substance of a communication that was carried by means of a carriage service—particulars of that carriage service.
- (6) A record, or a copy of a record, may be made, given or retained under this section:
  - (a) in written form; or
  - (b) in electronic form.
- (7) A person who contravenes this section commits an offence punishable on conviction by a fine not exceeding 300 penalty units.

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

**306A Record of disclosures—prospective authorisation under the *Telecommunications (Interception and Access) Act 1979***

- (1) This section applies if:
  - (a) an eligible person or an eligible number-database person discloses information or a document; and
  - (b) the disclosure or disclosures are authorised by an authorisation under section 180 or 180B of the *Telecommunications (Interception and Access) Act 1979* (in so far as the authorisation is of a kind referred to in subsection 180(2) or 180B(2) of that Act).
- (2) If the person is a carrier, carriage service provider or number-database operator, the carrier, provider or operator must:
  - (a) make a record of the disclosure or disclosures as soon as practicable after the day on which the authorisation ceases to be in force and, in any event, within 5 days after that day; and
  - (b) retain that record for 3 years.
- (3) If the person is an associate of a carrier, carriage service provider or number-database operator, the person must:
  - (a) make a record of the disclosure or disclosures as soon as practicable after the day on which the authorisation ceases to

- be in force and, in any event, within 5 days after that day;  
and
- (b) give a copy of that record to the carrier, provider or operator within 5 days after the making of the record.
- (4) If a copy of a record is given to a carrier, carriage service provider or number-database operator under subsection (3), the carrier, provider or operator must retain that copy for 3 years.
- (5) A record made under subsection (2) or (3) must set out:
- (a) the name of the person or persons who made the disclosure or disclosures; and
  - (b) one of the following:
    - (i) if only 1 disclosure is made because of the authorisation—the date of the disclosure;
    - (ii) if more than 1 disclosure is made because of the authorisation—the date of the first disclosure and the date of the last disclosure; and
  - (c) a statement of the grounds for the disclosure or disclosures; and
  - (d) the name of the person who made the authorisation and the date of the making of the authorisation.
- (6) A record, or a copy of a record, may be made, given or retained under this section:
- (a) in written form; or
  - (b) in electronic form.
- (7) A person who contravenes this section commits an offence punishable on conviction by a fine not exceeding 300 penalty units.

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

### **307 Incorrect records**

- (1) A person must not, in purported compliance with section 306 or 306A, make a record of any matter or thing in such a way that it does not correctly record the matter or thing.

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- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by imprisonment for a term not exceeding 6 months.

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

**308 Annual reports to the ACMA by carriers, carriage service providers or number-database operators**

- (1) If:
- (a) information or a document is disclosed during a financial year; and
  - (b) either:
    - (i) under section 306 or 306A, a carrier, carriage service provider or number-database operator makes a record of the disclosure; or
    - (ii) under section 306 or 306A, a carrier, carriage service provider or number-database operator is given a copy of a record of the disclosure;

the carrier, carriage service provider or number-database operator must, within 2 months after the end of the financial year, give the ACMA a written report relating to the disclosure.

- (2) The report must set out such information about the disclosure as the ACMA requires.

**309 Monitoring by the Information Commissioner**

- (1) In addition to the functions conferred on the Information Commissioner by the *Privacy Act 1988*, the Information Commissioner has the function of monitoring compliance with this Division.
- (1A) The function conferred on the Information Commissioner by subsection (1) is a privacy function for the purposes of the *Australian Information Commissioner Act 2010*.
- (2) In particular, the function conferred on the Information Commissioner by subsection (1) includes monitoring:

- (a) whether a record made under section 306 or 306A sets out a statement of the grounds for a disclosure; and
  - (b) whether that statement is covered by Division 3 of this Part or Chapter 4 of the *Telecommunications (Interception and Access) Act 1979* (which deal with exceptions).
- (3) A carrier, carriage service provider or number-database operator must give the Information Commissioner such access to the records of the carrier, provider or operator as the Information Commissioner reasonably requires for the purposes of the performance of the function conferred by subsection (1).
- (4) The Information Commissioner may give the Minister a written report about any matters arising out of the performance of the function conferred by subsection (1).

## **Division 6—Instrument-making powers not limited**

### **310 Instrument-making powers not limited**

- (1) This Part does not, by implication, limit a power conferred by or under this Act to make an instrument.
- (2) This Part does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.
- (3) This section does not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.

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

### **Division 1—Simplified outline**

#### **311 Simplified outline**

The following is a simplified outline of this Part:

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

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



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

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

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

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

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

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- (b) the supply by the carrier or provider of carriage services; do the carrier's best or the provider's best to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories.
- (1A) For the purposes of security (within the meaning of the *Australian Security Intelligence Organisation Act 1979*), a carrier or carriage service provider must, in connection with:
- (a) the operation by the carrier or provider of telecommunications networks or facilities; or
  - (b) the supply by the carrier or provider of carriage services; do the carrier's best or the provider's best to protect telecommunications networks and facilities owned, operated or used by the carrier or provider from unauthorised interference or unauthorised access to ensure:
  - (c) the confidentiality of communications carried on, and of information contained on, telecommunications networks or facilities; and
  - (d) the availability and integrity of telecommunications networks and facilities.
- Note 1: **Security**, among other things, covers the protection of, and of the people of, the Commonwealth and the States and Territories from espionage, sabotage, attacks on Australia's defence system and acts of foreign interference.
- Note 2: A person who uses a carriage service to supply various kinds of broadcasting services is not a carriage service provider merely because of that use (and therefore not subject to the duty imposed by this subsection): see subsections 87(1) and (2) and 93(1) and (2).
- (1B) Without limiting subsection (1A), the duty imposed by that subsection includes the requirement for the carrier or carriage service provider to maintain competent supervision of, and effective control over, telecommunications networks and facilities owned or operated by the carrier or provider.
- (2) A carriage service intermediary must do the intermediary's best to prevent telecommunications networks and facilities from being

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

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

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

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

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- (e) safeguarding national security.

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

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

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

- (5) A carrier or carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith:
  - (a) in performance of the duty imposed by subsection (1), (1A), (2), (2A), (3) or (4); or
  - (b) in compliance with a direction that the ACMA gives in good faith in performance of its duties under section 312; or

- (c) in compliance with a direction given under subsection 315A(1) or 315B(2).
- (6) An officer, employee or agent of a carrier or of a carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the carrier or provider as mentioned in subsection (5).
- (7) A reference in this section to giving help includes a reference to giving help by way of:
  - (a) the provision of interception services, including services in executing an interception warrant under the *Telecommunications (Interception and Access) Act 1979*; or
  - (b) giving effect to a stored communications warrant under that Act; or
  - (c) providing relevant information about:
    - (i) any communication that is lawfully intercepted under such an interception warrant; or
    - (ii) any communication that is lawfully accessed under such a stored communications warrant; or
  - (caa) giving effect to authorisations under section 31A of that Act; or
  - (ca) complying with a domestic preservation notice or a foreign preservation notice that is in force under Part 3-1A of that Act; or
  - (d) giving effect to authorisations under Division 3 or 4 of Part 4-1 of that Act; or
  - (e) disclosing information or a document in accordance with section 280 of this Act.

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

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

- (1) This section applies if a person is required to give help to an officer or authority of the Commonwealth, a State or a Territory as mentioned in subsection 313(3) or (4).
- (2) The person must comply with the requirement on the basis that the person neither profits from, nor bears the costs of, giving that help.
- (3) The person must comply with the requirement on such terms and conditions as are:
  - (a) agreed between the following parties:
    - (i) the person;
    - (ii) the Commonwealth, the State or the Territory, as the case may be; or
  - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACMA is to appoint the arbitrator.

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

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

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

*Telecommunications (Interception and Access) Act 1979* (about data retention, interception capability and delivery capability).

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

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

**Subdivision A—Individual notifications**

**314A Individual notifications**

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

*Kinds of changes*

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



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

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

*Notification of change*

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

*Exemptions*

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

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

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

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

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

### **314B Assessment of proposed change**

#### *Further information*

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

#### *Assessment of proposed change*

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

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

*Definitions*

- (7) In this section:

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

## **Subdivision B—Security capability plans**

### **314C Security capability plans**

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

#### *Kinds of changes*

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

#### *Other matters plan may include*

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

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

*One instrument each 12-month period*

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

**314D Assessment of security capability plan**

*Further information*

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

*Assessment of proposed change*

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

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- proposed change where further information is provided as mentioned in this section); and
- (b) in relation to the proposed change, the Co-ordinator is satisfied that there is a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security;
- the Co-ordinator must give a written notice to the carrier or provider:
- (c) advising the carrier or provider of that risk; and
- (d) setting out the duty imposed by subsection 313(1A) or (2A); and
- (e) setting out the consequences for the carrier or provider for not complying with that duty.
- (4) A notice under subsection (3) may also set out the measures the Communications Access Co-ordinator considers the carrier or provider could adopt to eliminate or reduce the risk referred to in subsection (3).
- (5) If:
- (a) the Communications Access Co-ordinator considers a particular proposed change mentioned in subsection 314C(2) that is set out in a security capability plan (including a proposed change where further information is provided as mentioned in this section); and
- (b) in relation to the proposed change, the Co-ordinator is satisfied that there is not a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security;
- the Co-ordinator must give a written notice to the carrier or provider to that effect.
- (6) In response to a proposed change mentioned in subsection 314C(2) that is set out in a security capability plan, a notice must be given to the carrier or provider:
- (a) within 60 days of the plan being given to the Communications Access Co-ordinator; or

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(b) if under subsection (1) the Communications Access Co-ordinator sought further information from the carrier or provider—as soon as practicable and no later than 60 days after the carrier or provider gave that further information.

The notice must be a notice under subsection (3) or (5) and may relate to one or more such changes.

*Definitions*

(7) In this section:

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

**314E Relationship with section 314A**

*Dual notifications not required*

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

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

(2) If:

(a) under section 314C, a carrier or a nominated carriage service provider has given a security capability plan setting out one or more proposed changes mentioned in subsection 314C(2); and

(b) the carrier or provider becomes aware that the implementation by the carrier or provider of any modification to such a proposed change is likely to have a material adverse effect on the capacity of the carrier or provider to comply with its obligations under subsection 313(1A) or (2A);

then section 314A applies in relation to the modification as if the modification were a change in its own right.



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

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

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

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

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

- (4) In this section:

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

## **Division 5—Directions by Home Affairs Minister**

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

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

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

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

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

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

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*Compliance with direction*

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

*Definitions*

- (6) In this section:

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

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

- (1) This section applies if, in connection with:
- (a) the operation by a carrier or carriage service provider of telecommunications networks or facilities; or
  - (b) the supply by a carrier or carriage service provider of a carriage service; or
  - (c) the supply by a carriage service provider of a carriage service, being a supply arranged by a carriage service intermediary;

the Home Affairs Minister is satisfied that there is a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security.

- (2) The Home Affairs Minister may give a carrier, carriage service provider or carriage service intermediary a written direction requiring the carrier, provider or intermediary to do, or to refrain from doing, a specified act or thing within the period specified in the direction.
- (3) A direction under subsection (2) may be given only if the Home Affairs Minister is satisfied that requiring the carrier, carriage service provider or carriage service intermediary to do, or to refrain from doing, the specified act or thing is reasonably necessary for

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

*Direction to be given after adverse security assessment*

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

*Direction to be given after negotiations in good faith*

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

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

- (6) Before giving a carrier, carriage service provider or carriage service intermediary a direction under subsection (2), the Home Affairs Minister must have regard to the following matters:
- (a) the adverse security assessment mentioned in subsection (4);
  - (b) the costs, in complying with any direction, that would be likely to be incurred by the carrier, provider or intermediary;
  - (c) the potential consequences that any direction may have on competition in the telecommunications industry;
  - (d) the potential consequences that any direction may have on customers of the carrier, provider or intermediary.
- The Home Affairs Minister must give the greatest weight to the matter mentioned in paragraph (a).
- (7) Subsection (6) does not limit the matters to which regard may be had.

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*Consultation*

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

*Copy of direction to be given to ACMA*

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

*Compliance with direction*

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

*Definitions*

- (13) In this section:

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

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

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

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

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

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



*Content of notice*

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

*Copying documents—reasonable compensation*

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

**315D Self-incrimination**

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

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

**315E Copies of documents**

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

**315F Retention of documents**

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

**315G Delegation by Home Affairs Secretary**

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

## Division 7—Information sharing and confidentiality

### 315H Information sharing and confidentiality

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

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

#### *Limitation*

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

#### *Confidentiality*

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

#### *Definitions*

- (4) In this section:

***Commonwealth officer*** means:

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

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

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

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

## Division 8—Annual report

### 315J Annual report

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

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

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

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

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



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

**316 Generality of Part not limited**

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

## Part 15—Industry assistance

### Division 1—Introduction

#### 317A Simplified outline of this Part

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

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

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

### 317B Definitions

In this Part:

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

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

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

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

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

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

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

**electronic protection** includes:

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

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

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

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

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

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

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

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

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

**giving help:**

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

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

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

**interception agency** means:

- (a) the Australian Federal Police; or
- (b) the Australian Crime Commission; or
- (c) the Police Force of a State or the Northern Territory.

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

**material** means material:

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

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

**Ombudsman official** means:

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

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

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

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

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

**supply**:

- (a) when used in relation to:
  - (i) a facility; or
  - (ii) customer equipment; or
  - (iii) a component;includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

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- (b) when used in relation to software—includes provide, grant or confer rights, privileges or benefits.

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

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

**target technology:**

- (a) for the purposes of this Part, a particular carriage service, so far as the service is used, or is likely to be used, (whether directly or indirectly) by a particular person, is a **target technology** that is connected with that person; and
- (b) for the purposes of this Part, a particular electronic service, so far as the service is used, or is likely to be used, (whether directly or indirectly) by a particular person, is a **target technology** that is connected with that person; and
- (c) for the purposes of this Part, particular software installed, or to be installed, on:
- (i) a particular computer; or
  - (ii) a particular item of equipment;
- used, or likely to be used, (whether directly or indirectly) by a particular person is a **target technology** that is connected with that person; and
- (d) for the purposes of this Part, a particular update of software that has been installed on:
- (i) a particular computer; or
  - (ii) a particular item of equipment;



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

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

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

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

**technical assistance notice information** means:

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

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

**technical assistance request information** means:

- (a) information about any of the following:

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

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

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

- (a) information about any of the following:
  - (i) the giving of a technical capability notice;
  - (ii) consultation relating to the giving of a technical capability notice;
  - (iii) the existence or non-existence of a technical capability notice;
  - (iv) the variation of a technical capability notice;
  - (iva) consultation relating to the variation of a technical capability notice;
  - (v) the revocation of a technical capability notice;
  - (vi) the requirements imposed by a technical capability notice;
  - (vii) any act or thing done in compliance with a technical capability notice; or
- (b) any other information about a technical capability notice.

**317C Designated communications provider etc.**

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

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

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**Designated communications provider and eligible activities**

<b>Item</b>	<b>A person is a designated communications provider if ...</b>	<b>... and the eligible activities of the person are ...</b>
1	the person is a carrier or carriage service provider	(a) the operation by the person of telecommunications networks, or facilities, in Australia; or (b) the supply by the person of listed carriage services
2	the person is a carriage service intermediary who arranges for the supply by a carriage service provider of listed carriage services	(a) the arranging by the person for the supply by the carriage service provider of listed carriage services; or (b) the operation by the carriage service provider of telecommunications networks, or facilities, in Australia; or (c) the supply by the carriage service provider of listed carriage services
3	the person provides a service that facilitates, or is ancillary or incidental to, the supply of a listed carriage service	the provision by the person of a service that facilitates, or is ancillary or incidental to, the supply of a listed carriage service
4	the person provides an electronic service that has one or more end-users in Australia	the provision by the person of an electronic service that has one or more end-users in Australia
5	the person provides a service that facilitates, or is ancillary or incidental to, the provision of an electronic service that has one or more end-users in Australia	the provision by the person of a service that facilitates, or is ancillary or incidental to, the provision of an electronic service that has one or more end-users in Australia
6	the person develops, supplies or updates software used, for use, or likely to be used, in connection with: (a) a listed carriage service; or (b) an electronic service that has one or more end-users in Australia	(a) the development by the person of any such software; or (b) the supply by the person of any such software; or (c) the updating by the person of any such software

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<b>Designated communications provider and eligible activities</b>		
<b>Item</b>	<b>A person is a designated communications provider if ...</b>	<b>... and the eligible activities of the person are ...</b>
7	the person manufactures, supplies, installs, maintains or operates a facility	(a) the manufacture by the person of a facility for use, or likely to be used, in Australia; or (b) the supply by the person of a facility for use, or likely to be used, in Australia; or (c) the installation by the person of a facility in Australia; or (d) the maintenance by the person of a facility in Australia; or (e) the operation by the person of a facility in Australia
8	the person manufactures or supplies components for use, or likely to be used, in the manufacture of a facility for use, or likely to be used, in Australia	(a) the manufacture by the person of any such components; or (b) the supply by the person of any such components
9	the person connects a facility to a telecommunications network in Australia	the connection by the person of a facility to a telecommunications network in Australia
10	the person manufactures or supplies customer equipment for use, or likely to be used, in Australia	(a) the manufacture by the person of any such customer equipment; or (b) the supply by the person of any such customer equipment
11	the person manufactures or supplies components for use, or likely to be used, in the manufacture of customer equipment for use, or likely to be used, in Australia	(a) the manufacture by the person of any such components; or (b) the supply by the person of any such components

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**Designated communications provider and eligible activities**

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

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**Designated communications provider and eligible activities**

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

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

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

**317D Electronic service**

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

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

**317E Listed acts or things**

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

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



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(iii) the interests of Australia's national security, the interests of Australia's foreign relations or the interests of Australia's national economic well-being.

(2) Paragraph (1)(j) does not apply to:

- (a) making a false or misleading statement; or
- (b) engaging in dishonest conduct.

**317F Extension to external Territories**

This Part extends to every external Territory.

## Division 2—Voluntary technical assistance

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

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

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

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

*Relevant objective*

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

*Listed acts or things*

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

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

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

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

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

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

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

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

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

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

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

*Form of advice*

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

**317HAB Notification obligations**

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

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

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

**317HA Duration of technical assistance request**

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



### **317J Specified period etc.**

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

### **317JAA Decision-making criteria**

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

Note: See also section 317JC.

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

Note: See also section 317JC.

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

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

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

Note: See also section 317JC.

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

Note: See also section 317JC.

**317JA Variation of technical assistance requests**

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

*Form of variation*

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

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

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

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

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

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

*Decision-making criteria*

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

Note: See also section 317JC.

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

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

Note: See also section 317JC.

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

Note: See also section 317JC.

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

Note: See also section 317JC.

*Notification obligations*

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

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

**317JB Revocation of technical assistance requests**

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

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

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

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

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

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

*Notification obligations*

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

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

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



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

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

### **317K Contract etc.**

Any of the following persons:

- (a) the Director-General of Security;

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- (b) the Director-General of the Australian Secret Intelligence Service;
- (c) the Director-General of the Australian Signals Directorate;
- (d) the chief officer of an interception agency;

may enter into a contract, agreement or arrangement with a designated communications provider in relation to acts or things done by the provider in accordance with a technical assistance request.

## **Division 3—Technical assistance notices**

### **317L Technical assistance notices**

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

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

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

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

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### *Listed acts or things*

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

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

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

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

### **317M Form of technical assistance notice**

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

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

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

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

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

*Form of advice or notification*

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

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

### **317MAB Notification obligations**

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

### **317MA Duration of technical assistance notice**

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

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

**317N Compliance period etc.**

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



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

**317P Decision-making criteria**

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

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

Note: See also section 317RA.

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

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

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

**317Q Variation of technical assistance notices**

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

*Form of variation*

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

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

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

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

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

*Decision-making criteria*

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

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

Note: See also section 317RA.

*Variation must not extend duration of technical assistance notice*

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

*Notification obligations*

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

**317R Revocation of technical assistance notices**

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

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

*Notification obligations*

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

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

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

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

## **Division 4—Technical capability notices**

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

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

### **317T Technical capability notices**

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

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

- (2) The specified acts or things must:

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

*Relevant objective*

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

*Listed help*

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



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

that help is *listed help*.

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

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

*Listed acts or things*

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

*Applicable costs negotiator*

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

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Note: See section 317ZK.

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

**317TAAA Approval of technical capability notice**

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

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

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

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

*Form of advice*

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

**317TAB Notification obligations**

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

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

**317TA Duration of technical capability notice**

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

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

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

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

**317U Compliance period etc.**

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

**317V Decision-making criteria**

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

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

Note: See also section 317ZAA.

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

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

*Special consultation requirements for replacement technical capability notices*

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

**317WA Assessment and report**

*Designated communications provider may request carrying out of assessment*

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



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

*Attorney-General must appoint assessors*

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

*Assessment and report by assessors*

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

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

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

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

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

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

*Technical capability notice information*

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

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

*Prescribed court*

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

**317X Variation of technical capability notices**

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

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

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

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

*Decision-making criteria*

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

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

Note: See also section 317ZAA.

*Variation must not extend duration of technical capability notice*

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

*Notification obligations*

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

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

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

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

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

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

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

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

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

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



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

### **317YA Assessment and report**

*Designated communications provider may request carrying out of assessment*

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

*Attorney-General must appoint assessors*

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

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

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

*Assessment and report by assessors*

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

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

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

(8) If:

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

then:

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

(9) If:

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

then:

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

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

(10) If:

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

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

*Technical capability notice information*

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

*Prescribed court*

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

**317Z Revocation of technical capability notices**

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

*Notification obligations*

- (3) If:

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

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

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

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

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

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

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

- (1) A carrier or carriage service provider must comply with a requirement under:
  - (a) a technical assistance notice; or
  - (b) a technical capability notice;to the extent that the carrier or provider is capable of doing so.
- (2) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).
- (3) Subsections (1) and (2) are civil penalty provisions.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

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

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

Civil penalty:



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

### **317ZC Civil penalty provision**

#### *Enforceable civil penalty provision*

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

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

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*Authorised applicant*

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

*Relevant courts*

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

*Extension to external Territories etc.*

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

**317ZD Enforceable undertakings**

*Enforceable provision*

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

*Authorised person*

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

*Relevant courts*

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

*Extension to external Territories etc.*

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

### **317ZE Injunctions**

*Enforceable provision*

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

*Authorised person*

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

*Relevant courts*

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

*Extension to external Territories etc.*

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

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

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

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

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

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

Penalty: Imprisonment for 5 years.

*Exceptions*

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

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

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

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

*Authorised disclosures—general*

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

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

*Authorised disclosures—IGIS official*

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

*Authorised disclosures—Ombudsman official*

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



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

*Authorised disclosures—information sharing*

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

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

*Authorised disclosures—Communications Access Co-ordinator*

- (12A) If:

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

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

*Authorised disclosures—State or Territory inspecting authority*

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

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

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(12C) If a technical assistance request has been given to a designated communications provider by the chief officer of an interception agency of a State or Territory:

- (a) the designated communications provider; or
- (b) an employee of the designated communications provider; or
- (c) a contracted service provider of the designated communications provider; or
- (d) an employee of a contracted service provider of the designated communications provider;

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

(12D) If:

- (a) technical assistance notice information is disclosed under subsection (12B); or
- (b) technical assistance request information is disclosed under subsection (12C);

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

*Authorised disclosures—statistics*

(13) A person who is:

- (a) a designated communications provider; or
- (b) an employee of a designated communications provider; or
- (c) a contracted service provider of a designated communications provider; or

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

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

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

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

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

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

(a) by agency; or

(b) in any other way.

*Other authorised disclosures*

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

(a) the designated communications provider; or

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

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

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

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

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

(a) the designated communications provider; or

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

**317ZFA Powers of a court**

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

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

- (d) technical assistance notice information; or
- (e) technical capability notice information; or
- (f) technical assistance request information;

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

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

## Division 7—Limitations

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

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



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

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

**317ZGA Limits on technical capability notices**

(1) If:

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

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

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

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

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

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

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

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

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

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

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

*Interpretation*

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

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

## **Division 8—General provisions**

### **317ZJ Immunity**

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

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

#### *Scope*

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

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



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

*Basis of compliance*

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

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

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

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

*Terms and conditions*

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

the Attorney-General is to appoint the arbitrator.

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

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

*Arbitration*

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

*Acquisition of property*

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

*Applicable costs negotiator*

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

*Technical capability notice that relates to ASIO*

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

*Technical capability notice that relates to an interception agency*

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

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*Technical assistance notice information*

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

*Technical capability notice information*

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

**317ZKA Notification obligations**

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

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help (within the meaning of section 317T) to ASIO in relation to a matter covered by paragraph 317T(2)(a); or

- (ii) are by way of giving help to ASIO in relation to a matter covered by paragraph 317T(2)(b);

the Attorney-General must, within 7 days after making the declaration, notify the Inspector-General of Intelligence and Security of the making of the declaration.

(4) If:

- (a) the Attorney-General makes a declaration under paragraph 317K(1)(e), (3)(f) or (6A)(c) in relation to a technical capability notice; and

(b) the acts or things specified in the notice:

- (i) are directed towards ensuring that a designated communications provider is capable of giving listed help (within the meaning of section 317T) to an interception agency in relation to a matter covered by paragraph 317T(2)(a); or
- (ii) are by way of giving help to an interception agency in relation to a matter covered by paragraph 317T(2)(b);

the Attorney-General must, within 7 days after making the declaration, notify the Commonwealth Ombudsman of the making of the declaration.

(5) A failure to comply with subsection (1), (2), (3) or (4) does not affect the validity of a declaration under:

- (a) paragraph 317ZK(1)(c); or
- (b) paragraph 317ZK(1)(d); or
- (c) paragraph 317ZK(1)(e); or
- (d) paragraph 317ZK(3)(d); or
- (e) paragraph 317ZK(3)(e); or
- (f) paragraph 317ZK(3)(f); or
- (g) paragraph 317ZK(6A)(a); or
- (h) paragraph 317ZK(6A)(b); or
- (i) paragraph 317ZK(6A)(c).

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**317ZL Service of notices etc.**

*Scope*

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

*Address for service of summons, process or notice*

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



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

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

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

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

(4) If:

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

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

(5) If:

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

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

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*Other matters*

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

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

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

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

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

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

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<b>Chief officer and officers of interception agencies</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Interception agency</b>	<b>Chief officer</b>	<b>Officer</b>
4	Police Force of a State or the Northern Territory	the Commissioner of Police (however designated) of that State or Territory	an officer of that Police Force

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

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

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

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

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

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

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

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

<b>Potential delegates</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Interception agency</b>	<b>Potential delegates</b>
1	Australian Federal Police	(a) a Deputy Commissioner (within the meaning of the <i>Australian Federal Police Act 1979</i> ); or (b) a senior executive AFP employee (within the meaning of the <i>Australian Federal Police Act 1979</i> )
3	Australian Crime Commission	a member of the staff of the ACC (within the meaning of the <i>Australian Crime Commission Act 2002</i> ) who is an SES employee or acting SES employee

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**Potential delegates**

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<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Interception agency</b>	<b>Potential delegates</b>
4	Police Force of a State or the Northern Territory	(a) an Assistant Commissioner of the Police Force or a person holding equivalent rank; or (b) a Superintendent of the Police Force or a person holding equivalent rank

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

*Executive level*

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

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

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

- (a) each House of the Parliament;

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

**317ZRB Inspection of records**

- (1) An Ombudsman official may inspect the records of an interception agency to determine the extent of compliance with this Part by:
  - (a) the agency; and
  - (b) the chief officer of the agency; and
  - (c) officers of the agency.

- (2) The chief officer of an interception agency must ensure that officers of the agency give an Ombudsman official any assistance the Ombudsman official reasonably requires to enable the Ombudsman official to exercise the power conferred by subsection (1).

*Report*

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

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- (6) If the Home Affairs Minister receives a report under subsection (3), the Home Affairs Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Home Affairs Minister receives the report.
- (7) Before tabling the copy of the report, the Home Affairs Minister may delete from the copy information that, if made public, could reasonably be expected to:
  - (a) prejudice an investigation or prosecution; or
  - (b) compromise any interception agency's operational activities or methodologies.

**317ZS Annual reports**

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

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*(Interception and Access) Act 1979* relating to the year ending on that 30 June.

**317ZT Alternative constitutional basis**

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



## **Part 16—Defence requirements and disaster plans**

### **Division 1—Introduction**

#### **333 Simplified outline**

The following is a simplified outline of this Part:

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

#### **334 Defence authority**

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

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

## Division 2—Supply of carriage services

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

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

- (6) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (7) Subsection (6) does not, by implication, limit subsection (5).

## Division 3—Defence planning

### 336 Definitions

In this Division:

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

**crisis** means:

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

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

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

### 337 Preparation of draft agreement

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

**338 ACMA's certification of draft agreement**

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

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

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

**339 Requirement to enter into certified agreement**

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

**340 Compliance with agreement**

If:

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

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

**341 Withdrawal of certification of agreement**

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

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

### **342 Duration of agreement**

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

### **343 Variation of agreement**

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

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- (7) If the ACMA certifies a draft variation of a certified agreement, the agreement is varied accordingly.



## **Division 4—Disaster plans**

### **344 Designated disaster plans**

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

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

### **345 Carrier licence conditions about designated disaster plans**

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

### **346 Service provider determinations about designated disaster plans**

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

### **346A Carrier and carriage service provider immunity**

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

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

## **Division 5—Delegation**

### **347 Delegation**

- (1) The Secretary of the Defence Department may, by writing, delegate to an SES employee or acting SES employee in that Department any or all of the Secretary's powers under this Part.
- (2) The Chief of the Defence Force may, by writing, delegate to a member of the Defence Force holding a senior rank any or all of the powers conferred on the Chief of the Defence Force by this Part.
- (3) In this section:

*senior rank* means a rank not lower than:

- (a) in the case of the Royal Australian Navy—the rank of Commodore; or
- (b) in the case of the Australian Army—the rank of Brigadier; or
- (c) in the case of the Royal Australian Air Force—the rank of Air Commodore.

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

### **348 Simplified outline**

The following is a simplified outline of this Part:

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

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

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

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

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

- (3) In making a determination under subsection (1) or (2), the ACMA must have regard to:
  - (a) the technical feasibility of complying with the requirement concerned; and
  - (b) the costs and benefits of complying with the requirement concerned.
- (4) Subsection (3) does not, by implication, limit the matters to which regard may be had.
- (5) A reference in this section to a **standard telephone service** does not include a reference to a service that is supplied by means of a public mobile telecommunications service.
- (5A) A reference in this section to a **standard telephone service** does not include a reference to a service that:
  - (a) is supplied using:
    - (i) a designated radiocommunications facility owned or operated by a carrier or carriage service provider; and
    - (ii) a line that runs directly between the facility and the premises occupied or used by an end-user; and
  - (b) if an instrument is in force under subsection (5B)—satisfies the conditions set out in the instrument.
- (5B) The Minister may, by legislative instrument, set out conditions for the purposes of paragraph (5A)(b).
- (6) Before making a determination under this section, the ACMA must consult the ACCC.
- (7) In making a determination under this section, the ACMA may apply, adopt or incorporate (with or without modification) any

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matter contained in a code or standard proposed or approved by a body or association, either:

- (a) as in force or existing at a particular time; or
- (b) as in force or existing from time to time.

This subsection does not, by implication, limit section 589.

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

*Eligible standard telephone service*

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

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

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*Exempt line*

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

*Designated network*

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

*Review of determination*

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



*Definitions*

(16) In this section:

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

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

***local access line*** has the same meaning as in section 141D.

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

***optical fibre network*** means:

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

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

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

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

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

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

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

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

- (ii) change that selection from time to time; and
- (c) the controlled networks and controlled facilities of the first provider to provide over-ride dial codes for selecting alternative carriage service providers, in relation to calls made using that carriage service, on a call-by-call basis.

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

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

### **350A Declared carriage services**

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

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is to be determined in the same manner in which that question is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.

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

### 351 Pre-selection to be provided

- (1) This section applies to a person if a determination under section 349 is in force and that determination requires the person to provide pre-selection.
- (2) A person must provide pre-selection in accordance with the requirements set out in the determination and on such terms and conditions as are:
  - (a) agreed between the following parties:
    - (i) the person;
    - (ii) the carriage service provider in whose favour pre-selection is required to be provided; or
  - (b) failing agreement, determined by an arbitrator appointed by the parties.If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subsection (4) does not, by implication, limit subsection (3).
- (6) A person must comply with any rules set out in the determination as mentioned in paragraph 349(1)(b) or (2)(b).

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

- (1) The ACMA may, by writing, declare that a specified carrier or carriage service provider is exempt from a requirement imposed under section 349. The declaration has effect accordingly.  
Note: Carriers or providers may be specified by name, by inclusion in a particular class or in any other way.
- (2) In deciding whether a carrier or carriage service provider should be exempt from a requirement imposed under section 349, the ACMA must have regard to the following matters:
  - (a) whether it would be technically feasible for the carrier or provider to comply with the requirement concerned;
  - (b) whether compliance with the requirement concerned would impose unreasonable financial hardship on the carrier or provider.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.
- (4) Before making a declaration under this section, the ACMA must consult the ACCC.
- (5) The ACMA must publish a copy of a declaration under this section on the ACMA's website.
- (6) A declaration under this section is not a legislative instrument if:
  - (a) the declaration specifies a carrier by name; or
  - (b) the declaration specifies a carriage service provider by name.
- (7) A declaration under this section is a legislative instrument if:
  - (a) the declaration specifies a class of carriers; or
  - (b) the declaration specifies a class of carriage service providers.

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

- (1) This section applies to a carriage service provider (the *first provider*) if:

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

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

### **354 Simplified outline**

The following is a simplified outline of this Part:

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

### **355 Calling line identification**

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

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

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

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

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



## **Part 20—International aspects of activities of the telecommunications industry**

### **Division 1—Simplified outline**

#### **364 Simplified outline**

The following is a simplified outline of this Part:

- The Minister may give directions to the Signatories to the INTELSAT Agreement and the Inmarsat Convention.
- Carriers and carriage service providers may be required to comply with certain international conventions.
- The Minister may make Rules of Conduct about dealings with international telecommunications operators.

## **Division 2—Compliance with international agreements**

### **365 INTELSAT and Inmarsat—directions to Signatories**

- (1) This section applies to a person if:
  - (a) the person is:
    - (i) a carrier; or
    - (ii) a carriage service provider; and
  - (b) either:
    - (i) the person is a Signatory within the meaning of the INTELSAT Agreement because the person has been designated, by or on behalf of the Commonwealth and in accordance with Article II(b) of that Agreement, to sign the INTELSAT Operating Agreement; or
    - (ii) the person is a Signatory within the meaning of the Convention on the International Maritime Satellite Organisation (Inmarsat) because the person has been designated, by or on behalf of the Commonwealth and in accordance with Article 2(3) of that Convention, to sign the Operating Agreement on the International Maritime Satellite Organisation (Inmarsat).
- (2) The Minister may give the person such written directions as the Minister thinks necessary in relation to the person's performance of the person's functions as a Signatory within the meaning of that Agreement or Convention.
- (3) The Minister must not give a direction under subsection (2) that relates to the manner in which the person is to deal with a particular customer.
- (4) A person must comply with a direction under subsection (2).

### **366 Compliance with conventions**

- (1) This section applies to a person who is:
  - (a) a carrier; or

- (b) a carriage service provider.
- (2) The Minister may, by notice published in the *Gazette*, declare that, for the purposes of this section, a specified convention is binding in relation to the members of a specified class of persons.
- (3) A person who is a member of that class must, in connection with:
- (a) the operation by the person of telecommunications networks or of facilities; or
  - (b) the supply by the person of carriage services;
- act in a way consistent with Australia's obligations under that convention.
- (4) The Minister may, by notice published in the *Gazette*, declare that, for the purposes of this section, a specified part of a specified convention is binding in relation to the members of a specified class of persons.
- (5) A person who is a member of that class must, in connection with:
- (a) the operation by the person of telecommunications networks or of facilities; or
  - (b) the supply by the person of carriage services;
- act in a way consistent with Australia's obligations under that part of the convention.
- (6) In this section:
- convention** means:
- (a) a convention to which Australia is a party; or
  - (b) an agreement or arrangement between Australia and a foreign country;
- and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

### **Division 3—Rules of conduct about dealings with international telecommunications operators**

#### **367 Rules of conduct about dealings with international telecommunications operators**

- (1) For the purposes of this section, an international telecommunications operator *engages in unacceptable conduct* if, and only if:
  - (a) the operator uses, in a manner that is, or is likely to be, contrary to the national interest, the operator's power in a market for:
    - (i) carriage services; or
    - (ii) goods or services for use in connection with the supply of carriage services; or
    - (iii) the installation of, maintenance of, operation of, or provision of access to, telecommunications networks or facilities; or
  - (b) the operator uses, in a manner that is, or is likely to be, contrary to the national interest, any legal rights or legal status that the operator has because of foreign laws that relate to:
    - (i) carriage services; or
    - (ii) goods or services for use in connection with the supply of carriage services; or
    - (iii) the installation of, maintenance of, operation of, or provision of access to, telecommunications networks or facilities; or
  - (c) the operator engages in any other conduct that is, or is likely to be, contrary to the national interest.
- (2) With a view to preventing, mitigating or remedying unacceptable conduct engaged in by international telecommunications operators, the Minister may, by written instrument, make Rules of Conduct:

- (a) prohibiting or regulating dealings by either or both of the following:
  - (i) carriers;
  - (ii) carriage service providers;with such operators and with other persons; or
- (b) authorising the ACCC to make written determinations of a legislative character, where the determination imposes requirements, prohibitions or restrictions on either or both of the following:
  - (i) carriers;
  - (ii) carriage service providers; or
- (c) authorising the ACCC to give either or both of the following:
  - (i) carriers;
  - (ii) carriage service providers;written directions of an administrative character, where the direction imposes a requirement, prohibition or restriction on the carrier or provider, as the case requires; or
- (d) requiring:
  - (i) carriers; and
  - (ii) carriage service providers;to comply with:
  - (iii) a determination mentioned in paragraph (b); or
  - (iv) a direction mentioned in paragraph (c); or
- (e) authorising the ACCC to make information available to:
  - (i) the public; or
  - (ii) a specified class of persons; or
  - (iii) a specified person;if, in the opinion of the ACCC, the disclosure of the information:
  - (iv) would promote the fair and efficient operation of a market; or
  - (v) would otherwise be in the national interest.

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- (3) Before the ACCC makes a determination, or gives a direction, under the Rules of Conduct, the ACCC must consult the ACMA.
- (4) Rules of Conduct are legislative instruments.
- (5) A determination mentioned in paragraph (2)(b) is a legislative instrument.
- (6) For the purposes of this section, if a person carries on activities outside Australia that involve:
  - (a) the supply of a carriage service specified in paragraph 16(1)(b) or (c); or
  - (b) the supply of goods or services for use in connection with the supply of a carriage service specified in paragraph 16(1)(b) or (c); or
  - (c) the installation of, maintenance of, operation of or provision of access to:
    - (i) a telecommunications network; or
    - (ii) a facility;where the network or facility is used to supply a carriage service specified in paragraph 16(1)(b) or (c);the person is an *international telecommunications operator*.
- (7) In this section:

*engaging in conduct* has the same meaning as in the *Competition and Consumer Act 2010*.

*foreign law* means a law of a place outside Australia.

*international telecommunications operator* has the meaning given by subsection (6).

**368 ACCC to administer Rules of Conduct**

The ACCC has the general administration of the Rules of Conduct in force under section 367.

### **369 Rules of Conduct to bind carriers and carriage service providers**

- (1) This section applies to a person who is:
  - (a) a carrier; or
  - (b) a carriage service provider.
- (2) The person must comply with Rules of Conduct in force under section 367.
- (3) If a provision of an agreement made by the person is inconsistent with Rules of Conduct in force under section 367, the provision is unenforceable (see section 370).

### **370 Unenforceability of agreements**

- (1) This section applies if an agreement, or a provision of an agreement, is unenforceable because of section 369.
- (2) A party to the agreement is not entitled, as against any other party:
  - (a) to enforce the agreement or provision, as the case may be, whether directly or indirectly; or
  - (b) to rely on the agreement or provision, as the case may be, whether directly or indirectly and whether by way of defence or otherwise.
- (3) A party (the *first party*) to the agreement is not entitled to recover by any means (including, for example, set-off, a quasi-contractual claim or a claim for a restitutionary remedy) any amount that another party would have been liable to pay to the first party under or in connection with the agreement or provision, as the case may be, if this section had not been enacted.

### **371 Investigations by the ACCC**

- (1) This Act does not prevent the ACCC from carrying out an investigation of a contravention of Rules of Conduct in force under section 367.

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- (2) If the ACCC begins an investigation of a contravention of the Rules of Conduct, the ACCC must:
  - (a) notify the ACMA accordingly; and
  - (b) consult the ACMA about any significant developments that occur in the course of that investigation.

**372 Reviews of the operation of this Division**

- (1) The ACCC must review, and report each financial year to the Minister on, the operation of this Division.
- (2) The ACCC must give a report under subsection (1) to the Minister as soon as practicable after the end of the financial year concerned.
- (3) The ACCC must, if directed in writing to do so by the Minister, review, and report to the Minister on, specified matters relating to the operation of this Division.
- (4) The ACCC must give a report under subsection (3) to the Minister before the end of the period specified in the direction.
- (5) The Minister must cause a copy of a report under this section to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.



## **Part 20A—Deployment of optical fibre etc.**

### **Division 1—Simplified outline**

#### **372A Simplified outline**

The following is a simplified outline of this Part:

- If a real estate development project is specified in a legislative instrument made by the Minister, a person must not install a line in the project area unless the line is an optical fibre line.
- A person must not install a fixed-line facility in the project area for a real estate development project unless the facility is a fibre-ready facility.
- The rule about the installation of a fixed-line facility does not apply if NBN Co has issued a statement to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area.
- If the developer of a real estate development project is a constitutional corporation, the developer must not, in the course of carrying out the project, sell or lease a building lot or building unit unless a fibre-ready facility is installed in proximity to the lot or unit.
- The rule about selling or leasing a building lot or building unit does not apply if NBN Co has issued a statement to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area.
- These rules are subject to any exemptions specified in a legislative instrument made by the Minister.

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**Division 1** Simplified outline

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- A third party access regime applies to fixed-line facilities owned or operated by a person other than a carrier.

## **Division 2—Deployment of optical fibre lines**

### **372B Deployment of optical fibre lines to building lots**

#### *Scope*

- (1) This section applies to the installation of a line in the project area, or any of the project areas, for a real estate development project if:
- (a) the project involves the subdivision of one or more areas of land into building lots; and
  - (b) the project is specified in, or ascertained in accordance with, a legislative instrument made by the Minister; and
  - (c) the line is wholly or primarily used, or wholly or primarily for use, to supply one or more carriage services to either or both of the following:
    - (i) one or more end-users in one or more building units;
    - (ii) one or more prospective end-users in one or more building units; and
  - (d) those building units have been, are being, are to be, or may be, constructed on any of those building lots; and
  - (e) the line is not on the customer side of the boundary of a telecommunications network; and
  - (f) the line is used, or for use, to supply a carriage service to the public; and
  - (g) the installation occurs after the commencement of this section.

Note 1: For *real estate development project*, see section 372Q.

Note 2: For *subdivision* of an area of land, see section 372R.

Note 3: For *building lot*, see section 372Q.

Note 4: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

Note 5: For *building unit*, see section 372S.

Note 6: For *boundary of a telecommunications network*, see section 22.

Note 7: For *supply to the public*, see section 372ZA.

**Part 20A** Deployment of optical fibre etc.  
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Note 8: For exemption of certain projects, see section 372P.

*Requirement*

- (2) A person must not install a line in the project area, or any of the project areas, for a real estate development project, unless:
- (a) the line is an optical fibre line; and
  - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note: For exemptions, see section 372D.

*Ancillary provisions*

- (3) For the purposes of paragraph (1)(c), it is immaterial whether the end-users or prospective end-users are capable of being identified.

*Conditions*

- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

*Functions and powers*

- (5) An instrument under paragraph (1)(b) may confer functions or powers on the ACMA.

*Ancillary contraventions*

- (6) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

(7) Subsections (2) and (6) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**372C Deployment of optical fibre lines to building units**

*Scope*

- (1) This section applies to the installation of a line in the project area, or any of the project areas, for a real estate development project if:
- (a) the project involves the construction of one or more building units on one or more areas of land; and
  - (b) the project is specified in, or ascertained in accordance with, a legislative instrument made by the Minister; and
  - (c) the line is wholly or primarily used, or wholly or primarily for use, to supply one or more carriage services to either or both of the following:
    - (i) one or more end-users in those building units;
    - (ii) one or more prospective end-users in those building units; and
  - (d) the line is not on the customer side of the boundary of a telecommunications network; and
  - (e) the line is used, or for use, to supply a carriage service to the public; and
  - (f) the installation occurs after the commencement of this section.

Note 1: For ***real estate development project***, see section 372Q.

Note 2: For ***building unit***, see section 372S.

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

Note 4: For ***boundary of a telecommunications network***, see section 22.

Note 5: For ***supply to the public***, see section 372ZA.

Note 6: For exemption of certain projects, see section 372P.

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*Requirement*

- (2) A person must not install a line in the project area, or any of the project areas, for a real estate development project, unless:
- (a) the line is an optical fibre line; and
  - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note: For exemptions, see section 372D.

*Ancillary provisions*

- (3) For the purposes of paragraph (1)(c), it is immaterial whether the end-users or prospective end-users are capable of being identified.

*Conditions*

- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

*Functions and powers*

- (5) An instrument under paragraph (1)(b) may confer functions or powers on the ACMA.

*Ancillary contraventions*

- (6) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (7) Subsections (2) and (6) are ***civil penalty provisions***.
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Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

### **372D Exemptions—Ministerial instrument**

- (1) The Minister may, by legislative instrument, exempt:
  - (a) conduct specified in the instrument; or
  - (b) conduct ascertained in accordance with the instrument;from the scope of either or both of the following provisions:
  - (c) subsection 372B(2);
  - (d) subsection 372C(2).
- (2) An exemption under subsection (1) may be unconditional or subject to such conditions (if any) as are specified in the exemption.
- (3) An instrument under subsection (1) may confer functions or powers on the ACMA.

## Division 3—Installation of fibre-ready facilities

### Subdivision A—Installation obligations

#### 372E Installation of fibre-ready facilities—building lots

##### *Scope*

- (1) This section applies to the installation of a fixed-line facility in the project area, or any of the project areas, for a real estate development project if:
- (a) the project involves the subdivision of one or more areas of land into building lots; and
  - (b) the installation occurs after the commencement of this section; and
  - (c) sewerage services, electricity or water is, are, or will be, supplied to those lots.

Note 1: For *fixed-line facility*, see section 372V.

Note 2: For *real estate development project*, see section 372Q.

Note 3: For *subdivision* of an area of land, see section 372R.

Note 4: For *building lot*, see section 372Q.

Note 5: For *supply* of sewerage services, electricity or water, see section 372Z.

Note 6: For exemptions, see section 372K.

Note 7: For exemption of certain projects, see section 372P.

##### *Requirement*

- (2) A person must not install a fixed-line facility in the project area, or any of the project areas, for a real estate development project, unless:
- (a) the facility is a fibre-ready facility; and
  - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.



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Note 1: For *fibre-ready facility*, see section 372W.

Note 2: For exemptions, see section 372K.

- (3) Subsection (2) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.
- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

*Ancillary contraventions*

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (6) Subsections (2) and (5) are *civil penalty provisions*.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**372F Installation of fibre-ready facilities—building units**

*Scope*

- (1) This section applies to the installation of a fixed-line facility in the project area, or any of the project areas, for a real estate development project if:

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- (a) the project involves the construction of one or more building units on one or more areas of land; and
- (b) the installation occurs after the commencement of this section; and
- (c) sewerage services, electricity or water is, are, or will be, supplied to those units.

Note 1: For *fixed-line facility*, see section 372V.

Note 2: For *real estate development project*, see section 372Q.

Note 3: For *building unit*, see section 372S.

Note 4: For *supply* of sewerage services, electricity or water, see section 372Z.

Note 5: For exemptions, see section 372K.

Note 6: For exemption of certain projects, see section 372P.

*Requirement*

- (2) A person must not install a fixed-line facility in the project area, or any of the project areas, for a real estate development project, unless:
  - (a) the facility is a fibre-ready facility; and
  - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note 1: For *fibre-ready facility*, see section 372W.

Note 2: For exemptions, see section 372K.

- (3) Subsection (2) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.
- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

*Ancillary contraventions*

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (6) Subsections (2) and (5) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**Subdivision B—Sale of building lots and building units**

**372G Sale of building lots and building units—subdivisions**

*Scope*

- (1) This section applies if:
- (a) a real estate development project involves the subdivision of one or more areas of land into building lots; and
  - (b) the project involves either or both of the following:
    - (i) the making available of one or more of those lots for sale or lease, where it would be reasonable to expect that one or more building units would be subsequently constructed on the lots;
    - (ii) the construction of one or more building units on any of the lots and the making available of any of those building units for sale or lease; and
  - (c) if subparagraph (b)(i) applies—sewerage services, electricity or water is, are, or will be, supplied to those lots; and

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(d) is subparagraph (b)(ii) applies—sewerage services, electricity or water is, are, or will be, supplied to those units.

- Note 1: For *subdivision* of an area of land, see section 372R.  
Note 2: For *building lot*, see section 372Q.  
Note 3: For *building unit*, see section 372S.  
Note 4: For *sale* of building lots, see section 372T.  
Note 5: For *sale* of building units, see section 372U.  
Note 6: For *supply* of sewerage services, electricity or water, see section 372Z.  
Note 7: For exemptions, see section 372K.  
Note 8: For exemption of certain projects, see section 372P.

*Requirements—building lots*

(2) If subparagraph (1)(b)(i) applies to a building lot, a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the lot unless a fibre-ready facility is installed in proximity to the lot.

- Note 1: For *fibre-ready facility*, see section 372W.  
Note 2: For *proximity*, see section 372Y.  
Note 3: For exemptions, see section 372K.

(3) Subsection (2) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.

*Requirements—building units*

(4) If subparagraph (1)(b)(ii) applies to a building unit, a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a fibre-ready facility is installed in proximity to the unit.

- Note 1: For *fibre-ready facility*, see section 372W.

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Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

- (5) Subsection (4) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.

*Ancillary contraventions*

- (6) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2) or (4); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2) or (4); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2) or (4); or
  - (d) conspire with others to effect a contravention of subsection (2) or (4).

*Civil penalty provisions*

- (7) Subsections (2), (4) and (6) are *civil penalty provisions*.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Validity of transactions*

- (8) A contravention of subsection (2) or (4) does not affect the validity of any transaction.

### **372H Sale of building units—other projects**

*Scope*

- (1) This section applies if:
- (a) a real estate development project involves:

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- (i) the construction of one or more building units on one or more areas of land; and
- (ii) the making available of any or all of those building units for sale or lease; and
- (b) sewerage services, electricity or water is, are, or will be, supplied to those units.

Note 1: For **building unit**, see section 372S.

Note 2: For **sale** of building units, see section 372U.

Note 3: For **supply** of sewerage services, electricity or water, see section 372Z.

Note 4: For exemptions, see section 372K.

Note 5: For exemption of certain projects, see section 372P.

*Requirements*

- (2) A constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease such a building unit unless a fibre-ready facility is installed in proximity to the unit.

Note 1: For **fibre-ready facility**, see section 372W.

Note 2: For **proximity**, see section 372Y.

Note 3: For exemptions, see section 372K.

- (3) Subsection (2) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.

*Ancillary contraventions*

- (4) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or

- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
- (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (5) Subsections (2) and (4) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

*Validity of transactions*

- (6) A contravention of subsection (2) does not affect the validity of any transaction.

**Subdivision C—NBN Co may issue statement about the non-installation of optical fibre lines**

**372J NBN Co may issue statement about the non-installation of optical fibre lines**

- (1) NBN Co may issue a written statement to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for a specified real estate development project.
- (2) NBN Co may exercise the power conferred by subsection (1):
  - (a) at the request of a person; or
  - (b) on NBN Co's own initiative.
- (3) A statement issued under subsection (1) is not a legislative instrument.

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**372JA Register of Statements about the Non-installation of Optical Fibre Lines**

- (1) NBN Co must keep a register, to be known as the Register of Statements about the Non-installation of Optical Fibre Lines, that sets out each statement issued under subsection 372J(1).
- (2) The register is to be maintained by electronic means.
- (3) The register is to be made available for inspection on NBN Co's website.

**Subdivision D—Exemptions**

**372K Exemptions—Ministerial instrument**

*Real estate development projects*

- (1) The Minister may, by legislative instrument, exempt:
  - (a) a real estate development project specified in the instrument;  
or
  - (b) a real estate development project ascertained in accordance with the instrument;from the scope of any or all of the following provisions:
  - (c) section 372E;
  - (d) section 372F;
  - (e) section 372G;
  - (f) section 372H.

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

- (2) An exemption under subsection (1) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

*Installations*

- (3) The Minister may, by legislative instrument, exempt:



- (a) conduct specified in the instrument; or
  - (b) conduct ascertained in accordance with the instrument;
- from the scope of either or both of the following provisions:
- (c) subsection 372E(2);
  - (d) subsection 372F(2).

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

- (4) An exemption under subsection (3) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

*Building lots*

- (5) The Minister may, by legislative instrument, exempt:
  - (a) a building lot specified in the instrument; or
  - (b) a building lot ascertained in accordance with the instrument;from the scope of subsection 372G(2).

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

- (6) An exemption under subsection (5) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

*Building units*

- (7) The Minister may, by legislative instrument, exempt:
  - (a) a building unit specified in the instrument; or
  - (b) a building unit ascertained in accordance with the instrument;from the scope of either or both of the following provisions:
  - (c) subsection 372G(4);
  - (d) subsection 372H(2).

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

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- (8) An exemption under subsection (7) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

*Functions and powers*

- (9) An instrument under subsection (1), (3), (5) or (7) may confer functions or powers on the ACMA.

## **Division 4—Third party access regime**

### **372L Third party access regime**

#### *Scope*

- (1) This section applies to a fixed-line facility installed in Australia if:
  - (a) the installation occurs after the commencement of this section; and
  - (b) the facility is owned or operated by a person other than a carrier.

Note 1: For *fixed-line facility*, see section 372V.

Note 2: For exemptions, see section 372N.

#### *Access to facility*

- (2) The owner or operator of the facility must, if requested to do so by a carrier, give the carrier access to the facility.
- (3) The owner or operator of the facility is not required to comply with subsection (2) unless:
  - (a) the access is provided for the sole purpose of enabling the carrier:
    - (i) to provide facilities and carriage services; or
    - (ii) to establish its own facilities; and
  - (b) the carrier gives the owner or operator of the facility reasonable notice that the carrier requires the access.
- (4) The owner or operator of the facility is not required to comply with subsection (2) in relation to the facility if there is in force a written certificate issued by the ACCC stating that, in the ACCC's opinion, compliance with subsection (2) in relation to the facility is not technically feasible.
- (5) In determining whether compliance with subsection (2) in relation to a facility is technically feasible, the ACCC must have regard to:

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- (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
  - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the facility; and
  - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
    - (i) changing the configuration or operating parameters of the facility; and
    - (ii) making alterations to the facility; and
  - (d) such other matters (if any) as the ACCC considers relevant.
- (6) Before issuing a certificate under subsection (4), the ACCC may consult the ACMA.
- (7) If the ACCC receives a request to make a decision about the issue of a certificate under subsection (4), the ACCC must use its best endeavours to make that decision within 10 business days after the request was made.
- (8) Subsection (2) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have the effect of depriving any person of a right under a contract that was in force at the time the request was made.

*Ancillary contraventions*

- (9) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (10) Subsections (2) and (9) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**372M Terms and conditions of access**

- (1) The owner or operator of a fixed-line facility must comply with subsection 372L(2) on such terms and conditions as are:
- (a) agreed between the following parties:
    - (i) the owner or operator of the facility;
    - (ii) the carrier who made the request under that subsection;or
  - (b) failing agreement, determined by an arbitrator appointed by the parties.

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

- (2) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (3) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (4) Subsection (3) does not, by implication, limit subsection (2).
- (5) If:
- (a) an agreement mentioned in paragraph (1)(a) is in force; and
  - (b) the agreement is in writing;
- a determination under this section has no effect to the extent to which it is inconsistent with the agreement.

### 372N Exemptions—Ministerial instrument

- (1) The Minister may, by legislative instrument, exempt:
  - (a) a fixed-line facility specified in the instrument; or
  - (b) a fixed-line facility ascertained in accordance with the instrument;from the scope of section 372L.

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

- (2) An exemption under subsection (1) may be unconditional or subject to such conditions (if any) as are specified in the exemption.
- (3) An instrument under subsection (1) may confer functions or powers on the ACCC.
- (4) The ACCC may, by writing, delegate any or all of the functions or powers conferred on it by an instrument under subsection (1) to a member of the Commission (within the meaning of the *Competition and Consumer Act 2010*).

### 372NA Code relating to access

- (1) The ACCC may, by legislative instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Division.
- (2) The owner or operator of a fixed-line facility must comply with the Code.
- (3) This section does not, by implication, limit a power conferred by or under this Act to make an instrument.
- (4) This section does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.
- (5) Subsections (3) and (4) do not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.

*Ancillary contraventions*

- (6) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).

*Civil penalty provisions*

- (7) Subsections (2) and (6) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

## Division 5—Exemption of certain projects

### 372P Exemption of certain projects

- (1) A real estate development project is exempt from the scope of Division 2 if, before the commencement of this section, a person who carries out, or carries out an element of, the project:
  - (a) began to install lines in the project area, or any of the project areas, for the project; or
  - (b) entered into a contract with another person for the installation of lines in the project area, or any of the project areas, for the project.
- (2) A real estate development project is exempt from the scope of Division 3 if, before the commencement of this section, a person who carries out, or carries out an element of, the project:
  - (a) began to install fixed-line facilities in the project area, or any of the project areas, for the project; or
  - (b) entered into a contract with another person for the installation of fixed-line facilities in the project area, or any of the project areas, for the project.
- (3) A real estate development project is exempt from the scope of Division 3 if, before the commencement of this section:
  - (a) civil works associated with the project began to be carried out; or
  - (b) a person who carries out, or carries out an element of, the project entered into a contract with another person for the carrying out of civil works associated with the project.



## **Division 6—Miscellaneous**

### **372Q Real estate development projects etc.**

#### *Subdivisions*

- (1) For the purposes of this Act, a project is a ***real estate development project*** if:
- (a) the project involves the subdivision of one or more areas of land in Australia into lots (however described); and
  - (b) the project involves either or both of the following:
    - (i) the making available of one or more of those lots for sale or lease, where it would be reasonable to expect that one or more building units would be subsequently constructed on the lots;
    - (ii) the construction of one or more building units on any of the lots and the making available of any of those building units for sale or lease; and
  - (c) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note 1: For ***subdivision*** of an area of land, see section 372R.

Note 2: For ***sale*** of building lots, see section 372T.

Note 3: For ***building unit***, see section 372S.

Note 4: For ***sale*** of building units, see section 372U.

- (2) For the purposes of this Act, an area of land mentioned in subsection (1) is a ***project area*** for the real estate development project.
- (3) For the purposes of this Act, a lot mentioned in subsection (1) is a ***building lot***.
- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (1)(c).

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*Building units*

- (5) For the purposes of this Act, a project is a **real estate development project** if:
- (a) the project involves:
    - (i) the construction of one or more building units on one or more areas of land in Australia; and
    - (ii) the making available of any or all of those building units for sale or lease; and
  - (b) the conditions (if any) specified in an instrument under subsection (7) are satisfied.

Note 1: For **building unit**, see section 372S.

Note 2: For **sale** of building units, see section 372U.

- (6) For the purposes of this Act, an area of land mentioned in subsection (5) is a **project area** for the real estate development project.
- (7) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (5)(b).

*Application*

- (8) For the purposes of subsections (1) and (5), it is immaterial whether:
- (a) the project has been, is being, or will be, implemented in stages; or
  - (b) different elements of the project have been, are being, or will be, carried out by different persons; or
  - (c) one or more approvals are given, are required, or will be required, under a law of the Commonwealth, a State or Territory, for the project, or any element of the project; or
  - (d) in a case where the project relates to 2 or more areas of land—those areas of land are under common ownership.

### **372R Subdivision of an area of land**

For the purposes of this Act, if an area of land has been subdivided into lots (however described) it is immaterial whether, after the subdivision, a part of the area of land (for example, a road) is not included in any of those lots.

### **372S Building units**

#### *Scope*

- (1) This section applies to a building that has been, is being, or is to be, constructed.

#### *Building units*

- (2) For the purposes of this Act, if the whole of the building is, or is to be, for single occupation or use, the building is a **building unit**.
- (3) For the purposes of this Act, if the whole or a part of the building is, or is to be, held as a unit under a strata title system (or a similar system) established under a law of a State or Territory, the whole or the part, as the case may be, of the building is a **building unit**.
- (4) For the purposes of this Act, if a part of the building is, or is to be, for separate lease, that part of the building is a **building unit**.

### **372T Sale of building lots**

For the purposes of this Act, a person **sells** a building lot if:

- (a) in a case where the person holds a freehold interest in the land concerned—the person transfers the whole or a part of the freehold interest in the land; or
- (b) in a case where the person holds a leasehold interest in the land concerned—the person transfers the whole or a part of the leasehold interest in the land.

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**372U Sale of building units**

For the purposes of this Act, a person *sells* a building unit if:

- (a) in a case where:
  - (i) the building unit is covered by subsection 372S(2), but is not covered by subsection 372S(3); and
  - (ii) the person holds a freehold interest in the land on which the building unit is situated;the person transfers the whole or a part of the freehold interest; or
- (b) in a case where:
  - (i) the building unit is covered by subsection 372S(2), but is not covered by subsection 372S(3); and
  - (ii) the person holds a leasehold interest in the land on which the building unit is situated;the person transfers the whole or a part of the leasehold interest; or
- (c) in a case where:
  - (i) the building unit is covered by subsection 372S(3); and
  - (ii) the person holds an interest in the unit;the person transfers the whole or a part of the interest in the unit.

**372V Fixed-line facilities**

For the purposes of this Act, a *fixed-line facility* is a facility (other than a line) used, or for use, in connection with a line, where the line:

- (a) is not on the customer side of the boundary of a telecommunications network; and
- (b) is used, or for use, to supply a carriage service to the public.

Note 1: For *boundary of a telecommunications network*, see section 22.

Note 2: For *supply to the public*, see section 372ZA.

### **372W Fibre-ready facility**

For the purposes of this Act, each of the following is a *fibre-ready facility*:

- (a) an underground fixed-line facility that:
  - (i) is used, or for use, in connection with an optical fibre line; and
  - (ii) satisfies such conditions (if any) as are specified in a legislative instrument made by the Minister;
- (b) a fixed-line facility that:
  - (i) is used, or for use, in connection with an optical fibre line; and
  - (ii) is specified in a legislative instrument made by the Minister; and
  - (iii) satisfies such conditions (if any) as are specified in a legislative instrument made by the Minister.

### **372X Installation of a facility**

For the purposes of this Part, *install*, in relation to a facility, includes:

- (a) construct the facility on, over or under any land; and
- (b) attach the facility to any building or other structure.

### **372Y Installation of a fibre-ready facility in proximity to a building lot or building unit**

*Building lot*

- (1) For the purposes of this Part, a fibre-ready facility used, or for use, in connection with a line is installed in *proximity* to a building lot if, and only if, it is installed:
  - (a) in, on or under the lot, so as to enable the line to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; or

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- (b) in sufficient proximity to the lot as to enable the line to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot.

*Building unit*

- (2) For the purposes of this Part, a fibre-ready facility used, or for use, in connection with a line is installed in **proximity** to a building unit if, and only if, it is installed in sufficient proximity to the building unit as to enable the line to be readily connected to the building unit.

**372Z Sewerage services, electricity or water supplied to a building lot or building unit**

*Sewerage services*

- (1) For the purposes of this Part, sewerage services are **supplied** to a building lot if, and only if:
  - (a) a sewerage pipeline is installed:
    - (i) under the lot; or
    - (ii) in sufficient proximity to the lot as to enable sewerage services to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; and
  - (b) the pipeline is part of a public sewerage system.
- (2) For the purposes of this Part, sewerage services are **supplied** to a building unit if, and only if:
  - (a) a sewerage pipeline is installed in sufficient proximity to the building unit as to enable sewerage services to be readily connected to the building unit; and
  - (b) the pipeline is part of a public sewerage system.

*Electricity*

- (3) For the purposes of this Part, electricity is **supplied** to a building lot if, and only if:

- (a) an electricity cable is installed:
    - (i) over or under the lot; or
    - (ii) in sufficient proximity to the lot as to enable electricity to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; and
  - (b) the cable is part of an electricity supply grid.
- (4) For the purposes of this Part, electricity is **supplied** to a building unit if, and only if:
- (a) an electricity cable is installed in sufficient proximity to the building unit as to enable electricity to be readily connected to the building unit; and
  - (b) the cable is part of an electricity supply grid.

*Water*

- (5) For the purposes of this Part, water is **supplied** to a building lot if, and only if:
- (a) a water pipeline is installed:
    - (i) under the lot; or
    - (ii) in sufficient proximity to the lot as to enable water to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; and
  - (b) the pipeline is part of a reticulated water supply system.
- (6) For the purposes of this Part, water is **supplied** to a building unit if, and only if:
- (a) a water pipeline is installed in sufficient proximity to the building unit as to enable water to be readily connected to the building unit; and
  - (b) the pipeline is part of a reticulated water supply system.

**372ZA Supply to the public**

- (1) For the purposes of this Part, if:
- (a) a line consists of, or forms part of, a network unit; and

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- (b) under section 44, the network unit is taken, for the purposes of section 42, to be used to supply a carriage service to the public;  
the line is taken to be used, or for use, to supply a carriage service to the public.
- (2) For the purposes of this Part, if:
- (a) a line neither consists of, nor forms part of, a network unit;  
and
- (b) assuming that the line were a network unit, then, under section 44, the network unit would be taken, for the purposes of section 42, to be used to supply a carriage service to the public;  
the line is taken to be used, or for use, to supply a carriage service to the public.

**372ZB Concurrent operation of State and Territory laws**

This Part is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.

**372ZD NBN Co**

In this Part:

*NBN Co* means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).



## **Part 21—Technical regulation**

### **Division 1—Simplified outline**

#### **373 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA may make the following types of standards:
  - (a) technical standards about customer equipment and customer cabling;
  - (b) standards relating to the features of customer equipment that are designed to cater for the special needs of persons with disabilities;
  - (c) technical standards about the interconnection of facilities;
  - (d) technical standards relating to Layer 2 bitstream services.
- The ACMA may require customer equipment and customer cabling to be labelled so as to indicate compliance with standards.
- The ACMA may issue connection permits, and make connection rules, authorising the connection of customer equipment and customer cabling that does not comply with the labelling requirements.
- A label may include a compliance symbol. The unauthorised use of compliance symbols is prohibited.

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- The ACMA may grant cabling licences, and make cabling provider rules, authorising the performance of cabling work.
- Civil actions may be instituted for unlawful or dangerous connections of customer equipment or customer cabling.
- Dangerous equipment and cabling may be disconnected from networks.
- The ACMA may prohibit the supply or possession of dangerous equipment or cabling.

## **Division 2—Interpretative provisions**

### **374 Part applies to networks or facilities in Australia operated by carriers or carriage service providers**

- (1) A reference in this Part to a *telecommunications network* is a reference to a telecommunications network in Australia that is operated by a carrier or carriage service provider.
- (2) A reference in this Part to a *facility* is a reference to a facility in Australia that is operated by a carrier or carriage service provider.

### **375 Manager of network or facility**

For the purposes of this Part, the *manager* of:

- (a) a telecommunications network; or
- (b) a facility of a telecommunications network;

is the carrier, or carriage service provider, who operates the network or facility, as the case may be.

### **Division 3—Technical standards about customer equipment and customer cabling**

#### **376 ACMA's power to make technical standards**

- (1) The ACMA may, by legislative instrument, make a technical standard relating to specified customer equipment or specified customer cabling.
- (2) Standards under this section are to consist only of such requirements as are necessary or convenient for:
  - (a) protecting the integrity of a telecommunications network or a facility; or
  - (b) protecting the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or
    - (iv) are otherwise reasonably likely to be affected by the operation of;a telecommunications network or a facility; or
  - (c) ensuring that customer equipment can be used to give access to an emergency call service; or
  - (d) ensuring, for the purpose of the supply of a standard telephone service, the interoperability of customer equipment with a telecommunications network to which the equipment is, or is proposed to be, connected; or
  - (da) ensuring, for the purpose of the supply of a carriage service using:
    - (i) the national broadband network; or
    - (ii) any other superfast telecommunications network;the interoperability of customer equipment with such a network; or
  - (db) ensuring that customer equipment or customer cabling that is, or is proposed to be, connected to:
    - (i) the national broadband network; or

- (ii) any other superfast telecommunications network;  
meets particular performance requirements; or
  - (dc) ensuring that customer equipment or customer cabling that is,  
or is proposed to be, connected to:
    - (i) the national broadband network; or
    - (ii) any other superfast telecommunications network;  
has particular design features; or
  - (e) achieving an objective specified in the regulations.
- (3) Regulations made for the purposes of paragraph (2)(e) must not specify an objective if the achievement of the objective is likely to have the effect (whether direct or indirect) of requiring a telecommunications network or a facility to:
- (a) have particular design features; or
  - (b) meet particular performance requirements.
- (4) A standard under this section may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (7) In this section:

***national broadband network*** has the same meaning as in section 577BA.

***superfast carriage service*** means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the download transmission speed of the carriage service is normally more than 25 megabits per second; and
- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

***superfast telecommunications network*** means a telecommunications network that is capable of being used to supply a superfast carriage service.

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**376A ACMA must make technical standards if directed by the Minister**

- (1) The Minister may, by legislative instrument, direct the ACMA to:
  - (a) make a technical standard under section 376 that deals with one or more specified matters; and
  - (b) do so within a specified period.
- (2) The Minister must not give the ACMA a direction under section 14 of the *Australian Communications and Media Authority Act 2005* requiring the ACMA to make a technical standard under section 376 of this Act that deals with one or more specified matters.

**377 Adoption of voluntary standards**

- (1) In making a technical standard under section 376, the ACMA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
  - (a) Standards Australia; or
  - (b) any other body or association;either:
  - (c) as in force or existing at a particular time; or
  - (d) as in force or existing from time to time.
- (2) Subsection (1) does not, by implication, limit section 589.

**378 Procedures for making technical standards**

- (1) Before making a technical standard under section 376, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representation so made.

Note: This subsection has effect subject to section 379 (which deals with the ACMA's power to make standards in cases of urgency).

- (2) The ACMA may make an arrangement with any of the following bodies or associations:
- (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;
- under which the body or association:
- (d) prepares a draft of a standard; and
  - (e) publishes the draft standard; and
  - (f) undertakes a process of public consultation on the draft standard; and
  - (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

### **379 Making technical standards in cases of urgency**

- (1) The ACMA is not required to comply with subsection 378(1) in relation to the making of a particular technical standard if the ACMA is satisfied that it is necessary to make the standard as a matter of urgency in order to:
- (a) protect the integrity of a telecommunications network or of a facility; or
  - (b) protect the health or safety of persons who:

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- (i) operate; or
  - (ii) work on; or
  - (iii) use services supplied by means of; or
  - (iv) are otherwise reasonably likely to be affected by the operation of;  
a telecommunications network or a facility.
- (2) If subsection (1) applies to a standard (the *urgent standard*), the urgent standard ceases to have effect 12 months after it came into operation. However, this rule does not prevent the ACMA from revoking the urgent standard and making another standard under section 376 that:
- (a) is not a standard to which subsection (1) applies; and
  - (b) deals with the same subject matter as the urgent standard.



## **Division 4—Disability standards**

### **380 Disability standards**

- (1) The ACMA may, by legislative instrument, make a standard relating to specified customer equipment if:
  - (a) the customer equipment is for use in connection with the standard telephone service; and
  - (b) the customer equipment is for use primarily by persons who do not have a disability; and
  - (c) the standard relates to the features of the equipment that are designed to cater for any or all of the special needs of persons with disabilities.
- (2) The following are examples of features mentioned in paragraph (1)(c):
  - (a) an induction loop that is designed to assist in the operation of a hearing aid;
  - (b) a raised dot on the button labelled “5” on a telephone.
- (3) A standard under this section may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (6) In this section:

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

### **381 Adoption of voluntary standards**

- (1) In making a standard under section 380, the ACMA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
  - (a) Standards Australia; or
  - (b) any other body or association;

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either:

- (c) as in force or existing at a particular time; or
- (d) as in force or existing from time to time.

(2) Subsection (1) does not, by implication, limit section 589.

**382 Procedures for making disability standards**

- (1) Before making a standard under section 380, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representation so made.
- (2) The ACMA may make an arrangement with any of the following bodies or associations:
  - (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;under which the body or association:
  - (d) prepares a draft of a standard; and
  - (e) publishes the draft standard; and
  - (f) undertakes a process of public consultation on the draft standard; and
  - (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.

- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

**383 Effect of compliance with disability standards**

- (1) In determining whether a person has infringed section 24 of the *Disability Discrimination Act 1992* in relation to the supply or provision of customer equipment, regard must be had to whether the customer equipment complies with a standard in force under section 380.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.

## Division 5—Technical standards about the interconnection of facilities

### 384 ACMA's power to make technical standards

- (1) The ACMA may, by legislative instrument, make a technical standard relating to the interconnection of facilities.

Note: For enforcement of the standards, see sections 152AR and 152AXB of the *Competition and Consumer Act 2010*.

- (2) The ACMA must not make a standard under subsection (1) unless the ACMA is directed to do so by the ACCC under subsection (3).
- (3) The ACCC may give written directions to the ACMA in relation to the exercise of the power to make standards under subsection (1).
- (4) The ACMA must exercise its powers under subsection (1) in a manner consistent with any directions given by the ACCC under subsection (3).
- (5) The ACCC must not give a direction under subsection (3) unless, in the ACCC's opinion, it is necessary to do so in order to:
- (a) promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services; or
  - (b) reduce or eliminate the likelihood of hindrance to the provision of access to declared services.
- (6) A standard under subsection (1) may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (9) In this section:

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

### **385 Adoption of voluntary standards**

- (1) In making a technical standard under section 384, the ACMA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
  - (a) Standards Australia; or
  - (b) any other body or association;either:
  - (c) as in force or existing at a particular time; or
  - (d) as in force or existing from time to time.
- (2) Subsection (1) does not, by implication, limit section 589.

### **386 Procedures for making technical standards**

- (1) Before making a technical standard under section 384, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representations so made.
- (2) The ACMA may make an arrangement with any of the following bodies or associations:
  - (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;under which the body or association:
  - (d) prepares a draft of a standard; and
  - (e) publishes the draft standard; and
  - (f) undertakes a process of public consultation on the draft standard; and

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- (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

**387 Procedures for making technical standards**

- (1) The ACMA must not make a standard under section 384 relating to a particular matter unless:
  - (a) the ACMA has given a body or association a written notice requesting the body or association to make a standard relating to that matter within the period specified in the notice; and
  - (b) one of the following subparagraphs applies:
    - (i) the body or association does not comply with the request;
    - (ii) the body or association complies with the request, but the ACMA is not satisfied that the body's or association's standard deals with that matter in an adequate way;
    - (iii) the body or association complies with the request, but the ACMA is not satisfied that the body's or association's standard is operating adequately.
- (2) The period specified under paragraph (1)(a) must run for at least 120 days after the notice was given.

- (3) In making a decision under subparagraph (1)(b)(ii) or (iii), the ACMA must have regard to:
- (a) whether the body's or association's standard is likely to promote the long-term interests of end-users of carriage services and of services supplied by means of carriage services; and
  - (b) whether the body's or association's standard is likely to reduce or eliminate the likelihood of hindrance to the provision of access to declared services.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACMA may have regard.
- (5) Before making a decision under subparagraph (1)(b)(ii) or (iii), the ACMA must consult the ACCC.

### **388 Provision of access**

A reference in this Division to the *provision of access* is a reference to the provision of access to:

- (a) service providers generally; or
  - (b) a particular class or classes of service providers; or
  - (c) a particular service provider or particular service providers;
- in order that the service provider or providers can provide carriage services and/or content services.

### **389 Promotion of the long-term interests of end-users of carriage services and of services supplied by means of carriage services**

For the purposes of this Division, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as it is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.

## Division 5A—Technical standards relating to Layer 2 bitstream services

### 389A ACMA's power to determine technical standards

The ACMA may, by legislative instrument, determine technical standards relating to Layer 2 bitstream services.

Note: See section 589 (instruments under this Act may provide for matters by reference to other instruments).

### 389B Compliance with technical standards

- (1) A carrier or carriage service provider must comply with a standard determined under section 389A.
- (2) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).

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

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

#### *Exemptions*

- (4) The Minister may, by written instrument, exempt a specified carrier, or a specified carriage service provider, from subsection (1).

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (5) An instrument under subsection (4) may be:
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- (a) unconditional; or
  - (b) subject to such conditions (if any) as are specified in the instrument.
- (6) Before making an instrument under subsection (4), the Minister must consult:
- (a) the ACCC; and
  - (b) the ACMA.
- (7) An instrument under subsection (4) is not a legislative instrument.

## Division 6—Connection permits and connection rules

### Subdivision A—Connection permits authorising the connection of non-standard customer equipment and non-standard cabling

#### 390 Application for connection permit

##### *Customer equipment*

- (1) A person (the ***applicant***) may apply to the ACMA for a permit authorising the applicant, and such other persons as are from time to time nominated by the applicant, to:
  - (a) connect specified customer equipment to a telecommunications network or to a facility; and
  - (b) maintain such a connection.

The permit is called a ***connection permit***.

##### *Customer cabling*

- (2) A person (the ***applicant***) may apply to the ACMA for a permit authorising the applicant, and such other persons as are from time to time nominated by the applicant, to:
  - (a) connect specified customer cabling to a telecommunications network or to a facility; and
  - (b) maintain such a connection.

The permit is called a ***connection permit***.

#### 391 Form of application

An application must be:

- (a) in writing; and
- (b) in accordance with the form approved in writing by the ACMA.

### **392 Application to be accompanied by charge**

An application must be accompanied by the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*.

### **393 Further information**

- (1) The ACMA may request the applicant to give the ACMA further information about the application.
- (2) The ACMA may refuse to consider the application until the applicant gives the ACMA the information.

### **394 Issue of connection permits**

- (1) After considering an application, the ACMA may issue a connection permit in accordance with the application.
- (2) In deciding whether to issue a connection permit, the ACMA may have regard to:
  - (a) whether the purpose for which the permit is sought is a purpose related to:
    - (i) education or research; or
    - (ii) the testing of customer equipment or customer cabling; or
    - (iii) the demonstration of customer equipment or customer cabling; and
  - (b) the knowledge and experience of the applicant.
- (3) In deciding whether to issue a connection permit, the ACMA must have regard to:
  - (a) the protection of the integrity of a telecommunications network or of a facility; and
  - (b) the protection of the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or

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- (iv) are otherwise reasonably likely to be affected by the operation of;  
a telecommunications network or a facility.
- (4) Subsections (2) and (3) do not, by implication, limit the matters to which the ACMA may have regard.
- (5) If the ACMA decides to refuse to issue the connection permit, it must give the applicant a written notice setting out the decision.

**395 Connection permit has effect subject to this Act**

- (1) A connection permit has effect subject to this Act.
- (2) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**396 Nominees of holder**

If the ACMA issues a connection permit, the persons nominated by the holder are called the holder's *nominees*.

**397 Duration of connection permits**

- (1) A connection permit comes into force when it is issued and remains in force:
  - (a) if the permit specifies a day of expiration—until the end of that day; or
  - (b) otherwise—indefinitely.
- (2) The ACMA may, by written notice given to the holder of a connection permit, declare that the permit has effect as if the permit had specified a day specified in the notice as the day of expiration of the connection permit. The declaration has effect accordingly.

- (3) A day specified in a notice under subsection (2) must be later than the day on which the notice is given to the holder of the connection permit.

### **398 Conditions of connection permits**

- (1) A connection permit is subject to the following conditions:
- (a) a condition that the holder and the holder's nominees must comply with this Division;
  - (b) any condition to which the permit is subject under subsection (2);
  - (c) any other conditions specified in the permit.
- (2) The ACMA may, by legislative instrument, determine that:
- (a) each connection permit is subject to such conditions as are specified in the determination; or
  - (b) each connection permit included in a specified class of connection permits is subject to such conditions as are specified in the determination.
- (3) The ACMA may, by written notice given to the holder of a connection permit:
- (a) impose one or more further conditions to which the permit is subject; or
  - (b) vary or revoke any condition:
    - (i) imposed under paragraph (a); or
    - (ii) specified in the permit.
- (4) A condition of a connection permit may relate to the kinds of persons who can be the holder's nominees.
- (5) Subsection (4) does not, by implication, limit the conditions to which a connection permit may be subject.

### **399 Offence of contravening condition**

- (1) A person commits an offence if:

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- (a) the person is the holder of a connection permit, or a nominee of such a holder; and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes a condition to which the permit is subject.

Penalty: 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

- (2) In this section:

***engage in conduct*** means:

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

**400 Formal warnings—breach of condition**

The ACMA may issue a formal warning to the holder of a connection permit if the holder, or a nominee of the holder, contravenes a condition to which the permit is subject.

**401 Surrender of connection permit**

The holder of a connection permit may, at any time, surrender the permit by written notice given to the ACMA.

**402 Cancellation of connection permit**

- (1) The ACMA may, by written notice given to the holder of a connection permit, cancel the permit.
- (2) In deciding whether to cancel the permit, the ACMA may have regard to any matter which the ACMA was entitled, under subsection 394(2), to have regard in deciding whether to issue a permit.

- (3) In deciding whether to cancel the permit, the ACMA must have regard to:
  - (a) any matter to which the ACMA was required, under subsection 394(3), to have regard in deciding whether to issue a permit; and
  - (b) whether or not the holder, or a nominee of the holder, has been convicted of an offence against this Division.
- (4) Subsections (2) and (3) do not, by implication, limit the matters to which the ACMA may have regard.

### **403 Register of connection permits**

- (1) The ACMA is to maintain a Register in which it includes:
  - (a) all connection permits currently in force; and
  - (b) all conditions of such permits.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*:
  - (a) inspect the Register; and
  - (b) make a copy of, or take extracts from, the Register.
- (4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACMA gives the person a printout of, or of the relevant parts of, the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACMA may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.

## Subdivision B—Connection rules

### 404 Connection rules

- (1) The ACMA may, by legislative instrument, make rules (*connection rules*) that:
  - (a) are expressed to apply to specified persons; and
  - (b) relate to any or all of the following:
    - (i) the connection of specified customer equipment to a telecommunications network or to a facility;
    - (ii) maintaining a connection referred to in subparagraph (i);
    - (iii) the connection of specified customer cabling to a telecommunications network or to a facility;
    - (iv) maintaining a connection referred to in subparagraph (iii).

Note 1: A person may be specified by name, by inclusion in a specified class or in any other way.

Note 2: Equipment or cabling may be specified by name, by inclusion in a specified class or in any other way.

- (2) A person specified under paragraph (1)(a) is said to be *subject to the connection rules*.
- (3) The connection rules may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

### 405 Procedures for making connection rules

- (1) Before making connection rules under section 404, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed rules (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representation so made.



- (2) The ACMA may make an arrangement with any of the following bodies or associations:
- (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;
- under which the body or association:
- (d) prepares draft rules; and
  - (e) publishes the draft rules; and
  - (f) undertakes the process of public consultation on the draft rules; and
  - (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

## **Division 7—Labelling of customer equipment and customer cabling**

### **406 Application of labels**

- (1) A reference in this Division to a *label* includes a reference to a statement.
- (2) For the purposes of this Division, a label is taken to be *applied* to a thing if:
  - (a) the label is affixed to the thing; or
  - (b) the label is woven in, impressed on, worked into or annexed to the thing; or
  - (c) the label is affixed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is supplied; or
  - (d) the label is affixed to, or incorporated in, an instruction or other document that accompanies the first-mentioned thing.

### **406A Application of Division to agent of manufacturer or importer**

For the purposes of this Act and to avoid doubt, a reference in this Division to a manufacturer or importer of customer equipment or customer cabling includes a reference to a person who is authorised in writing by such a manufacturer or importer to act in Australia as an agent of the manufacturer or importer (as the case may be) for the purposes of this Division.

### **407 Labelling requirements**

- (1) The ACMA may, by written instrument, require any person who is a manufacturer or importer of specified customer equipment or specified customer cabling to apply to the equipment or cabling a label that indicates whether the equipment or cabling meets the requirements of the section 376 standards specified in the instrument.

- (2) An instrument under this section is a legislative instrument.

#### **408 Requirements to apply labels—ancillary matters**

- (1) This section applies to an instrument under section 407.
- (2) The label must be in the form specified by the ACMA in the instrument.
- (3) The method of applying the label to the equipment or cabling must be as specified by the ACMA in the instrument.
- (4) The instrument may state that the requirement does not apply to imported customer equipment, or imported customer cabling, if there is applied to the equipment or cabling a label of a specified kind that indicates that the equipment or cabling complies with the requirements of:
- (a) a specified law of a specified foreign country; or
  - (b) a specified instrument in force under a specified law of a specified foreign country; or
  - (c) a specified convention, treaty or international agreement; or
  - (d) a specified instrument in force under a specified convention, treaty or international agreement.
- (5) The instrument may specify requirements that must be met before a label can be applied, including (but not limited to):
- (a) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must have obtained a written statement from a certification body certifying that the equipment or cabling complies with a specified section 376 standard; and
  - (b) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the equipment or cabling must have been tested by a recognised testing authority for compliance with the standards specified in the instrument; and

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- (c) a requirement that a manufacturer or importer must:
  - (i) conduct quality assurance programs; or
  - (ii) be satisfied that quality assurance programs have been conducted; or
  - (iii) have regard to the results of quality assurance programs; before the manufacturer or importer applies the label to the equipment or cabling; and
- (d) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must have obtained a written statement from a competent body certifying that reasonable efforts have been made to avoid a contravention of a specified section 376 standard; and
- (e) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must make a written declaration in relation to the equipment or cabling, being a declaration in a form specified in the instrument.

Note 1: **Certification body** is defined by section 410.

Note 2: **Recognised testing authority** is defined by section 409.

Note 3: **Competent body** is defined by section 409.

- (6) The instrument may specify requirements that must be met after a label has been applied to customer equipment or customer cabling, including (but not limited to) a requirement that a manufacturer or importer retain for inspection, for the period specified in the instrument:
  - (a) records of the quality assurance programs conducted in accordance with the instrument in respect of the equipment or cabling; and
  - (b) records of any results of any tests conducted in relation to compliance with the standards specified in the instrument; and
  - (c) a declaration, or a copy of a declaration, made as mentioned in paragraph (5)(e).

#### **409 Recognised testing authorities and competent bodies**

- (1) The ACMA may, by notice published in the *Gazette*, determine that a specified person or association is an **accreditation body** for the purposes of this section. The determination has effect accordingly.
- (2) An accreditation body may, by written instrument, determine that a specified person is a **recognised testing authority** for the purposes of this Division. The determination has effect accordingly.
- (3) An accreditation body may, by written instrument, determine that a specified person or association is a **competent body** for the purposes of this Division. The determination has effect accordingly.

#### **410 Certification bodies**

- (1) The ACMA may, by notice published in the *Gazette*, determine that a specified person or association is an **approving body** for the purposes of this section. The determination has effect accordingly.
- (2) An approving body may, by written instrument, determine that a specified person or association is a **certification body** for the purposes of this Division. The determination has effect accordingly.

#### **411 Connection of customer equipment or customer cabling— breach of section 376 standards**

##### *Basic prohibition*

- (1) A person must not:
  - (a) connect customer equipment or customer cabling to a telecommunications network or to a facility; or
  - (b) maintain such a connection;if:

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- (c) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and
- (d) either:
  - (i) the manufacturer or importer did not comply with the requirement; or
  - (ii) the manufacturer or importer complied with the requirement, but the label indicated that the equipment or cabling did not meet the requirements of the section 376 standards that were specified in the first-mentioned requirement.

*Offence*

- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

*Exception—reasonable excuse for contravention*

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

*Exception—connection permit*

- (3) A person does not contravene subsection (1) in relation to:
  - (a) connecting customer equipment, or customer cabling, to a telecommunications network, or to a facility; or
  - (b) maintaining such a connection;

if the connection, or the maintenance of the connection, as the case may be, is in accordance with a connection permit.

Note: Connection permits are issued under section 394.

*Exception—compliance with connection rules*

- (4) A person does not contravene subsection (1) in relation to:
- (a) connecting customer equipment, or customer cabling, to a telecommunications network, or to a facility; or
  - (b) maintaining such a connection;
- if:
- (c) the person is subject to the connection rules; and
  - (d) the connection, or the maintenance of the connection, as the case may be, is in accordance with the connection rules.

Note: The connection rules are dealt with by section 404.

*Exception—consent of network manager*

- (5) A person does not contravene subsection (1) in relation to the connection of customer equipment, or customer cabling, to a telecommunications network, or to a facility, if:
- (a) the manager of the network or facility consents in writing to the connection; and
  - (b) the equipment or cabling has applied to it a label that indicates that the equipment or cabling does not meet the requirements of each of the standards under section 376 that were applicable to it when it was connected.

Note: *Manager* is defined by section 375.

**412 Connection of labelled customer equipment or customer cabling not to be refused**

- (1) If:
- (a) at a particular time, a person proposes to connect customer equipment or customer cabling to a telecommunications network or to a facility; and
  - (b) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and
  - (c) both:

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- (i) the manufacturer or importer complied with the requirement; and
- (ii) the label indicated that the equipment or cabling met the requirements of the section 376 standards that were specified in the first-mentioned requirement;

the manager of the network or facility must not refuse to give written consent to the connection.

Note: **Manager** is defined by section 375.

- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (3) A manager of a telecommunications network, or of a facility, does not contravene subsection (1) in relation to a refusal to give consent to the connection of customer equipment, or customer cabling, to the network, or to the facility, if:
  - (a) the manager has reasonable grounds to believe that a label has been applied to the equipment or cabling in contravention of section 414 or 416; or
  - (b) the manager has reasonable grounds to believe that the connection would, or would be likely to, constitute a threat to the integrity of a telecommunications network or of a facility; or
  - (c) the manager has reasonable grounds to believe that the connection would, or would be likely to, constitute a threat to the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or
    - (iv) are otherwise reasonably likely to be affected by the operation of;



a telecommunications network or a facility.

- (4) This section does not, by implication, impose an obligation to supply a carriage service to a particular person.

#### **413 Supply of unlabelled customer equipment or unlabelled customer cabling**

- (1) If a person:
- (a) is a manufacturer or importer of customer equipment or customer cabling; and
  - (b) is required under section 407 to apply to it a label in a particular form;
- the person must not supply the equipment or cabling unless a label in that form has been applied to the equipment or cabling.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (3) In this section:

**supply** includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

#### **414 Applying labels before satisfying requirements under subsection 408(5)**

- (1) If a person is subject to requirements that:
- (a) have been specified under subsection 408(5); and

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- (b) must be met before applying a particular label to customer equipment or customer cabling;  
the person must not apply:
- (c) the label; or
  - (d) a label that purports to be such a label;
- before the person satisfies those requirements.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.
- Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.
- Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).
- (3) Subsection (2) does not apply if the person has a reasonable excuse.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

**415 Failure to retain records etc.**

- (1) If the ACMA makes an instrument under subsection 407(1) that specifies requirements to be met after a label has been applied, a manufacturer or importer must not contravene those requirements.
- (2) A person commits an offence if:
- (a) the person is a manufacturer or importer of customer equipment or customer cabling; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement referred to in subsection (1).
- Penalty: 100 penalty units.
- Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.
- Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).
- (3) Subsection (1) does not apply if the person has a reasonable excuse.
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Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) In this section:

***engage in conduct*** means:

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

#### **416 Application of labels containing false statements about compliance with standards**

- (1) A person must not apply a label to customer equipment or customer cabling if:
  - (a) the label contains a statement to the effect that the equipment or cabling complies with a section 376 standard; and
  - (b) the statement is false or misleading.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

## Division 8—Protected symbols

### 417 Protected symbols

- (1) A person must not:
- (a) use in relation to a business, trade, profession or occupation;  
or
  - (b) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let on hire;  
or
  - (c) use in relation to:
    - (i) goods or services; or
    - (ii) the promotion, by any means, of the supply or use of goods or services;
- a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 30 penalty units.
- Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.
- Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).
- (3) Nothing in subsection (1) limits anything else in that subsection.
- (4) Nothing in subsection (1), so far as it applies in relation to a protected symbol, affects rights conferred by law on a person in relation to:
- (a) a trade mark that is registered under the *Trade Marks Act 1995*; or
  - (b) a design that is registered under the *Designs Act 2003*; and was registered under the *Trade Marks Act 1995* or the *Designs Act 1906* immediately before 16 August 1996 in relation to the symbol.

- (5) Nothing in this section, so far as it applies to a protected symbol, affects the use, or rights conferred by law relating to the use, of the symbol by a person in a particular manner if, immediately before 16 August 1996, the person:
- (a) was using the symbol in good faith in that manner; or
  - (b) would have been entitled to prevent another person from passing off, by means of the use of the symbol or a similar symbol, goods or services as the goods or services of the first-mentioned person.
- (6) This section does not apply to a person who uses or applies a protected symbol for the purposes of labelling customer equipment or customer cabling in accordance with section 407 of this Act or labelling a device in accordance with section 182 of the *Radiocommunications Act 1992*. For this purpose, *device* has the same meaning as in the *Radiocommunications Act 1992*.
- (7) This section does not apply to a person who uses or applies a protected symbol for a purpose of a kind specified in a written determination made by the ACMA.
- (8) A reference in this section to a **protected symbol** is a reference to:
- (a) the symbol known in the telecommunications industry as the C-Tick mark:
    - (i) the design of which is set out in a written determination made by the ACMA; and
    - (ii) a purpose of which, after the commencement of this section, is to indicate compliance by customer equipment or customer cabling with applicable section 376 standards; or
  - (b) a symbol:
    - (i) the design of which is set out in a written determination made by the ACMA; and
    - (ii) a purpose of which, after the commencement of this section, is to indicate compliance by customer equipment or customer cabling with applicable section 376 standards; or

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- (c) a symbol:
  - (i) the design of which is set out in a written determination made by the ACMA; and
  - (ii) a purpose of which, after the commencement of this section, is to indicate non-compliance by customer equipment or customer cabling with applicable section 376 standards.
- (9) For the purposes of this Part, if:
  - (a) a label is applied to customer equipment or customer cabling; and
  - (b) the label embodies a symbol referred to in paragraph (8)(a) or (b);the label is taken to indicate that the equipment or cabling meets the requirements of each applicable section 376 standard.
- (10) For the purposes of this Part, if:
  - (a) a label is applied to customer equipment or customer cabling; and
  - (b) the label embodies a symbol referred to in paragraph (8)(c);the label is taken to indicate that the equipment or cabling does not meet the requirements of each applicable section 376 standard.
- (11) For the purposes of this section, a section 376 standard is taken to be applicable in relation to customer equipment or customer cabling if, and only if, the standard was specified in the section 407 requirement that dealt with the manufacture or importation of the equipment or cabling.
- (12) A determination made by the ACMA under subsection (7) or (8) is a legislative instrument.
- (13) In addition to its effect apart from this subsection, this section also has the effect it would have if a reference in subsection (1) to a person were, by express provision, confined to a corporation to which paragraph 51(xx) of the Constitution applies.

- (14) In addition to its effect apart from this subsection, this section also has the effect it would have if each reference in subsection (1) to use, or to application, were a reference to use or application, as the case may be, in the course of, or in relation to:
- (a) trade or commerce between Australia and places outside Australia; or
  - (b) trade or commerce among the States; or
  - (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
  - (d) the supply of goods or services to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory; or
  - (e) the defence of Australia; or
  - (f) the operation of lighthouses, lightships, beacons or buoys; or
  - (g) astronomical or meteorological observations; or
  - (h) an activity of a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (i) banking, other than State banking; or
  - (j) insurance, other than State insurance; or
  - (k) weighing or measuring.

## Division 9—Cabling providers

### 418 Cabling work

A reference in this Division to *cabling work* is a reference to:

- (a) the installation of customer cabling for connection to a telecommunications network or to a facility; or
- (b) the connection of customer cabling to a telecommunications network or to a facility; or
- (c) the maintenance of customer cabling connected to a telecommunications network or to a facility.

### 419 Types of cabling work

- (1) The ACMA may, by legislative instrument, declare that a specified kind of cabling work is a type of cabling work for the purposes of this Division.
- (2) The declaration has effect accordingly.
- (3) For the purposes of this Division, the type of cabling work is to be ascertained solely by reference to the declaration.

### 420 Prohibition of unauthorised cabling work

- (1) A person must not perform a particular type of cabling work unless:
  - (a) the person is subject to the cabling provider rules; or
  - (b) the person performs the work under the supervision of another person who is subject to the cabling provider rules; or
  - (c) the person is the holder of a cabling licence that authorises the performance of that type of cabling work; or
  - (d) the person performs the work under the supervision of the holder of a cabling licence that authorises the performance of that type of cabling work.



- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

#### **421 Cabling provider rules**

- (1) The ACMA may, by legislative instrument, make rules (***cabling provider rules***) that:

- (a) are expressed to apply to specified persons; and
- (b) relate to:
  - (i) the performance of cabling work; or
  - (ii) the supervision of the performance of cabling work;or both.

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

- (2) A person specified under paragraph (1)(a) is said to be ***subject to the cabling provider rules***.
- (3) A person who is subject to the cabling provider rules must comply with the cabling provider rules.
- (4) A person who contravenes subsection (3) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.
- Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.
- Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).
- (5) The cabling provider rules may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

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**422 Procedures for making cabling provider rules**

- (1) Before making cabling provider rules under section 421, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had an adequate opportunity to make representations about the proposed rules (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representation so made.
- (2) The ACMA may make an arrangement with any of the following bodies or associations:
  - (a) Standards Australia;
  - (b) a body or association approved in writing by Standards Australia for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;under which the body or association:
  - (d) prepares a draft of the cabling provider rules; and
  - (e) publishes the draft rules; and
  - (f) undertakes a process of public consultation on the draft rules; and
  - (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

#### **423 Application for cabling licence**

An individual may apply to the ACMA for a cabling licence that authorises the performance of a particular type of cabling work.

#### **424 Form of application**

- (1) An application must:
  - (a) be in writing; and
  - (b) describe the knowledge and experience of the applicant to perform cabling work; and
  - (c) be in accordance with the form approved in writing by the ACMA.
- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.

#### **425 Application to be accompanied by charge**

An application must be accompanied by the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*.

#### **426 Further information**

- (1) The ACMA may, within 7 days after an application is made, request the applicant to give the ACMA further information about the application.
- (2) The ACMA may refuse to consider the application until the applicant gives the ACMA the information.

#### **427 Grant of cabling licence**

- (1) After considering an application, the ACMA may grant a cabling licence in accordance with the application.

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- (2) The ACMA must not grant a cabling licence authorising the performance of a particular type of cabling work unless it is satisfied that:
- (a) the applicant has the necessary knowledge and experience to perform cabling work of that type; and
  - (b) cabling work of that type performed in accordance with the conditions included in the licence would comply with standards in force under section 376; and
  - (c) the issue of the licence is not contrary to directions given by the Minister under section 440.

**428 Time limit on licence decision**

If the ACMA neither grants, nor refuses to grant, a cabling licence before the end of whichever of the following periods is applicable:

- (a) if the ACMA did not give a request under section 426 in relation to the licence application—the period of 30 days after the day on which the ACMA received the application;
- (b) if:
  - (i) the ACMA gave a request under section 426 in relation to the licence application; and
  - (ii) the request was complied with;the period of 30 days after the day on which the request was complied with;
- (c) if:
  - (i) the ACMA gave a request under section 426 in relation to the licence application; and
  - (ii) the request was not complied with;the period of 30 days after the end of the period specified in the request;

the ACMA is taken, at the end of that 30-day period, to have refused to grant the licence under section 427.

#### **429 Notification of refusal of application**

If the ACMA decides to refuse to grant a cabling licence, the ACMA must give written notice of the decision to the applicant.

#### **430 Cabling licence has effect subject to this Act**

- (1) A cabling licence has effect subject to this Act.
- (2) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

#### **431 Duration of cabling licence**

A cabling licence comes into force when it is issued and remains in force:

- (a) if the licence specifies a day of expiration—until the end of that day; or
- (b) otherwise—indefinitely.

#### **432 Conditions of cabling licence**

- (1) A cabling licence is subject to such conditions as are specified in a written determination made by the ACMA for the purposes of this subsection.
- (2) A cabling licence is subject to such conditions as are specified in the licence.
- (3) The ACMA may, by written notice given to the holder of a cabling licence:
  - (a) impose one or more further conditions to which the licence is subject; or
  - (b) revoke or vary any condition:
    - (i) imposed under paragraph (a); or
    - (ii) specified in the licence.

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- (4) The following are examples of conditions to which a cabling licence could be subject:
  - (a) conditions relating to the types of premises in or on which the holder of the licence may perform cabling work;
  - (b) conditions requiring customer cabling to be inspected by persons authorised in writing by the ACMA for the purposes of this paragraph.
- (5) A determination under subsection (1) is a legislative instrument.

**433 Procedures for changing licence conditions**

- (1) The ACMA's powers under subsection 432(3) may be exercised:
  - (a) on the ACMA's own initiative; or
  - (b) on application made to the ACMA by the holder of the licence.
- (2) An application under paragraph (1)(b) must:
  - (a) be in writing; and
  - (b) be in accordance with the form approved in writing by the ACMA.
- (3) The approved form of application may provide for verification by statutory declaration of statements in applications.
- (4) If the ACMA refuses an application under paragraph (1)(b), the ACMA must give written notice of the refusal to the applicant.
- (5) If the ACMA neither grants, nor refuses to grant, an application under paragraph (1)(b) before the end of 30 days after receiving the application, the ACMA is taken, at the end of that period, to have refused the application.

**434 Offence in relation to contravening condition**

- (1) A person commits an offence if:
  - (a) the person is the holder of a cabling licence that authorises the performance of a particular type of cabling work; and

- (b) the person performs cabling work of that type; and
- (c) the performance of that work contravenes a condition to which the licence is subject.

Penalty: 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

- (2) A person commits an offence if:
  - (a) the person is the holder of a cabling licence that authorises the performance of a particular type of cabling work; and
  - (b) the person engages in conduct; and
  - (c) the result of the person's conduct is a failure to take all reasonable steps to ensure that cabling work of that type performed under the person's supervision does not contravene the conditions of the licence.

Penalty: 100 penalty units.

Note 1: See also sections 4AA and 4B of the *Crimes Act 1914*.

Note 2: See also Division 13 of this Part (which deals with the payment of penalties as an alternative to prosecution).

- (3) In this section:

***engage in conduct*** means:

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

#### **435 Formal warnings—breach of condition**

The ACMA may issue a formal warning if the holder of a cabling licence contravenes a condition to which the licence is subject.

#### **436 Surrender of cabling licence**

- (1) The holder of a cabling licence may, at any time, surrender the licence by:

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- (a) returning it to the ACMA; and
  - (b) giving the ACMA written notice that it is surrendered.
- (2) The surrender of a cabling licence takes effect on the day on which the notice is given to the ACMA.

**437 Suspension of cabling licence**

- (1) The ACMA may, by written notice given to the holder of a cabling licence, suspend the cabling licence for a period of not longer than 28 days.
- (2) In deciding whether to suspend the cabling licence, the ACMA must have regard to:
- (a) any matter to which the ACMA was required, under section 427, to have regard in deciding whether to grant a cabling licence; and
  - (b) whether or not the holder of the cabling licence has been convicted of an offence against this Division.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.
- (4) During the period of suspension, section 420 has effect as if the licence did not exist.

**438 Cancellation of cabling licence**

- (1) The ACMA may, by written notice given to the holder of a cabling licence, cancel the cabling licence.
- (2) In deciding whether to cancel the cabling licence, the ACMA must have regard to:
- (a) any matter to which the ACMA was required, under section 427, to have regard in deciding whether to grant a cabling licence; and
  - (b) whether or not the holder of the cabling licence has been convicted of an offence against this Division.



- (3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.

**439 ACMA may limit application of Division in relation to customer cabling**

- (1) The ACMA may, by legislative instrument, declare that this Division, or specified provisions of it, do not apply in relation to specified kinds of customer cabling.
- (2) An instrument under subsection (1) may specify a kind of customer cabling:
- (a) by reference to the technical characteristics of the cabling; or
  - (b) by reference to the functions of the cabling; or
  - (c) by reference to the purposes for which the cabling is used, or is intended to be used, by the customer concerned; or
  - (d) by reference to the location of the cabling.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) This Division has effect in accordance with an instrument in force under subsection (1).

**440 Ministerial directions**

- (1) The Minister may, by legislative instrument, give the ACMA written directions about how it is to perform its functions or exercise its powers under this Division.
- (2) A direction under subsection (1) may require the ACMA to make cabling provider rules that deal with one or more specified matters.
- (2A) Subsection (2) does not limit subsection (1).
- (3) A direction under subsection (1) must not concern the way in which the ACMA is to deal with a particular application for a cabling licence.
- (4) The Minister must not give the ACMA a direction under section 14 of the *Australian Communications and Media Authority Act 2005*

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about how the ACMA is to perform its functions or exercise its powers under this Division.

**441 Delegation**

- (1) The ACMA may, by writing, delegate to a person any or all of its functions and powers under this Division.
- (1A) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated a function or power referred to in subsection (1) to a Division of the ACMA, the following provisions have effect:
  - (a) the Division may delegate the function or power to a person;
  - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.
- (2) Subsections (1) and (1A) do not apply to the following powers:
  - (a) the power to refuse an application for a cabling licence;
  - (b) the power conferred by subsection 432(3);
  - (c) the power to cancel or suspend a cabling licence;
  - (d) the power to make a declaration under section 439.
- (3) The delegate is, in the exercise of the delegated function or power, subject to the written directions of:
  - (a) the ACMA, if the delegation to the delegate was under subsection (1); or
  - (b) the Division that delegated the power, if the delegation to the delegate was under subsection (1A).
- (4) The powers conferred on the ACMA by subsection (1), and on a Division of the ACMA by subsection (1A), are in addition to the powers conferred by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

#### **442 Register of cabling licences**

- (1) The ACMA is to maintain a Register in which it includes:
  - (a) all cabling licences currently in force; and
  - (b) all conditions of such licences.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*:
  - (a) inspect the Register; and
  - (b) make a copy of, or take extracts from, the Register.
- (4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACMA gives the person a printout of, or of the relevant parts of, the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACMA may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.

**Division 10—Remedies for unauthorised connections to telecommunications networks etc.**

**443 Civil action for unauthorised connections to telecommunications networks etc.**

- (1) If:
- (a) a person:
    - (i) connects customer equipment, or customer cabling, to a telecommunications network, or to a facility, contrary to section 411; or
    - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network, or to a facility, where the equipment or cabling was so connected by another person contrary to section 411; and
  - (b) as a result of:
    - (i) the connection of the customer equipment or customer cabling to the network or facility; or
    - (ii) the customer equipment or customer cabling being used while it was so connected;either:
    - (iii) damage is caused to the network or the facility; or
    - (iv) the manager of the network or facility suffers a loss or incurs a liability;the manager of the network or facility may apply to the Federal Court for remedial relief.
- (2) The relief that may be granted includes an injunction and, at the option of the manager, either damages or an account of profits.
- (3) If an application is made to the Federal Court for an injunction under this section, the court may grant an interim injunction pending determination of the application.

- (4) The power of the court under this section to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.
- (5) The power of the court under this section to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.
- (6) An application under this section must be made within 3 years after the damage was caused, the loss was suffered or the liability was incurred, as the case requires.

#### **444 Remedy for contravention of labelling requirements**

- (1) If:
- (a) a person (the *first person*) contravenes section 413, 414 or 415 in relation to particular customer equipment or particular customer cabling; and

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- (b) a person (who may be the first person) connects the equipment or cabling to a telecommunications network or to a facility; and
  - (c) as a result of:
    - (i) the connection of the equipment or cabling to the network or facility; or
    - (ii) the equipment or cabling being used while it was so connected;either:
    - (iii) damage is caused to the network or the facility; or
    - (iv) the manager of the network or facility suffers a loss;the manager of the network or facility may apply to the Federal Court for the recovery from the first person of the amount of the loss or damage.
- (2) An application under this section must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

**445 Remedies for connection of unlabelled customer equipment or unlabelled customer cabling**

- (1) This section applies if:
- (a) a person:
    - (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
    - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
  - (b) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and
  - (c) either:
    - (i) the manufacturer or importer did not comply with the requirement; or

- (ii) the manufacturer or importer complied with the requirement, but the label indicated that the equipment or cabling did not meet the requirements of the section 376 standards that were specified in the first-mentioned requirement.
- (2) If, as a result of:
- (a) the connection of the equipment or cabling to the network or facility; or
  - (b) the equipment or cabling being used while it was so connected;
- either:
- (c) damage is caused to the network or the facility; or
  - (d) the manager of the network or facility suffers a loss;
- the manager of the network or facility may apply to the Federal Court for remedial relief.
- (3) The relief that may be granted includes an injunction and, at the option of the manager, either damages or an account of profits.
- (4) The manager of the network or facility may disconnect the equipment or cabling from the network or facility.
- (5) If it is necessary for other customer equipment or other customer cabling to be disconnected from the network or facility in order to achieve the disconnection mentioned in subsection (4), the manager may disconnect that other equipment or cabling.
- (6) If an application is made to the Federal Court for an injunction under this section, the court may grant an interim injunction pending determination of the application.
- (7) The power of the court under this section to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the

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- person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.
- (8) The power of the court under this section to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.
- (9) An application under this section must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

**446 Disconnection of dangerous customer equipment or customer cabling**

- (1) If:
- (a) a person (the *first person*):
- (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
- (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and



- (b) the manager of the network or facility has an honest belief that the equipment or cabling is, or is likely to be, a threat to the health or safety of persons who:
- (i) operate; or
  - (ii) work on; or
  - (iii) use services supplied by means of; or
  - (iv) are otherwise reasonably likely to be affected by the operation of;
- a telecommunications network or a facility;
- the manager of the network or facility may:
- (c) disconnect the equipment or cabling; and
  - (d) if it is necessary to disconnect other customer equipment or other customer cabling for the purposes of achieving the disconnection referred to in paragraph (c)—disconnect that other equipment or cabling.
- (2) If:
- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
  - (b) the ACMA is satisfied that there were no reasonable grounds for the belief mentioned in paragraph (1)(b);
- the ACMA may, by written notice given to the manager of the network or facility, direct the manager to reconnect the equipment or cabling.
- (3) A person must comply with a direction under subsection (2).
- (4) If:
- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
  - (b) the manager of the network or facility had no reasonable grounds for the belief mentioned in paragraph (1)(b); and
  - (c) as a result of the disconnection, the first person suffers loss or damage;
- the first person may apply to the Federal Court for the recovery from the manager of the amount of the loss or damage.

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- (5) An application under subsection (4) must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

**447 Disconnection of customer equipment or customer cabling—  
protection of the integrity of networks and facilities**

- (1) If:
- (a) a person (the *first person*):
    - (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
    - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
  - (b) the manager of the network or facility has an honest belief that the equipment or cabling is, or is likely to be, a threat to the integrity of a telecommunications network or a facility;
- the manager of the network or facility may:
- (c) disconnect the equipment or cabling; and
  - (d) if it is necessary to disconnect other customer equipment or other customer cabling for the purposes of achieving the disconnection referred to in paragraph (c)—disconnect that other equipment or cabling.
- (2) If:
- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
  - (b) the ACMA is satisfied that there were no reasonable grounds for the belief mentioned in paragraph (1)(b);
- the ACMA may, by written notice given to the manager of the network or facility, direct the manager to reconnect the equipment or cabling.
- (3) A person must comply with a direction under subsection (2).
- (4) If:

- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
  - (b) the manager of the network or facility had no reasonable grounds for the belief mentioned in paragraph (1)(b); and
  - (c) as a result of the disconnection, the first person suffers loss or damage;
- the first person may apply to the Federal Court for the recovery from the manager of the amount of the loss or damage.
- (5) An application under subsection (4) must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

#### **448 Civil action for dangerous connections to telecommunications networks etc.**

- (1) If:
- (a) a person:
    - (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
    - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
  - (b) the equipment or cabling is, or is likely to be, a threat to the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or
    - (iv) are otherwise reasonably likely to be affected by the operation of;a telecommunications network or a facility; and
  - (c) as a result of:
    - (i) the connection of the equipment or cabling to the network or facility; or
    - (ii) the equipment or cabling being used while it was so connected;

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either:

(iii) damage is caused to the network or the facility; or

(iv) the manager of the network or facility suffers a loss;

the manager of the network or facility may apply to the Federal Court for the recovery from the person of the amount of the loss or damage.

- (2) An application under subsection (1) must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

**449 Other remedies not affected**

This Division does not, by implication, affect other remedies.

## **Division 11—Prohibited customer equipment and prohibited customer cabling**

### **450 Declaration of prohibited customer equipment or prohibited customer cabling**

- (1) The ACMA may, by legislative instrument, declare that operation or supply, or possession for the purpose of operation or supply, of:
  - (a) specified customer equipment; or
  - (b) specified customer cabling;is prohibited for the reasons set out in the instrument.
- (2) Those reasons must relate to:
  - (a) the protection of the integrity of a telecommunications network or of a facility; or
  - (b) the protection of the health or safety of persons who:
    - (i) operate; or
    - (ii) work on; or
    - (iii) use services supplied by means of; or
    - (iv) are otherwise reasonably likely to be affected by the operation of;a telecommunications network or a facility.
- (3) A copy of an instrument under subsection (1) must be published on the ACMA's website.
- (5) In this section:

*supply* includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

### **452 Operation of prohibited customer equipment or customer cabling**

- (1) A person must not:

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- (a) operate or supply customer equipment, or customer cabling, in respect of which a declaration is in force under section 450; or
  - (b) have in his or her possession customer equipment, or customer cabling, in respect of which such a declaration is in force, if the possession is for the purpose of operating or supplying the equipment or cabling.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 2,000 penalty units.

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

- (3) In this section:

**supply** includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

## **Division 12—Pre-commencement labels**

### **453 Pre-commencement labels**

- (1) This section applies if:
  - (a) before the commencement of this section, customer equipment was labelled in accordance with a condition of a kind mentioned in paragraph 258(2)(a) of the *Telecommunications Act 1991*; and
  - (b) the label embodied the protected symbol (within the meaning of section 402A of that Act).
- (2) This Part has effect as if:
  - (a) at the time when the equipment was manufactured or imported, the manufacturer or importer had been required by subsection 407(1) to apply the label to the equipment; and
  - (b) the manufacturer or importer had complied with that requirement by applying the label to the equipment; and
  - (c) the label had indicated that the equipment met the requirements of each of the section 376 standards that were applicable to the equipment when it was manufactured or imported.

## Division 13—Penalties payable instead of prosecution

### 453A Penalties payable instead of prosecution

- (1) The regulations may make provision in relation to enabling a person who is alleged to have committed an offence of a kind referred to in the following table to pay to the Commonwealth, as an alternative to prosecution, a penalty of an amount worked out in accordance with subsection (2).
- (2) The amount of penalty payable to the Commonwealth under regulations made for the purposes of subsection (1) in respect of an offence is determined using the following table:

<b>Penalties payable</b>			
<b>Item</b>	<b>Alleged offence</b>	<b>Penalty for individual</b>	<b>Penalty for body corporate</b>
1	subsection 399(1)	12 penalty units	60 penalty units
2	subsection 411(2)	12 penalty units	60 penalty units
3	subsection 413(2)	12 penalty units	60 penalty units
4	subsection 414(2)	12 penalty units	60 penalty units
5	subsection 415(2)	12 penalty units	60 penalty units
6	subsection 416(2)	12 penalty units	60 penalty units
7	subsection 417(2)	6 penalty units	30 penalty units
8	subsection 420(2)	12 penalty units	60 penalty units
9	subsection 421(4)	12 penalty units	60 penalty units
10	subsection 434(1) or (2)	12 penalty units	60 penalty units



## **Part 22—Numbering of carriage services and regulation of electronic addressing**

### **Division 1—Simplified outline**

#### **454 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA is required to make a plan for:
  - (a) the numbering of carriage services in Australia;  
and
  - (b) the use of numbers in connection with the supply  
of such services.
- The plan is called the numbering plan.
- Numbers may be allocated to carriage service providers:
  - (a) in accordance with an allocation system; or
  - (b) otherwise than in accordance with such a system.
- The numbering plan will specify emergency service numbers.
- The ACMA and the ACCC may give directions to managers  
of electronic addressing so long as the electronic addressing is  
of public importance.

## Division 2—Numbering of carriage services

### Subdivision A—Numbering plan

#### 455 Numbering plan

- (1) The ACMA must, by legislative instrument, make a plan for:
  - (a) the numbering of carriage services in Australia; and
  - (b) the use of numbers in connection with the supply of such services.
- (2) The plan is called the *numbering plan*.
- (3) The numbering plan must specify the numbers that are for use in connection with the supply of carriage services to the public in Australia.

Note: *Specification* is the “first tier” concept. It operates at the level of a general specification of numbers.

- (4) Different numbers may be specified for use in connection with the supply of different types of carriage services.
- (5) The numbering plan may set out rules about:
  - (a) the allocation of numbers to carriage service providers; and
  - (b) the transfer of allocated numbers between carriage service providers; and
  - (c) the surrender or withdrawal of allocated numbers; and
  - (d) the portability of allocated numbers (including rules about the maintenance of, and access to, databases that facilitate portability); and
  - (e) the use of allocated numbers in connection with the supply of carriage services to the public in Australia (including rules about the issue of allocated numbers by carriage service providers to customers for use in connection with the supply of carriage services).

Note 1: *Allocation* is the “second tier” concept. It operates at the level of particular carriage service providers.

Note 2: **Issue** is the “third tier” concept. It operates at the level of particular customers of carriage service providers. The issue of an allocated number to a customer does not affect the allocation of the number to the carriage service provider concerned.

- (6) Rules made for the purposes of paragraph (5)(a) may authorise the allocation of specified numbers:
- (a) in accordance with an allocation system determined under section 463; or
  - (b) otherwise than in accordance with such a system.
- (7) The numbering plan may make provision for, or in relation to, a matter by empowering the ACMA to make decisions of an administrative character.
- (8) Subsections (3) to (7) (inclusive) do not, by implication, limit the matters that may be dealt with by the numbering plan.
- (9) The renumbering of a number in accordance with the numbering plan does not affect the continuity of:
- (a) the allocation of the number; or
  - (b) the issue of the number.
- (10) In making or varying the numbering plan, the ACMA must have regard to:
- (a) the obligations imposed on carriage service providers by Part 4 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
  - (b) recognised international standards.
- This subsection does not, by implication, limit the matters to which regard may be had.
- (12) Despite subsection (1), the ACMA is not required to make a numbering plan before 1 January 1998.

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**456 Numbering plan—supply to the public**

- (1) This section sets out the circumstances in which a carriage service is taken, for the purposes of section 455, to be supplied to the public.
- (2) If:
  - (a) a carriage service is used for the carriage of communications between 2 end-users; and
  - (b) each end-user is outside the immediate circle of the supplier of the service;the service is supplied to the public.

**457 Numbering plan—allocation otherwise than in accordance with an allocation system**

- (1) The numbering plan must impose the following requirements in relation to an application for the allocation of a number otherwise than in accordance with an allocation system determined under section 463:
  - (a) a requirement that the application must be accompanied by the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*;
  - (b) a requirement that the applicant must tender the amount of charge (if any) imposed on the allocation by Part 2 of the *Telecommunications (Numbering Charges) Act 1997*.
- (2) If an applicant tenders an amount as mentioned in paragraph (1)(b), but the application is not successful, the amount is to be refunded to the applicant.

**458 Numbering plan—rules about portability of allocated numbers**

- (1) The ACMA must not make a numbering plan that sets out rules about the matter mentioned in paragraph 455(5)(d) (portability of allocated numbers) unless the ACMA is directed to do so by the ACCC under subsection (2).

- (2) The ACCC may give written directions to the ACMA in relation to the exercise of the power to determine a numbering plan setting out rules as mentioned in subsection (1).
- (3) In exercising the power conferred by subsection (2), the ACCC must ensure that, at all times when the numbering plan is in force, the plan sets out rules about the matter mentioned in paragraph 455(5)(d).
- (4) The ACMA must exercise its powers under section 455 in a manner consistent with any directions given by the ACCC under subsection (2).
- (5) In exercising the power conferred by subsection (2), the ACCC must have regard to whether portability of particular allocated numbers is required in order to promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services.
- (6) For the purposes of this section, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as that question is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.

#### **459 ACMA to administer numbering plan**

The ACMA has the general administration of the numbering plan.

#### **460 Consultation about numbering plan**

- (1) Before making a numbering plan, the ACMA must publish on its website a notice:
  - (a) stating that the ACMA has prepared a draft of the plan; and
  - (b) setting out the draft; and
  - (c) inviting interested persons to give written comments about the draft to the ACMA within 90 days after the publication of the notice.

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- (2) If interested persons have given comments about the draft in accordance with the notice, the ACMA must have due regard to those comments in making the plan.
- (3) If the ACMA is of the opinion:
  - (a) that a variation of a numbering plan:
    - (i) will affect a number issued to a customer of a carriage service provider; and
    - (ii) is not a variation that, under a written declaration made by the ACMA under this subparagraph, is taken to be a minor variation; or
  - (b) that it is in the public interest that the public should be consulted about a variation of a numbering plan;the ACMA must publish on its website a notice:
  - (c) stating that the ACMA has prepared a draft of the variation; and
  - (d) setting out the draft; and
  - (e) inviting interested persons to give written comments about the draft to the ACMA within 30 days after the publication of the notice.
- (4) If interested persons have given comments about the draft in accordance with the notice, the ACMA must have due regard to those comments in varying the plan.
- (4A) A declaration under subparagraph (3)(a)(ii) is a legislative instrument.

**461 Consultation with ACCC**

- (1) Before making or varying a numbering plan, the ACMA must consult the ACCC.
- (2) The numbering plan may provide that, before exercising a power conferred on the ACMA by the numbering plan, the ACMA must consult the ACCC.

## **462 Compliance with the numbering plan**

- (1) A person who is a carrier or a carriage service provider must comply with the numbering plan.
- (2) If:
  - (a) a person (the *first person*) is a carrier or a carriage service provider; and
  - (b) the plan requires the first person to provide number portability in relation to customers of a carriage service provider;the first person must comply with that requirement on such terms and conditions as are:
  - (c) agreed between the following parties:
    - (i) the first person;
    - (ii) the carriage service provider; or
  - (d) failing agreement, determined by an arbitrator appointed by the parties.If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subsection (4) does not, by implication, limit subsection (3).
- (6) A determination made in an arbitration under this section must not be inconsistent with:
  - (a) the numbering plan; or
  - (b) with a pricing principles determination.

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For this purpose, a *pricing principles determination* is a written determination made by the Minister that sets out principles dealing with price-related terms and conditions relating to a requirement of a kind referred to in paragraph (2)(b).

(7) A determination made by the Minister under subsection (6) is a legislative instrument.

(8) In this section:

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

### Subdivision B—Allocation system for numbers

#### 463 Allocation system for numbers

(1) The ACMA may, by legislative instrument, determine an allocation system for allocating specified numbers to carriage service providers.

(2) Before so determining the system, the ACMA must consult the ACCC.

(3) A system so determined:

- (a) may apply generally or in respect of a particular area; and
- (b) may require payment of an application fee.

(4) A system so determined may:

- (a) impose limits on the quantity of numbers that the ACMA may allocate to:
  - (i) any one person; or
  - (ii) a specified person; or
- (b) impose limits on the quantity of numbers that the ACMA may, in total, allocate to the members of a specified group of persons.

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



- (5) Subsections (3) and (4) do not, by implication, limit subsection (1).
- (6) A system so determined must provide for:
- (a) the successful applicant for the allocation of a particular number; and
  - (b) an amount, to be known as the eligible amount, in relation to the allocation of that number;
- to be determined by reference to the results of:
- (c) a tender process; or
  - (d) a public auction; or
  - (e) another process;
- carried out or conducted as provided by the system.
- (7) The ACMA may enter into an arrangement with a person about the collection, on behalf of the ACMA, of fees of a kind referred to in subsection (3).

#### **464 Consultation about an allocation system**

- (1) Before determining or varying an allocation system under section 463, the ACMA must publish on its website a notice:
- (a) stating that the ACMA has prepared a draft of the plan or variation; and
  - (b) setting out the draft; and
  - (c) inviting interested persons to give written comments about the draft to the ACMA within 30 days after the publication of the notice.
- (2) If interested persons have given comments about the draft in accordance with the notice, the ACMA must have due regard to those comments in determining or varying the system, as the case may be.
- (3) Subsection (1) does not apply to a variation if the variation is of a minor nature.

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**Subdivision C—Miscellaneous**

**465 Register of allocated numbers**

- (1) For the purposes of this section, the *designated authority* is:
- (a) the ACMA; or
  - (b) if the ACMA enters into an arrangement with another person under which the other person agrees to perform the functions conferred on the designated authority by this section—that other person.

Note: An arrangement under paragraph (b) may provide for the payment of amounts by the ACMA to the other person.

- (2) The designated authority is to maintain a Register in which the designated authority includes:
- (a) particulars of numbers that have been allocated to carriage service providers under the authority of the numbering plan; and
  - (b) in the case of a number that has been allocated in accordance with an allocation system determined under section 463:
    - (i) the name of the successful applicant for the allocation; and
    - (ii) the eligible amount in relation to the allocation of the number; and
  - (c) in the case of numbers that have been allocated otherwise than in accordance with such a system—the names of the persons to whom the numbers were allocated.
- (3) The designated authority may include in the Register particulars relating to numbers that are taken, for the purposes of Part 3 of the *Telecommunications (Numbering Charges) Act 1997*, to be held by carriage service providers. Those particulars are to include the names of the carriage service providers concerned.
- (4) The Register may be maintained by electronic means.
- (5) If the ACMA is the designated authority, a person may, on payment of the charge (if any) fixed by a determination under

section 60 of the *Australian Communications and Media Authority Act 2005*:

- (a) inspect the Register; and
  - (b) make a copy of, or take extracts from, the Register.
- (6) If the ACMA is not the designated authority, a person may, on payment to the designated authority of the fee (if any) specified in the regulations:
- (a) inspect the Register; and
  - (b) make a copy of, or take extracts from, the Register.
- (7) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the designated authority gives the person a printout of, or of the relevant parts of, the Register.
- (8) If a person requests that a copy be provided in an electronic form, the designated authority may provide the relevant information:
- (a) on a data processing device; or
  - (b) by way of electronic transmission.

#### **466 Emergency service numbers**

- (1) The object of this section is to identify numbers for the purpose of calling an emergency call service in connection with emergencies that are likely to require the provision of assistance by any or all of the following services:
- (a) a police force or service;
  - (b) a fire service;
  - (c) an ambulance service;
  - (d) a service specified in the numbering plan for the purposes of this paragraph.
- (2) For the purposes of this Act, an ***emergency service number*** is a number specified in the numbering plan for the purposes of this subsection.

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- (3) The numbering plan may specify different numbers for use in different areas.
- (4) The numbering plan may specify different numbers for use in connection with different types of services.
- (5) The numbering plan may set out rules about the use of emergency service numbers.
- (6) In making the numbering plan, the ACMA must have regard to the objective that, as far as practicable, there should be no more than one emergency service number for use throughout Australia.
- (7) Subsection (6) does not, by implication, limit section 455.

**467 Delegation**

- (1) The ACMA may, by writing, delegate any or all of the powers conferred on the ACMA by the numbering plan to a body corporate.
- (1A) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated a power referred to in subsection (1) to a Division of the ACMA, the following provisions have effect:
  - (a) the Division may delegate the power to a body corporate;
  - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.
- (2) The delegate is, in the exercise of a delegated power, subject to the written directions of:
  - (a) the ACMA, if the delegation to the delegate was under subsection (1); or
  - (b) the Division that delegated the power, if the delegation to the delegate was under subsection (1A).
- (3) Before giving a direction under subsection (2), the ACMA or the Division (as the case requires) must consult the ACCC.

- (4) The powers conferred on the ACMA by subsection (1), and on a Division of the ACMA by subsection (1A), are in addition to the powers conferred by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

#### **468 Collection of numbering charges**

##### *Definitions*

- (1) In this section:

**allocation charge** means a charge imposed by Part 2 of the *Telecommunications (Numbering Charges) Act 1997*.

**annual charge** means a charge imposed by Part 3 of the *Telecommunications (Numbering Charges) Act 1997*.

**late payment penalty** means an amount that is payable by way of penalty in accordance with a determination under subsection (4).

##### *When allocation charge due and payable*

- (2) An allocation charge imposed on the allocation of a number is due and payable when the number is allocated.

##### *When annual charge due and payable*

- (3) An annual charge is due and payable at the time ascertained in accordance with a written determination made by the ACMA.

##### *Late payment penalty*

- (4) The ACMA may, by written instrument, determine that, if any annual charge payable by a person remains unpaid after the time when it became due for payment, the person is liable to pay to the Commonwealth, by way of penalty, an amount calculated at the rate of:
- (a) 20% per annum; or

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(b) if the determination specifies a lower percentage—that lower percentage per annum;  
on the amount unpaid, computed from that time.

*Determination has effect*

(5) A determination under subsection (4) has effect accordingly.

*Remission of penalty*

(6) A determination under subsection (4) may authorise the ACMA to make decisions about the remission of the whole or a part of an amount of late payment penalty.

*Payment of charge and late payment penalty*

(7) Allocation charge, annual charge and late payment penalty are payable to the ACMA on behalf of the Commonwealth.

*Recovery of charge and penalty*

(8) Allocation charge, annual charge and late payment penalty may be recovered by the ACMA, on behalf of the Commonwealth, as debts due to the Commonwealth.

*Payment to the Commonwealth*

(9) Amounts received by way of allocation charge, annual charge or late payment penalty must be paid to the Commonwealth.

*Withdrawal of number for non-payment of annual charge*

(10) If any annual charge payable by a person in relation to a number remains unpaid after the time when it became due for payment, the ACMA may, by written notice given to the person, withdraw the number. Such a withdrawal is taken to be in accordance with the numbering plan.

*Legislative instrument*

- (11) A determination under subsection (3) or (4) is a legislative instrument.

**469 Collection of charges on behalf of the Commonwealth**

The ACMA may enter into an arrangement with a person under which the person may, on behalf of the Commonwealth, collect payments of charge imposed by the *Telecommunications (Numbering Charges) Act 1997*.

**470 Cancellation of certain exemptions from charge**

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

**471 Commonwealth not liable to charge**

- (1) The Commonwealth is not liable to pay charge imposed by the *Telecommunications (Numbering Charges) Act 1997*.
- (2) Even though the Commonwealth is not liable to pay charge imposed by Division 1 of Part 2 of the *Telecommunications (Numbering Charges) Act 1997*, it is the intention of the Parliament that the following should be notionally liable for such a charge:
- (a) a Department of State;
  - (b) a Department of the Parliament established under the *Parliamentary Service Act 1999*;

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- (c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable by, the Secretary of a Department of the Australian Public Service;
  - (d) an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.
- (3) The Finance Minister may give such written directions as are necessary or convenient to be given for carrying out or giving effect to subsection (2) and, in particular, may give directions in relation to the transfer of money within the Public Account.
- (4) Directions under subsection (3) have effect, and must be complied with, despite any other law of the Commonwealth.
- (5) A reference in this section to the *Commonwealth* includes a reference to an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.

**472 Integrated public number database**

- (1) The Minister may, by legislative instrument, determine that a specified person (other than Telstra) is to provide and maintain an integrated public number database.
- (2) If a determination is in force under subsection (1) in relation to a person, the person must comply with the determination.
- (3) If a determination is in force under subsection (1) in relation to a person, the Minister may, by written notice given to the person, direct the person to do, or refrain from doing, a specified act or thing relating to the provision or maintenance of the integrated public number database.
- (4) A direction under subsection (3) may require the database to include specified information. This subsection does not, by implication, limit subsection (3).



(5) A determination under subsection (1) has no effect if Telstra is obliged by a condition of a carrier licence to provide and maintain an integrated public number database.

(7) In this section:

*public number* means a number specified in the numbering plan as mentioned in subsection 455(3).

### **473 Letters and symbols taken to be numbers**

For the purposes of this Division, a letter or a symbol is taken to be a number.

## Division 3—Regulation of electronic addressing

### 474 Declared manager of electronic addressing

- (1) The ACMA may, by notice in the *Gazette*, determine that, for the purposes of this Division, a specified person or association is a **declared manager of electronic addressing** in relation to a specified kind of electronic addressing and a specified kind of listed carriage service.
- (2) The determination has effect accordingly.
- (3) The ACMA must not make a determination under subsection (1) in relation to a particular person or association unless:
  - (a) the ACMA is directed to do so by the ACCC under subsection (4); or
  - (b) the ACMA considers that the person or association is not managing that kind of electronic addressing to the ACMA's satisfaction.
- (4) The ACCC may give written directions to the ACMA in relation to the exercise of the power conferred by subsection (1).
- (5) The ACMA must exercise its powers under subsection (1) in a manner consistent with directions given by the ACCC under subsection (4).
- (6) The ACCC must not give a direction under subsection (4) unless, in the ACCC's opinion, compliance with the direction is likely to have a bearing on competition or consumer protection.

### 475 ACMA may give directions to declared manager of electronic addressing

- (1) The ACMA may, by written notice given to a declared manager of electronic addressing in relation to a particular kind of electronic addressing and a particular kind of listed carriage service, direct the manager to do, or refrain from doing, a specified act or thing

relating to that kind of electronic addressing and that kind of carriage service.

- (2) The ACMA must not give a direction under this section unless, in the ACMA's opinion, the electronic addressing is of public importance.
- (3) In determining whether the kind of electronic addressing is of public importance, the ACMA must have regard to the extent to which the addressing is of significant social and/or economic importance.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACMA may have regard.
- (5) Before giving a direction under this section, the ACMA must consult the ACCC.
- (6) A person must comply with a direction under this section.
- (7) A person commits an offence if:
  - (a) the person has been given a direction under this section; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

- (8) A direction under this section is a legislative instrument.
- (9) In this section:

***engage in conduct*** means:

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

#### **476 ACCC may give directions to declared manager of electronic addressing**

- (1) The ACCC may, by written notice given to a declared manager of electronic addressing in relation to a particular kind of electronic

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addressing and a particular kind of listed carriage service, direct the manager to do, or refrain from doing, a specified act or thing relating to that kind of electronic addressing and that kind of carriage service.

- (2) The ACCC must not give a direction under this section unless, in the ACCC's opinion:
  - (a) the electronic addressing is of public importance; and
  - (b) compliance with the direction is likely to have a bearing on competition or consumer protection.
- (3) In determining whether the kind of electronic addressing is of public importance, the ACCC must have regard to the extent to which the addressing is of significant social and/or economic importance.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACCC may have regard.
- (5) Before giving a direction under this section, the ACCC must consult the ACMA.
- (6) A person must comply with a direction under this section.
- (7) A person commits an offence if:
  - (a) the person has been given a direction under this section; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

- (8) A direction under this section is a legislative instrument.
- (9) In this section:

***engage in conduct*** means:

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

**477 ACCC's directions to prevail over the ACMA's directions**

A direction given by the ACMA under section 475 has no effect to the extent to which it is inconsistent with a direction given by the ACCC under section 476.

## **Part 23—Standard agreements for the supply of carriage services**

### **478 Simplified outline**

The following is a simplified outline of this Part:

- The terms and conditions on which certain telecommunications-related goods and services are supplied are:
  - (a) as agreed between the supplier and the customer; or
  - (b) failing agreement, set out in a standard form of agreement formulated for the purposes of this Part.

### **479 Standard terms and conditions apply unless excluded**

- (1) This section applies to the supply to an ordinary person by a carriage service provider of:
  - (a) a standard telephone service; or
  - (b) a carriage service of a kind specified in the regulations; or
  - (c) ancillary goods of a kind specified in the regulations; or
  - (d) an ancillary service of a kind specified in the regulations.
- (2) The terms and conditions on which the goods or services are supplied are:
  - (a) so far as the provider and the person agree on the terms and conditions on which the goods or services are supplied—the agreed terms and conditions; and
  - (b) if the provider and the person do not agree on terms and conditions, but terms and conditions are set out in a standard form of agreement that:

- (i) is formulated by the provider for the purpose of this section; and
  - (ii) relates to the goods or services; and
  - (iii) is in force at the time of the supply;
- the terms and conditions so set out, so far as they are applicable to the supply of the goods or services.
- (3) Subsection (2) has effect subject to any express provision of this Act or any other Act.
- (4) In this section:

***ancillary goods*** means goods for use in connection with a carriage service.

***ancillary service*** means a service for use in connection with a carriage service.

***ordinary person*** means a person other than a carrier or a carriage service provider.

***terms and conditions***, in relation to the supply of goods or services, includes:

- (a) charges for the supply of the goods or services; and
- (b) any discounts, allowances, rebates or credits given or allowed in relation to the supply of the goods or services; and
- (c) any commissions or similar benefits (whether monetary or otherwise) payable or given in relation to the supply of the goods or services; and
- (d) the supply of other goods or services, where the other goods or services are supplied in connection with the first-mentioned goods or services; and
- (e) the making of payments for such other goods or services.

#### **482 Concurrent operation of State/Territory laws**

This Part does not prevent or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.

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**483 Competition and Consumer Act not affected by this Part**

This Part has no effect to the extent (if any) to which it is inconsistent with the *Competition and Consumer Act 2010*.



## **Part 24—Carriers' powers and immunities**

### **484 Schedule 3**

Schedule 3 has effect.

**Part 24A** Submarine cables

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**Part 24A—Submarine cables**

**484A Schedule 3A**

Schedule 3A has effect.

## **Part 25—Public inquiries**

### **Division 1—Simplified outline**

#### **485 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA and the ACCC may hold public inquiries about certain matters relating to telecommunications.

## Division 2—Inquiries by the ACMA

### 486 When inquiry must be held

- (1) The Minister may give the ACMA a written direction to hold a public inquiry under this Division about a specified matter concerning:
  - (a) carriage services; or
  - (b) content services; or
  - (c) the telecommunications industry.
- (2) The Minister must not give the ACMA a direction under subsection (1) to hold a public inquiry about a matter concerning the content of a content service.
- (3) If the Minister gives a direction under subsection (1) about a particular public inquiry, the Minister may direct the ACMA to:
  - (a) consult with one or more specified persons, bodies or agencies in connection with the conduct of the inquiry; and
  - (b) have regard to one or more specified matters in connection with the conduct of the inquiry.
- (4) The ACMA must comply with a direction under this section.

### 487 When inquiry may be held

- (1) This section applies if the ACMA considers that it is appropriate and practicable to hold a public inquiry under this Division about a matter relating to:
  - (a) the performance of any of the ACMA's telecommunications functions; or
  - (b) the exercise of any of the ACMA's telecommunications powers.
- (2) The ACMA may hold such an inquiry about the matter.

#### **488 Informing the public about an inquiry**

- (1) If the ACMA holds a public inquiry, it must publish, in whatever ways it thinks appropriate, notice of:
  - (a) the fact that it is holding the inquiry; and
  - (b) the period during which the inquiry is to be held; and
  - (c) the nature of the matter to which the inquiry relates; and
  - (d) the period within which, and the form in which, members of the public may make submissions to the ACMA about that matter; and
  - (e) the matters that the ACMA would like such submissions to deal with; and
  - (f) the address or addresses to which submissions may be sent.
- (2) The ACMA need not publish at the same time or in the same way notice of all the matters referred to in subsection (1).

#### **489 Discussion paper**

- (1) After deciding to hold a public inquiry about a matter, the ACMA may cause to be prepared a discussion paper that:
  - (a) identifies the issues that, in the ACMA's opinion, are relevant to that matter; and
  - (b) sets out such background material about, and discussion of, those issues as the ACMA thinks appropriate.
- (2) The ACMA must make copies of the discussion paper available at each of the ACMA's offices. The ACMA may charge a reasonable price for supplying copies of the discussion paper in accordance with this subsection.
- (3) The ACMA may otherwise publish the discussion paper, including in electronic form. The ACMA may charge for supplying a publication under this subsection in accordance with a determination under section 60 of the *Australian Communications and Media Authority Act 2005*.

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**490 Written submissions and protection from civil actions**

- (1) The ACMA must provide a reasonable opportunity for any member of the public to make a written submission to the ACMA about the matter to which a public inquiry relates.
- (2) For the purposes of subsection (1), the ACMA is taken not to have provided a reasonable opportunity to make submissions unless there was a period of at least 28 days during which the submissions could be made.
- (3) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information, to the ACMA in connection with a public inquiry under this Division.
- (4) The rule in subsection (3) applies whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

**491 Hearings**

- (1) The ACMA may hold hearings for the purposes of a public inquiry.
- (2) Hearings may be held, for example:
  - (a) in order to receive submissions about the matter to which the inquiry relates; or
  - (b) in order to provide a forum for public discussion of issues relevant to that matter.
- (3) At a hearing, the ACMA may be constituted by:
  - (a) a member or members determined in writing by the Chair for the purposes of that hearing; or
  - (b) if the functions or powers of the ACMA in relation to the hearing have been delegated to a person, or to a Division of the ACMA, under section 50, 51 or 52 of the *Australian Communications and Media Authority Act 2005*—that person or Division.

- (4) The Chair is to preside at all hearings at which he or she is present.
- (5) If the Chair is not present at a hearing, the hearing is to be presided over by:
  - (a) if paragraph (3)(a) applies—the member, specified in an instrument under that paragraph, as the member who is to preside at the hearing; or
  - (b) if paragraph (3)(b) applies and the delegation is to a person—that person; or
  - (c) if paragraph (3)(b) applies and the delegation is to a Division of the ACMA—a member of the Division chosen by the Division.
- (6) The ACMA may regulate the conduct of proceedings at a hearing as it thinks appropriate.

#### **492 Hearing to be in public except in exceptional cases**

- (1) This section applies to a hearing conducted under this Division.
- (2) The basic rule is that the hearing must take place in public.
- (3) However, the hearing, or a part of the hearing, may be conducted in private if the ACMA is satisfied that:
  - (a) evidence that may be given, or a matter that may arise, during the hearing or a part of the hearing is of a confidential nature; or
  - (b) hearing a matter, or part of a matter, in public would not be conducive to the due administration of this Act.
- (4) If the hearing is to be conducted in public, the ACMA must give reasonable public notice of the conduct of the hearing.
- (5) In this section:

*this Act* includes:

  - (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
  - (b) the *Spam Act 2003* and regulations under that Act; and

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- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**493 Confidential material not to be published**

- (1) This section applies to a hearing conducted under this Division.
- (2) If:
- (a) the hearing, or a part of the hearing, takes place in public; and
  - (b) the ACMA is of the opinion that:
    - (i) evidence or other material presented to the hearing; or
    - (ii) material in a written submission lodged with the ACMA;is of a confidential nature;
- the ACMA may order that:
- (c) the evidence or material not be published; or
  - (d) its disclosure be restricted.
- (3) A person must not fail to comply with an order under subsection (2).
- (4) A person commits an offence if:
- (a) the ACMA has made an order under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the order.

Penalty: 50 penalty units.

- (5) Subsections (3) and (4) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) In this section:

***engage in conduct*** means:

- (a) do an act; or



- (b) omit to perform an act.

**494 Direction about private hearings**

- (1) This section applies to a hearing conducted under this Division.
- (2) If the hearing, or a part of the hearing, takes place in private, the ACMA:
- (a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and
  - (b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.
- (3) A person must not fail to comply with a direction under subsection (2).
- (4) A person commits an offence if:
- (a) the ACMA has given a direction under paragraph (2)(a); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

- (5) A person commits an offence if:
- (a) the ACMA has given a direction under paragraph (2)(b); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.

- (6) Subsections (3), (4) and (5) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) In this section:

***engage in conduct*** means:

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

**495 Reports on inquiries**

- (1) If the ACMA holds a public inquiry, the ACMA must prepare a report setting out its findings as a result of the inquiry.
- (2) If the inquiry was held because of a direction given by the Minister under section 486, the ACMA must give a copy of the report to the Minister.
- (3) If the inquiry was held otherwise than because of a direction given by the Minister under section 486, the ACMA must publish the report.
- (4) The ACMA is not required to include in a report any material:
  - (a) that is of a confidential nature; or
  - (b) the disclosure of which is likely to prejudice the fair trial of a person; or
  - (c) that is the subject of an order or direction under section 493 or 494.

## **Division 3—Inquiries by the ACCC**

### **496 When inquiry must be held**

- (1) The Minister may give the ACCC a written direction to hold a public inquiry under this Division about a specified matter concerning:
  - (a) carriage services; or
  - (b) content services; or
  - (c) the telecommunications industry.
- (2) The Minister must not give the ACCC a direction under subsection (1) to hold a public inquiry about a matter concerning the content of a content service.
- (3) If the Minister gives a direction under subsection (1) about a particular public inquiry, the Minister may direct the ACCC to:
  - (a) consult with one or more specified persons, bodies or agencies in connection with the conduct of the inquiry; and
  - (b) have regard to one or more specified matters in connection with the conduct of the inquiry.
- (4) The ACCC must comply with a direction under this section.

### **497 When inquiry may be held**

- (1) This section applies if the ACCC considers that it is appropriate and practicable to hold a public inquiry under this Division about a matter relating to the ACCC's telecommunications functions and powers.
- (2) The ACCC may hold such an inquiry about the matter.

### **498 Informing the public about an inquiry**

- (1) If the ACCC holds a public inquiry, it must publish, in whatever ways it thinks appropriate, notice of:

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- (a) the fact that it is holding the inquiry; and
  - (b) the period during which the inquiry is to be held; and
  - (c) the nature of the matter to which the inquiry relates; and
  - (d) the period within which, and the form in which, members of the public may make submissions to the ACCC about that matter; and
  - (e) the matters that the ACCC would like such submissions to deal with; and
  - (f) the address or addresses to which submissions may be sent.
- (2) The ACCC need not publish at the same time or in the same way notice of all the matters referred to in subsection (1).

**499 Discussion paper**

- (1) After deciding to hold a public inquiry about a matter, the ACCC may cause to be prepared a discussion paper that:
- (a) identifies the issues that, in the ACCC's opinion, are relevant to that matter; and
  - (b) sets out such background material about, and discussion of, those issues as the ACCC thinks appropriate.
- (2) The ACCC must make copies of the discussion paper available at each of the ACCC offices. The ACCC may charge a reasonable price for supplying copies of the discussion paper in accordance with this subsection.
- (3) The ACCC may otherwise publish the discussion paper, including in electronic form. The ACCC may charge a fee for supplying a publication under this subsection.

**500 Written submissions and protection from civil actions**

- (1) The ACCC must provide a reasonable opportunity for any member of the public to make a written submission to the ACCC about the matter to which a public inquiry relates.

- (2) For the purposes of subsection (1), the ACCC is taken not to have provided a reasonable opportunity to make submissions unless there was a period of at least 28 days during which the submissions could be made.
- (3) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information, to the ACCC in connection with a public inquiry under this Division.
- (4) The rule in subsection (3) applies whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

### **501 Hearings**

- (1) The ACCC may hold hearings for the purposes of a public inquiry.
- (2) Hearings may be held, for example:
  - (a) in order to receive submissions about the matter to which the inquiry relates; or
  - (b) in order to provide a forum for public discussion of issues relevant to that matter.
- (3) At a hearing, the ACCC may be constituted by a member or members determined in writing by the Chairperson for the purposes of that hearing.
- (4) The Chairperson is to preside at all hearings at which he or she is present.
- (5) If the Chairperson is not present at a hearing, the member specified, in an instrument under subsection (3), as the member who is to preside at the hearing is to preside.
- (6) The ACCC may regulate the conduct of proceedings at a hearing as it thinks appropriate.

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**502 Hearing to be in public except in exceptional cases**

- (1) This section applies to a hearing conducted under this Division.
- (2) The basic rule is that the hearing must take place in public.
- (3) However, the hearing, or a part of the hearing, may be conducted in private if the ACCC is satisfied that:
  - (a) evidence that may be given, or a matter that may arise, during the hearing or a part of the hearing is of a confidential nature; or
  - (b) hearing a matter, or part of a matter, in public would not be conducive to the due administration of this Act.
- (4) If the hearing is to be conducted in public, the ACCC must give reasonable public notice of the conduct of the hearing.
- (5) In this section:

*this Act* includes:

  - (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
  - (b) the *Spam Act 2003* and regulations under that Act; and
  - (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**503 Confidential material not to be published**

- (1) This section applies to a hearing conducted under this Division.
- (2) If:
  - (a) the hearing, or a part of the hearing, takes place in public; and
  - (b) the ACCC is of the opinion that:
    - (i) evidence or other material presented to the hearing; or
    - (ii) material in a written submission lodged with the ACCC; is of a confidential nature;

the ACCC may order that:

- (c) the evidence or material not be published; or
  - (d) its disclosure be restricted.
- (3) A person must not fail to comply with an order under subsection (2).
- (4) A person commits an offence if:
- (a) the ACCC has made an order under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the order.

Penalty: 50 penalty units.

- (5) Subsections (3) and (4) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) In this section:

***engage in conduct*** means:

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

#### **504 Direction about private hearings**

- (1) This section applies to a hearing conducted under this Division.
- (2) If the hearing, or a part of the hearing, takes place in private, the ACCC:
- (a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and
  - (b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.
- (3) A person must not fail to comply with a direction under subsection (2).

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- (4) A person commits an offence if:
- (a) the ACCC has given a direction under paragraph (2)(a); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

- (5) A person commits an offence if:
- (a) the ACCC has given a direction under paragraph (2)(b); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.

- (6) Subsections (3), (4) and (5) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) In this section:

***engage in conduct*** means:

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

**505 Reports on inquiries**

- (1) If the ACCC holds a public inquiry, the ACCC must prepare a report setting out its findings as a result of the inquiry.
- (2) If the inquiry was held because of a direction given by the Minister under section 496, the ACCC must give a copy of the report to the Minister.
- (3) If the inquiry was held otherwise than because of a direction given by the Minister under section 496, the ACCC must publish the report.
- (4) The ACCC is not required to include in a report any material:



- (a) that is of a confidential nature; or
- (b) the disclosure of which is likely to prejudice the fair trial of a person; or
- (c) that is the subject of an order or direction under section 503 or 504.

**505A ACCC may use material presented to a previous public inquiry**

- (1) This section applies if:
  - (a) the ACCC has held a public inquiry (the *original inquiry*) under this Part; and
  - (b) any of the following subparagraphs applies:
    - (i) evidence or other material was presented to a hearing for the purposes of the original inquiry;
    - (ii) a written submission was lodged with the ACCC for the purposes of the original inquiry;
    - (iii) any other information obtained by the ACCC was used by the ACCC for the purposes of the original inquiry; and
  - (c) the ACCC holds another public inquiry under this Part.
- (2) The ACCC may:
  - (a) in the case of evidence or other material presented to a hearing—treat the whole or a part of the evidence or other material as if it had also been presented to a hearing for the purposes of the other public inquiry; or
  - (b) in the case of a written submission lodged with the ACCC—treat the whole or a part of the written submission as if it had also been lodged with the ACCC for the purposes of the other public inquiry; or
  - (c) in the case of any other information obtained by the ACCC—use the whole or a part of the information for the purposes of the other public inquiry.

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- (3) This section does not, by implication, limit the information that may be used by the ACCC for the purposes of a public inquiry under this Part.

**505B ACCC may adopt a finding from a previous public inquiry**

If:

- (a) the ACCC has held a public inquiry (the *original inquiry*) under this Part; and
  - (b) the ACCC has prepared a report about the original inquiry under section 505; and
  - (c) the ACCC holds another public inquiry under this Part;
- the ACCC may, for the purposes of the other public inquiry, adopt a finding set out in the report about the original inquiry.

**506 ACCC's other powers not limited**

This Division does not, by implication, limit the powers conferred on the ACCC by the *Competition and Consumer Act 2010*.

## Part 26—Investigations

### 507 Simplified outline

The following is a simplified outline of this Part:

- The ACMA may investigate certain matters relating to telecommunications.

### 508 Matters to which this Part applies

This Part applies to the following matters:

- (a) a contravention of this Act;
- (aa) a contravention of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or regulations under that Act;
- (ab) a contravention of the *Spam Act 2003* or regulations under that Act;
- (ac) a contravention of the *Do Not Call Register Act 2006* or regulations under that Act;
- (b) a contravention of a code registered under Part 6;
- (c) a failure by a carriage service provider to comply with an obligation, or discharge a liability, under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- (d) a matter relating to the supply of, or a refusal or failure to supply, a carriage service;
- (e) a matter relating to the connection of, or a refusal or failure to connect, customer equipment;
- (f) a matter relating to the performance of the ACMA's telecommunications functions, or the exercise of the ACMA's telecommunications powers;

except to the extent (if any) to which the matter relates to the content of a content service.

### 509 Complaints to the ACMA

- (1) A person may complain to the ACMA about a matter.
- (2) A complaint must be in writing.
- (3) A complaint must specify, as the respondent in respect of the complaint, the person against whom the complaint is made.
- (4) If it appears to the ACMA that:
  - (a) a person wishes to make a complaint; and
  - (b) the person requires assistance to formulate the complaint or to reduce it to writing;it is the duty of the ACMA to take reasonable steps to provide appropriate assistance to the person.
- (5) If it appears to the ACMA that:
  - (a) a person (the **first person**) wishes to make a complaint about:
    - (i) a contravention of a code registered under Part 6, where the code applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants; or
    - (ii) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants; or
    - (iii) a contravention of the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the complaint relates to a voice call (within the meaning of the *Do Not Call Register Act 2006*) made, or attempted to be made, to an Australian number; and
  - (c) the first person does not have sufficient information to identify:
    - (i) the person who made, or attempted to make, the call; or

- (ii) the person who caused the call to be made or attempted;  
and
  - (d) the first person gives the ACMA such information about the call as the ACMA requires;
- it is the duty of the ACMA to take reasonable steps to assist the first person to identify whichever of the following is applicable:
- (e) the person who made, or attempted to make, the call;
  - (f) the person who caused the call to be made or attempted.
- (6) Subsection (5) does not limit subsection (4).
- (7) If it appears to the ACMA that:
- (a) a person (the *first person*) wishes to make a complaint about:
    - (i) a contravention of a code registered under Part 6, where the code applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants; or
    - (ii) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants; or
    - (iii) a contravention of the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the complaint relates to a marketing fax sent, or attempted to be sent, to an Australian number; and
  - (c) the first person does not have sufficient information to identify:
    - (i) the person who sent, or attempted to send, the fax; or
    - (ii) the person who caused the fax to be sent or attempted;  
and
  - (d) the first person gives the ACMA such information about the fax as the ACMA requires;

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it is the duty of the ACMA to take reasonable steps to assist the first person to identify whichever of the following is applicable:

- (e) the person who sent, or attempted to send, the fax;
  - (f) the person who caused the fax to be sent or attempted.
- (8) Subsection (7) does not limit subsection (4).

**510 Investigations by the ACMA**

- (1) The ACMA may investigate a matter of a kind referred to in section 508 if:
- (a) in the case of a matter covered by paragraph 508(a)—the ACMA has reason to suspect that a person may have contravened this Act; or
  - (aa) in the case of a matter covered by paragraph 508(aa)—the ACMA has reason to suspect that a person may have contravened the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or regulations under that Act; or
  - (ab) in the case of a matter covered by paragraph 508(ab)—the ACMA has reason to suspect that a person may have contravened the *Spam Act 2003* or regulations under that Act; or
  - (ac) in the case of a matter covered by paragraph 508(ac)—the ACMA has reason to suspect that a person may have contravened the *Do Not Call Register Act 2006* or regulations under that Act; or
  - (b) in any case—a complaint is made under section 509; or
  - (c) in any case—the ACMA thinks that it is desirable to investigate the matter.
- (2) The ACMA must not conduct such an investigation if it thinks that the subject matter of the investigation would not be a matter relevant to the performance of any of its functions.
- (3) The ACMA must investigate:
- (a) a matter of a kind referred to in section 508; or

- (b) any other matter concerning carriage services or the telecommunications industry;  
if the Minister requests the ACMA so to investigate.

### **511 Preliminary inquiries**

If a complaint has been made to the ACMA under section 509, the ACMA may make inquiries of the respondent for the purposes of determining:

- (a) whether the ACMA has power to investigate the matter to which the complaint relates; or
- (b) whether the ACMA should, in its discretion, investigate the matter.

### **512 Conduct of investigations**

- (1) Before beginning an investigation of a matter to which a complaint relates, the ACMA must inform the respondent that the matter is to be investigated.
- (1A) However, the ACMA is not required to inform the respondent that the matter is to be investigated if:
  - (a) the matter relates to a possible breach of:
    - (i) the *Spam Act 2003* or regulations under that Act; or
    - (ii) the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the ACMA has reasonable grounds to believe that informing the respondent is likely to result in the concealment, loss or destruction of a thing connected with the breach.
- (2) An investigation under this Part is to be conducted as the ACMA thinks fit.
- (3) The ACMA may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as it thinks fit.

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- (4) It is not necessary for a complainant or a respondent to be given an opportunity to appear before the ACMA in connection with an investigation. This subsection has effect subject to subsection (5).
- (5) The ACMA must not, as a result of the investigation, make a finding that is adverse to a complainant or a respondent unless it has given the complainant or respondent an opportunity to make submissions about the matter to which the investigation relates.
- (6) However, the ACMA is not required to give the respondent an opportunity to make submissions if:
  - (a) the matter relates to a possible breach of:
    - (i) the *Spam Act 2003* or regulations under that Act; or
    - (ii) the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the ACMA has reasonable grounds to believe that giving the respondent an opportunity to make submissions is likely to result in the concealment, loss or destruction of a thing connected with the breach.

**513 Complainant and certain other persons to be informed of various matters**

- (1) If the ACMA decides not to investigate, or not to investigate further, a matter to which a complaint relates, it must, as soon as practicable and in such manner as it thinks fit, inform the complainant and the respondent of the decision and of the reasons for the decision.
- (2) However, the ACMA is not required to inform the respondent of the decision and of the reasons for the decision if:
  - (a) the matter relates to a possible breach of:
    - (i) the *Spam Act 2003* or regulations under that Act; or
    - (ii) the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the ACMA has reasonable grounds to believe that informing the respondent is likely to result in the concealment, loss or destruction of a thing connected with the breach.



**514 Reference of matters to Ombudsman or other responsible person**

- (1) If, before the ACMA starts, or after it has started, an investigation of a matter to which a complaint relates, the ACMA forms the opinion that:
- (a) a complaint relating to that matter has been, or could have been, made by the complainant to:
    - (i) the Ombudsman under the *Ombudsman Act 1976*; or
    - (ii) the Telecommunications Industry Ombudsman; or
    - (iii) another person or body responsible for handling complaints under a code registered, or standard determined, under Part 6; and
  - (b) the matter could be more conveniently or effectively dealt with by:
    - (i) the Ombudsman; or
    - (ii) the Telecommunications Industry Ombudsman; or
    - (iii) another person or body responsible for handling complaints under a code registered, or standard determined, under Part 6;
- the ACMA may decide not to investigate the matter, or not to investigate the matter further, as the case may be.
- (2) If the ACMA decides as mentioned in subsection (1), it must:
- (a) transfer the complaint to:
    - (i) the Ombudsman; or
    - (ii) the Telecommunications Industry Ombudsman; or
    - (iii) another person or body responsible for handling complaints under a code registered, or standard determined, under Part 6;as the case requires; and
  - (b) give written notice to the complainant stating that the complaint has been so transferred.
- (3) If the ACMA decides as mentioned in subsection (1), then:

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- (a) in a case where subparagraph (1)(a)(i) applies—the ACMA must give the Ombudsman any information or documents that relate to the complaint and that are in the ACMA’s possession or under its control; and
  - (b) in a case where subparagraph (1)(a)(ii) applies—the ACMA may give the Telecommunications Industry Ombudsman any information or documents that relate to the complaint and that are in the ACMA’s possession or under its control; and
  - (c) in a case where subparagraph (1)(a)(iii) applies—the ACMA may give the person or body mentioned in that subparagraph:
    - (i) any information or documents that relate to the complaint and that are in the ACMA’s possession or under its control; or
    - (ii) copies of, or extracts from, such information or documents.
- (4) A complaint transferred under subsection (2) to the Ombudsman is taken to be a complaint made to the Ombudsman under the *Ombudsman Act 1976*.

**515 Reference of matters to the ACCC**

- (1) If, before the ACMA commences, or after it has commenced, an investigation of a matter to which a complaint relates, the ACMA forms the opinion that the matter could be more conveniently or effectively dealt with by the ACCC, it may decide not to investigate the matter, or not to investigate the matter further, as the case may be.
- (2) If the ACMA so decides, it must:
  - (a) transfer the complaint to the ACCC; and
  - (b) give written notice to the complainant stating that the complaint has been so transferred; and
  - (c) give to the ACCC any information or documents that relate to the complaint and that are in the ACMA’s possession or under its control.

- (3) The ACCC may hold an investigation into the matter and, if it decides to do so, it must report to the ACMA on:
- (a) the conduct of the investigation; and
  - (b) any findings that it has made as a result of the investigation; and
  - (c) the evidence and other material on which those findings were based; and
  - (d) such other matters relating to, or arising out of, the investigation as the ACCC thinks fit.
- (4) If the ACCC decides not to hold an investigation into the matter, it must give to the ACMA a written notice informing the ACMA of its decision and of the reasons for its decision.

### **515A Reference of matters to Information Commissioner**

- (1) This section applies to a complaint about any of the following matters:
- (a) a contravention of a code registered under Part 6, where the code applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants;
  - (b) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants;
  - (ba) a contravention of a code registered under Part 6, where the code applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants;
  - (bb) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the fax marketing industry (within the meaning of

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- Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants;
- (c) a contravention of the *Do Not Call Register Act 2006* or regulations under that Act.
- (2) If, before the ACMA starts, or after it has started, an investigation of a matter to which a complaint relates, the ACMA forms the opinion that:
- (a) a complaint relating to that matter has been, or could have been, made by the complainant to the Information Commissioner under section 36 of the *Privacy Act 1988*; and
  - (b) the matter could be more conveniently or effectively dealt with by the Information Commissioner;
- the ACMA may decide not to investigate the matter, or not to investigate the matter further, as the case may be.
- (3) If the ACMA decides as mentioned in subsection (2), it must:
- (a) transfer the complaint to the Information Commissioner; and
  - (b) give written notice to the complainant stating that the complaint has been so transferred; and
  - (c) give the Information Commissioner any information or documents that relate to the complaint and that are in the ACMA's possession or under its control.
- (4) A complaint transferred under subsection (3) to the Information Commissioner is taken to be a complaint made to the Information Commissioner under section 36 of the *Privacy Act 1988*.

**516 Reports on investigations**

- (1) After concluding an investigation under subsection 510(1), the ACMA may prepare and give to the Minister a report under this section.
- (2) After concluding an investigation under subsection 510(3), the ACMA must prepare and give to the Minister a report under this section.

- (3) A report under this section must cover:
- (a) the conduct of the investigation concerned; and
  - (b) any findings that the ACMA has made as a result of the investigation; and
  - (c) the evidence and other material on which those findings were based; and
  - (d) such other matters relating to, or arising out of, the investigation as the ACMA thinks fit or as the Minister directs.

### **517 Publication of reports**

- (1) This section applies if the ACMA prepares a report under section 516.
- (2) If the report was prepared under subsection 516(1), the ACMA may cause the report to be published.
- (3) If the report was prepared under subsection 516(2), the Minister may direct the ACMA to publish the report. The ACMA must comply with the direction. The ACMA must not otherwise cause the report to be published.
- (4) The ACMA is not required to publish, or to disclose to a person to whose affairs it relates, a report or a part of a report if the publication or disclosure would:
- (a) disclose a matter of a confidential character; or
  - (b) be likely to prejudice the fair trial of a person.
- (5) The ACMA is not required to publish a report or part of a report if the publication would involve the unreasonable disclosure of personal information about any individual (including a deceased individual).

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**518 Person adversely affected by report to be given opportunity to comment**

- (1) This section applies if the publication of a matter in a report or a part of a report would, or would be likely to, adversely affect the interests of a person.
- (2) The ACMA must not publish the report or the part of the report, as the case may be, until the ACMA has given the person a reasonable period (not exceeding 30 days) to make representations, either orally or in writing, in relation to the matter.
- (3) However, the ACMA is not required to give the person a reasonable period to make representations if:
  - (a) the matter relates to a possible breach of:
    - (i) the *Spam Act 2003* or regulations under that Act; or
    - (ii) the *Do Not Call Register Act 2006* or regulations under that Act; and
  - (b) the ACMA has reasonable grounds to believe that giving the person a reasonable period to make representations is likely to result in the concealment, loss or destruction of a thing connected with the breach.

**519 Protection from civil actions**

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:
  - (a) the making of a complaint under section 509;
  - (b) the making of a statement to, or the giving of a document or information to, the ACMA in connection with an investigation under section 510;
  - (c) the making of a complaint to the Telecommunications Industry Ombudsman;
  - (d) subject to subsection (2), the making of a statement to, or the giving of a document or information to, the Telecommunications Industry Ombudsman in connection

with the consideration by the Telecommunications Industry Ombudsman of a complaint.

- (2) Paragraph (1)(d) does not apply to the making of a statement, or the giving of a document or information, by:
- (a) a carrier; or
  - (b) a person who is a service provider and who is participating in the Telecommunications Industry Ombudsman scheme under which the Telecommunications Industry Ombudsman has been appointed.

## **Part 27—The ACMA's information-gathering powers**

### **Division 1—Simplified outline**

#### **520 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA may obtain information from carriers, service providers and other persons if the information is relevant to:
  - (a) the performance of any of the ACMA's telecommunications functions; or
  - (b) the exercise of any of the ACMA's telecommunications powers.
- The ACMA may make record-keeping rules that apply to carriers and carriage service providers.



## **Division 2—Information-gathering powers**

### **521 The ACMA may obtain information and documents from carriers and service providers**

- (1) This section applies to a carrier or a service provider if the ACMA has reason to believe that the carrier or provider:
  - (a) has information or a document that is relevant to:
    - (i) the performance of any of the ACMA's telecommunications functions; or
    - (ii) the exercise of any of the ACMA's telecommunications powers; or
  - (b) is capable of giving evidence which the ACMA has reason to believe is relevant to:
    - (i) the performance of any of the ACMA's telecommunications functions; or
    - (ii) the exercise of any of the ACMA's telecommunications powers.
- (2) The ACMA may, by written notice given to the carrier or provider, require the carrier or provider:
  - (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies; or
  - (d) if the carrier or provider is an individual—to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
  - (e) if the carrier or provider is a body corporate or a public body—to cause a competent officer of the body to appear

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before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or

(f) if the carrier or provider is a partnership—to cause an individual who is:

(i) a partner in the partnership; or

(ii) an employee of the partnership;

to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

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

(4) A notice given to a carrier under this section must set out the effect of the following provisions:

(a) subsection (3);

(b) section 68;

(c) section 570;

(d) Part 1 of Schedule 1;

(e) section 525.

(5) A notice given to a service provider under this section must set out the effect of the following provisions:

(a) subsection (3);

(b) section 101;

(c) section 570;

(d) Part 1 of Schedule 2;

(e) section 525.

**522 The ACMA may obtain information and documents from other persons**

(1) This section applies to a person if the ACMA has reason to believe that the person:

(a) has information or a document that is relevant to:

- (i) the performance of any of the ACMA's telecommunications functions; or
    - (ii) the exercise of any of the ACMA's telecommunications powers; or
  - (b) is capable of giving evidence which the ACMA has reason to believe is relevant to:
    - (i) the performance of any of the ACMA's telecommunications functions; or
    - (ii) the exercise of any of the ACMA's telecommunications powers.
- (2) The ACMA may, by written notice given to the person, require the person:
- (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies; or
  - (d) if the person is an individual—to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
  - (e) if the person is a body corporate or a public body—to cause a competent officer of the body to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
  - (f) if the person is a partnership—to cause an individual who is:
    - (i) a partner in the partnership; or
    - (ii) an employee of the partnership;to appear before the ACMA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.
- (3) A person must comply with a requirement under subsection (2).
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- (4) A person commits an offence if:
- (a) the ACMA has given a notice to the person under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 20 penalty units.

- (5) A notice under this section must set out the effect of subsection (4) and section 525.
- (6) In this section:

*engage in conduct* means:

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

**523 Copying documents—reasonable compensation**

A person is entitled to be paid by the ACMA reasonable compensation for complying with a requirement covered by paragraph 521(2)(c) or 522(2)(c).

**524 Self-incrimination**

- (1) An individual is not excused from giving information or evidence or producing a document or a copy of a document under this Division on the ground that the information or evidence or the production of the document or copy might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
- (a) giving the information or evidence or producing the document or copy; or
  - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document or copy;
- is not admissible in evidence against the individual in:

- (c) criminal proceedings other than proceedings under, or arising out of, subsection 522(4) or section 525; or
- (d) proceedings under section 570 for recovery of a pecuniary penalty in relation to a contravention of section 521.

### **525 Giving false or misleading information or evidence**

A person must not, under section 521 or 522, give information or evidence that is false or misleading.

Penalty: Imprisonment for 12 months.

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

### **527 Copies of documents**

- (1) The ACMA may inspect a document or copy produced under this Division and may make and retain copies of, or take and retain extracts from, such a document.
- (2) The ACMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 521(2)(c) or 522(2)(c).

### **528 ACMA may retain documents**

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

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

## **Division 3—Record-keeping rules**

### **529 ACMA may make record-keeping rules**

- (1) The ACMA may, by written instrument, make rules for and in relation to requiring one or more specified carriers or one or more specified carriage service providers to keep and retain records. Rules under this subsection are to be known as *record-keeping rules*.

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

- (2) The rules may specify the manner and form in which the records are to be kept.
- (2A) The rules may also require those carriers or carriage service providers to prepare reports consisting of information contained in those records.
- (2B) The rules may also require those carriers or carriage service providers to give any or all of the reports to the ACMA.
- (2C) The rules may specify the manner and form in which reports are to be prepared.
- (2D) The rules may provide for:
- (a) the preparation of reports as and when required by the ACMA; or
  - (b) the preparation of periodic reports relating to such regular intervals as are specified in the rules.
- (2E) The rules may require or permit a report prepared in accordance with the rules to be given to the ACMA, in accordance with specified software requirements and specified authentication requirements:
- (a) on a specified kind of data processing device; or
  - (b) by way of a specified kind of electronic transmission.

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- (2F) Subsections (2) to (2E) do not limit subsection (1).
- (3) If the rules apply to a particular carrier or carriage service provider, the ACMA must give the carrier or provider a copy of the rules.
- (4) The ACMA must not exercise its powers under this section so as to require the keeping or retention of records unless the records contain, or will contain, information that is relevant to:
- (a) the performance by the ACMA of any of the ACMA's telecommunications functions; or
  - (b) the exercise by the ACMA of any of the ACMA's telecommunications powers.
- Note: Under section 521, the ACMA may require a carrier or carriage service provider to produce a document (including a record kept in accordance with the record-keeping rules).
- (5) This section does not limit section 521 (which is about the general information-gathering powers of the ACMA).

**530 Compliance with record-keeping rules**

A carrier or carriage service provider must comply with any record-keeping rules that are applicable to the carrier or provider.

**531 Incorrect records**

- (1) A person must not, in purported compliance with a requirement imposed by the record-keeping rules, make a record of any matter or thing in such a way that it does not correctly record the matter or thing.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 100 penalty units.

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



## **Part 28—Enforcement**

### **Division 1—Introduction**

#### **532 Simplified outline**

The following is a simplified outline of this Part:

- A person may be appointed as an inspector.
- Searches relating to offences against Part 21 (technical regulation) may be conducted:
  - (a) under the authority of a search warrant; or
  - (b) with the consent of the owner or occupier concerned; or
  - (c) in an emergency.
- Searches to monitor compliance with Part 21 (technical regulation) may be conducted with the consent of the occupier concerned.
- Searches relating to breaches of the *Spam Act 2003* may be conducted:
  - (a) under the authority of a search warrant; or
  - (b) with the consent of the owner or occupier concerned.
- Searches to monitor compliance with the *Spam Act 2003* may be conducted:
  - (a) under the authority of a monitoring warrant; or

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(b) with the consent of the occupier concerned.

- An inspector may require the production of a carrier licence.
- An inspector may require the giving of certain information, and the production of certain documents, relevant to compliance with the *Spam Act 2003* or Part 21 of this Act (technical regulation).
- A court may order forfeiture of goods used or otherwise involved in the commission of an offence against this Act.

**532A References to the *Spam Act 2003***

In this Part:

*Spam Act 2003* includes regulations under the *Spam Act 2003*.

## Division 2—Inspectors and identity cards

### 533 Inspectors

- (1) A person is an *inspector* for the purposes of a particular provision of this Act if:
- (a) the person is an officer appointed by the ACMA, by written instrument, to be an inspector:
    - (i) for the purposes of this Act in general; or
    - (ii) for the purposes of that provision; or
  - (b) the person is an officer included in a class of officers appointed by the ACMA, by notice in the *Gazette*, to be inspectors:
    - (i) for the purposes of this Act in general; or
    - (ii) for the purposes of that provision; or
  - (c) if the person is a member (other than a special member) of the Australian Federal Police or of the police force of a Territory.

- (2) In this section:

***Commonwealth officer*** means:

- (a) a person who, whether on a full-time or a part-time basis, and whether in a permanent capacity or otherwise:
  - (i) is in the service or employment of the Commonwealth, the Administration of an external Territory or an authority of the Commonwealth; or
  - (ii) holds or performs the duties of any office or position established by or under a law of the Commonwealth or an external Territory; or
- (b) a member of the Defence Force.

***officer*** means:

- (a) a Commonwealth officer; or
- (b) a State officer.

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**State** includes:

- (a) the Australian Capital Territory; and
- (b) the Northern Territory.

**State officer** means a person who, whether on a full-time basis or a part-time basis and whether in a permanent capacity or otherwise:

- (a) is in the service or employment of a State or an authority of a State; or
  - (b) holds or performs the duties of any office or position established by or under a law of a State;
- and includes a member of a police force of a State.

### 534 Identity cards

- (1) The ACMA may issue an identity card to an inspector, other than a member of a police force, in a form approved, in writing, by the ACMA.
- (2) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the ACMA.
- (3) A person must not contravene subsection (2).

Penalty: 5 penalty units.

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

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (3) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

### **Division 3—Search warrants relating to breaches of the Spam Act 2003 or Part 21 of this Act**

#### **535 Magistrate may issue warrant**

- (1) If:
- (a) an information on oath is laid before a magistrate alleging that an inspector suspects on reasonable grounds that there may be on any land, or in or on any premises, vessel, aircraft or vehicle:
    - (i) anything in respect of which an offence against Part 21 has been committed; or
    - (ii) anything that may afford evidence about the commission of an offence against Part 21; or
    - (iii) anything that was used, or is intended to be used, for the purposes of committing an offence against Part 21; or
    - (iv) anything in respect of which a breach of the *Spam Act 2003* has happened; or
    - (v) anything that may afford evidence about a breach of the *Spam Act 2003*; or
    - (vi) anything that was used, or is intended to be used, for the purposes of breaching the *Spam Act 2003*; and
  - (b) the information sets out those grounds;  
the magistrate may issue a search warrant authorising the inspector named in the warrant, with such assistance, and by such force, as is necessary and reasonable, to enter the land, premises, vessel, aircraft or vehicle and exercise the powers referred to in paragraphs 542(2)(b), (c) and (d), in respect of the thing.
- (2) A reference in this section to an ***offence against Part 21*** includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to Part 21 of this Act.

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**536 Reasonable grounds for issuing warrant etc.**

A magistrate is not to issue a warrant under section 535 unless:

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

**537 Contents of warrant**

The following must be stated in a warrant issued under section 535:

- (a) the purpose for which the warrant is issued, and the nature of the offence or breach in relation to which the entry and search are authorised;
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things to be seized;
- (d) a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

**538 Warrants may be issued by telephone etc.**

If, because of circumstances of urgency, an inspector thinks it necessary to do so, the inspector may apply to a magistrate for a warrant under section 535 by telephone, telex, fax or other electronic means.

**539 Provisions relating to issue of warrant by telephone etc.**

- (1) Before applying under section 538 for a warrant, an inspector must prepare an information of a kind referred to in section 535 that sets out the grounds on which the issue of the warrant is being sought.

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However, the inspector may, if it is necessary to do so, make the application before the information has been sworn.

(2) If the magistrate to whom an application under section 538 is made is satisfied:

- (a) after having considered the terms of the information prepared under subsection (1); and
- (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign such a search warrant as the magistrate would issue under section 535 if the application had been made under that section.

(3) If the magistrate signs a warrant under subsection (2):

- (a) the magistrate must:
  - (i) inform the inspector of the terms of the warrant; and
  - (ii) inform the inspector of the day on which and the time at which the warrant was signed; and
  - (iii) inform the inspector of the day (not more than 7 days after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
  - (iv) record on the warrant the reasons for issuing the warrant; and
- (b) the inspector must:
  - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
  - (ii) write on it the magistrate's name and the day on which and the time at which the warrant was signed.

(4) The inspector must, not later than the day after the date of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:

- (a) the form of warrant completed by the inspector; and
- (b) the information duly sworn in connection with the warrant.

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- (5) On receiving the documents referred to in subsection (4), the magistrate must:
- (a) attach to them the warrant signed by the magistrate; and
  - (b) deal with the documents in the way which the magistrate would have dealt with the information if the application for the warrant had been made under section 535.
- (6) A form of warrant duly completed by an inspector under subsection (3), if it is in accordance with the terms of the warrant signed by the magistrate, is authority for an entry, search, seizure or other exercise of a power that the warrant so signed authorises.

**540 Proceedings involving warrant issued by telephone etc.**

If:

- (a) it is material in any proceedings for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with section 539; and
- (b) a warrant signed by a magistrate under section 539 authorising the entry, search, seizure or other exercise of power is not produced in evidence;

the court is to assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant.



## **Division 4—Searches and seizures relating to breaches of the Spam Act 2003 or Part 21 of this Act**

### **541 When is a thing connected with an offence?**

For the purposes of this Division, a thing is *connected with* a particular offence if it is:

- (a) a thing in respect of which the offence has been committed; or
- (b) a thing that may afford evidence about the commission of the offence; or
- (c) a thing that was used, or is intended to be used, for the purposes of committing the offence.

### **541A When is a thing connected with a breach of the *Spam Act 2003*?**

For the purposes of this Part, a thing is *connected with* a breach of the *Spam Act 2003* if it is:

- (a) a thing in respect of which the breach has happened; or
- (b) a thing that may afford evidence about the breach; or
- (c) a thing that was used, or is intended to be used, for the purposes of the breach.

### **542 Searches and seizures**

- (1) This section applies if an inspector suspects on reasonable grounds that there is on any land, or on or in any premises, vessel, aircraft or vehicle anything connected with:
  - (a) a particular offence against Part 21 of this Act; or
  - (b) a particular breach of the *Spam Act 2003*.
- (2) The inspector may, with the consent of the owner or occupier of the land, premises, vessel, aircraft or vehicle, or in accordance with a warrant issued under Division 3:

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- (a) enter the land, premises, vessel, aircraft or vehicle; and
  - (b) search the land, premises, vessel, aircraft or vehicle; and
  - (c) break open and search a cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the inspector suspects on reasonable grounds there to be anything of a kind referred to in subsection (1); and
  - (d) examine and seize anything that the inspector suspects on reasonable grounds to be connected with the offence or breach.
- (3) If an inspector may enter a vessel, aircraft or vehicle under subsection (2), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (2)(b), (c) or (d), stop and detain the vessel, aircraft or vehicle.
- (4) A reference in this section to an ***offence against Part 21*** includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to Part 21 of this Act.

**543 Production of identity card etc.**

- (1) An inspector (other than a member of a police force who is in uniform) who proposes to enter land or premises under section 542 must:
- (a) in the case of a member of a police force—produce, for inspection by the owner or occupier of the land or premises written evidence of the fact that the inspector is a member of a police force; or
  - (b) in any other case—produce the inspector’s identity card for inspection by the owner or occupier;
- and, if the inspector fails to do so, he or she is not authorised to enter the land or premises.
- (2) If the entry is in accordance with a warrant issued under Division 3, the inspector is taken not to have complied with subsection (1) unless he or she also produces the warrant for inspection by the owner or occupier.

**544 Evidence of commission of other offences against Part 21 of this Act or other breaches of the *Spam Act 2003***

- (1) If:
- (a) in the course of searching, in accordance with a warrant issued under Division 3, for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes on reasonable grounds to be:
    - (i) a thing that is connected with the offence, although not the thing specified in the warrant; or
    - (ii) a thing that is connected with another offence against Part 21; and
  - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence;
- the warrant is taken to authorise the inspector to seize that thing.

- (1A) If:
- (a) in the course of searching, in accordance with a warrant issued under Division 3, for a particular thing in relation to a particular breach of the *Spam Act 2003*, an inspector finds a thing that the inspector believes on reasonable grounds to be:
    - (i) a thing that is connected with the breach, although not the thing specified in the warrant; or
    - (ii) a thing that is connected with another breach of the *Spam Act 2003*; and
  - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the breach or the other breach;
- the warrant is taken to authorise the inspector to seize that thing.

- (2) A reference in this section to an ***offence against Part 21*** includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to Part 21 of this Act.

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**545 Emergency entry, search and seizure**

- (1) If an inspector has reasonable grounds to believe:
- (a) that a person is carrying anything that is connected with an offence against Part 21; and
  - (b) that the exercise of the powers under this section is necessary to prevent the concealment, loss or destruction of a thing connected with a particular offence;
- the inspector may:
- (c) search the person, the person's clothing and any property in the person's immediate control; and
  - (d) seize any thing found in the course of the search;
- so long as those powers are exercised in circumstances of such seriousness and urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under Division 3.
- (2) If an inspector has reasonable grounds to believe:
- (a) that there is on any land or on or in any premises, vessel, aircraft or vehicle any thing that is connected with a particular offence against Part 21; and
  - (b) that the exercise of powers conferred under this section is necessary to prevent the concealment, loss or destruction of the thing;
- the inspector may, with such assistance as the inspector thinks fit, and if necessary by force:
- (c) enter the land, premises, vessel, aircraft or vehicle; and
  - (d) search for the thing; and
  - (e) seize any such thing found in the course of the search;
- so long as those powers are exercised in circumstances of such seriousness and urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under Division 3.
- (3) If an inspector may enter a vessel, aircraft or vehicle under subsection (2), the inspector may, for that purpose and for the

purpose of exercising a power referred to in paragraph (2)(d) or (e), stop and detain the vessel, aircraft or vehicle.

- (4) A reference in this section to an *offence against Part 21* includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to Part 21 of this Act.

### **546 Retention of things seized**

- (1) If an inspector seizes a thing under this Division, the inspector or the ACMA may retain it until:
- (a) the end of the period of 60 days after the seizure; or
  - (b) if either of the following proceedings are instituted within that period:
    - (i) proceedings for an offence against, or arising out of, this Act in respect of which the thing may afford evidence;
    - (ii) proceedings for a breach of the *Spam Act 2003* in respect of which the thing may afford evidence;the proceedings (including any appeal to a court in relation to those proceedings) are completed.
- (2) The ACMA may, by written instrument, authorise a thing seized under this Division to be released to the owner, or to the person from whom it was seized, either:
- (a) unconditionally; or
  - (b) on such conditions as the ACMA thinks fit, including conditions as to giving security for payment of its value if it is forfeited under section 551.
- (3) In this section:
- this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

## **Division 5—Searches to monitor compliance with Part 21**

### **547 Searches to monitor compliance with Part 21**

- (1) An inspector may, to the extent that it is reasonably necessary for the purpose of ascertaining whether Part 21 has been complied with, enter, at any time during the day or night, any premises that the inspector has reasonable cause to believe are premises to which this section applies and:
  - (a) search the premises; or
  - (b) inspect and take photographs, or make sketches, of the premises or any substance or thing at the premises; or
  - (c) inspect any document kept at the premises; or
  - (d) remove, or make copies of, any such document.This section has effect subject to subsections (2) and (3).
- (2) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.
- (3) An inspector is not entitled to exercise any powers under subsection (1) in relation to premises if:
  - (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
  - (b) the inspector fails to comply with the requirement.
- (4) This section applies to premises at which:
  - (a) activities that are the subject of regulation under Part 21 are engaged in; or
  - (b) records relating to any such activities are kept.

## **Division 5A—Searches to monitor compliance with the Spam Act 2003**

### **547A Powers available to inspectors for monitoring compliance**

- (1) For the purpose of finding out whether the *Spam Act 2003* has been complied with, an inspector may:
  - (a) enter any premises; and
  - (b) exercise the monitoring powers set out in section 547B.
- (2) An inspector is not authorised to enter premises under subsection (1) unless:
  - (a) the occupier of the premises has consented to the entry; or
  - (b) the entry is made under a warrant under section 547D.

#### *Consent*

- (3) Before obtaining the consent of a person for the purposes of paragraph (2)(a), the inspector must inform the person that he or she may refuse consent.
- (4) An entry of an inspector by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

### **547B Monitoring powers**

- (1) The monitoring powers that an inspector may exercise under paragraph 547A(1)(b) are as follows:
  - (a) to search the premises;
  - (b) to inspect and take photographs, or make sketches, of the premises or any substance or thing at the premises;
  - (c) to inspect any document kept at the premises;
  - (d) to remove, or make copies of, any such document;
  - (e) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;

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- (f) to secure a thing, until a warrant is obtained to seize it, if:
    - (i) the inspector finds the thing during the exercise of powers on the premises; and
    - (ii) the inspector believes on reasonable grounds that the thing is connected with a breach of the *Spam Act 2003*; and
    - (iii) the inspector believes on reasonable grounds that the thing would be lost, destroyed or tampered with before the warrant can be obtained;
  - (g) to secure a computer, until an order under section 547J is obtained in relation to it, if:
    - (i) the inspector finds the computer during the exercise of powers on the premises; and
    - (ii) there are reasonable grounds for suspecting that a thing connected with a breach of the *Spam Act 2003* is held in, or is accessible from, the computer; and
    - (iii) the inspector believes on reasonable grounds that the computer, or the thing mentioned in subparagraph (ii), would be lost, destroyed or tampered with before the order can be obtained.
- (2) The monitoring powers that an inspector may exercise under paragraph 547A(1)(b) include the power to operate equipment at premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is at the premises; and
    - (ii) can be used with the equipment or is associated with it;
- contains information that is relevant to determining whether there has been compliance with the *Spam Act 2003*.
- (3) If the inspector, after operating equipment at the premises, finds that the equipment, or that a tape, disk or other storage device at the premises, contains information mentioned in subsection (2), the inspector may:
- (a) operate facilities at the premises to put the information in documentary form and copy the document so produced; or
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- (b) if the information can be transferred to a tape, disk or other storage device that:
- (i) is brought to the premises; or
  - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;
- operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.

Note: See also section 547J (order requiring person to assist with access to computer data).

### **547C Production of identity card etc.**

An inspector (other than a member of a police force who is in uniform) who proposes to enter premises under section 547A must:

- (a) in the case of a member of a police force—produce, for inspection by the occupier of the premises, written evidence of the fact that the inspector is a member of a police force; or
- (b) in any other case—produce the inspector’s identity card for inspection by the occupier;

and, if the inspector fails to do so, he or she is not authorised to enter the premises.

### **547D Monitoring warrants**

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.
- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purposes of finding out whether the *Spam Act 2003* has been complied with.
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate

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requires concerning the grounds on which the issue of the warrant is being sought.

- (4) If the premises are a residence, the magistrate must not issue the warrant unless:
- (a) all of the following conditions are satisfied:
    - (i) the Federal Court has found, in proceedings under the *Spam Act 2003*, that an individual has breached that Act;
    - (ii) the finding has not been overturned on appeal;
    - (iii) the individual ordinarily resides at the premises;
    - (iv) the breach involved the use of equipment that is or was on those premises;
    - (v) the warrant is issued within 10 years after the finding; or
  - (b) all of the following conditions are satisfied:
    - (i) an individual has given an undertaking for the purposes of section 38 of the *Spam Act 2003*;
    - (ii) the undertaking is in force;
    - (iii) the individual ordinarily resides at the premises;
    - (iv) the undertaking applies to the use of equipment that is on those premises.
- (5) The warrant must:
- (a) authorise one or more inspectors (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in section 547B in relation to the premises; and
  - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

**547E Details of warrant to be given to occupier etc.**

- (1) If:
  - (a) a warrant under section 547D in relation to premises is being executed by an inspector; and
  - (b) the occupier of the premises or another person who apparently represents the occupier is present at the premises; the inspector must make available to that person a copy of the warrant.
- (2) The inspector must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

**547F Announcement before entry**

- (1) An inspector must, before entering premises under a warrant under section 547D:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
  - (a) to ensure the safety of a person; or
  - (b) to ensure that the effective execution of the warrant is not frustrated.

**547G Compensation for damage to equipment**

- (1) This section applies if:
  - (a) as a result of equipment being operated as mentioned in section 547B:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or

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- (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1):

*damage*, in relation to data, includes damage by erasure of data or addition of other data.

**547H Occupier entitled to be present during search**

- (1) If:
  - (a) a warrant under section 547D in relation to premises is being executed; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;

the person is entitled to observe the search being conducted.

- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

## **Division 5B—Access to computer data that is relevant to the Spam Act 2003**

### **547J Access to computer data that is relevant to the *Spam Act 2003***

#### *Scope*

- (1) This section applies if:
  - (a) both:
    - (i) a warrant is in force under Division 3 authorising an inspector to enter particular premises; and
    - (ii) the warrant relates to the *Spam Act 2003*; or
  - (b) a warrant is in force under Division 5A authorising an inspector to enter particular premises.

#### *Application to magistrate for access order*

- (2) The inspector may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow the inspector to do one or more of the following:
  - (a) access data held in, or accessible from, a computer that is on those premises;
  - (b) copy the data to a data storage device;
  - (c) convert the data into documentary form.

#### *Grant of access order*

- (3) The magistrate may grant the order if the magistrate is satisfied that:
  - (a) there are reasonable grounds for suspecting that a thing connected with a breach of the *Spam Act 2003* is held in, or is accessible from, the computer; and
  - (b) the specified person is:
    - (i) reasonably suspected of having been involved in the breach; or

- (ii) the owner or lessee of the computer; or
- (iii) an employee of the owner or lessee of the computer; and
- (c) the specified person has relevant knowledge of:
  - (i) the computer or a computer network of which the computer forms a part; or
  - (ii) measures applied to protect data held in, or accessible from, the computer.

*Offence*

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

Penalty: Imprisonment for 6 months.

*Definitions*

- (5) In this section:

**data** includes:

- (a) information in any form; and
- (b) any program (or part of a program).

**data held in a computer** includes:

- (a) data held in any removable data storage device for the time being held in a computer; and
- (b) data held in a data storage device on a computer network of which the computer forms a part.

**data storage device** means a thing containing, or designed to contain, data for use by a computer.

- (6) This section does not, by implication, affect the meaning of the expression **data** when used in any other provision of this Act or the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

## Division 6—Other powers of inspectors

### 548 General powers of inspectors

- (1) An inspector may:
- (a) require a person whom he or she suspects on reasonable grounds of having done an act in respect of which the person is required to hold:
    - (i) a carrier licence; or
    - (ii) a connection permit; or
    - (iii) a cabling licence;to produce the licence or permit (as the case may be), or evidence of its existence and contents; and
  - (b) require a person to produce evidence of having applied a label in accordance with an obligation imposed on the person under section 407; and
  - (c) require a person who has been required under paragraph 408(5)(a) or (d) to:
    - (i) obtain a written statement from a certification body certifying that customer equipment or customer cabling complies with a specified section 376 standard; or
    - (ii) obtain a written statement from a competent body stating that reasonable efforts have been made to avoid a contravention of a specified section 376 standard;to produce the statement, or evidence of its existence and contents; and
  - (d) require a person who has been required under paragraph 408(5)(b) to have customer equipment or customer cabling tested by a recognised testing authority to produce evidence of the testing; and
  - (e) require a person who has been required under subsection 408(6) to retain:
    - (i) records; or
    - (ii) a declaration; or
    - (iii) a copy of a declaration;



for a particular period to produce those records, that declaration or that copy, so long as the inspector does not require the production of those records, that declaration or that copy after the end of that period.

- (2) A person must not contravene a requirement under this section.

Penalty: 20 penalty units.

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

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (2B) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) In this section:

***application***, in relation to a label, has the same meaning as in Division 7 of Part 21.

***certification body*** has the same meaning as in Division 7 of Part 21.

***competent body*** has the same meaning as in Division 7 of Part 21.

***engage in conduct*** means:

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

***recognised testing authority*** has the same meaning as in Division 7 of Part 21.

### **549 Power to require information etc.**

- (1) An inspector who has entered land, premises, a vessel, an aircraft or a vehicle under Division 4 or 5 may, to the extent that is

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reasonably necessary for the purpose of ascertaining whether Part 21 has been complied with, require the person to:

- (a) answer any questions put by the inspector; and
  - (b) produce any documents requested by the inspector.
- (1A) An inspector who has entered land, premises, a vessel, an aircraft or a vehicle under Division 4 or 5A may, to the extent that is reasonably necessary for the purpose of ascertaining whether the *Spam Act 2003* has been complied with, require the person to:
- (a) answer any questions put by the inspector; and
  - (b) produce any documents requested by the inspector.
- (2) An inspector is not entitled to make a requirement of a person under subsection (1) or (1A) unless:
- (a) the inspector produces his or her identity card for inspection by the person; or
  - (b) the inspector is a member of a police force and is wearing the uniform of that police force.
- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) or (1A); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 20 penalty units.

- (3A) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

- (4) An individual is excused from giving information or producing a document under this section if the information or the production of the document might tend to incriminate the individual or expose the individual to a penalty.
- (5) In this section:

***engage in conduct*** means:

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

### **550 Retention of documents**

If:

- (a) an inspector removes a document from any land, premises, vessel, aircraft or vehicle under section 542, 547 or 547B; or
- (b) a person produces a document to an inspector in accordance with a requirement under subsection 549(1) or (1A);

then:

- (c) the inspector may retain possession of the document for such period as is necessary and reasonable for the purpose of ascertaining whether the *Spam Act 2003* or Part 21 of this Act has been complied with; and
- (d) during that period, the inspector must permit a person who would be entitled to inspect the document if it were not in the inspector's possession to inspect the document at all reasonable times.

## Division 7—Forfeiture

### 551 Court may order forfeiture

- (1) If a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of anything used or otherwise involved in the commission of the offence.
- (2) A reference in this section to an *offence against this Act* includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to this Act.
- (3) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

### 552 Forfeited goods may be sold

A thing forfeited under section 551:

- (a) may be sold or otherwise disposed of in accordance with the directions of the ACMA; and
- (b) pending such directions, must be kept in such custody as the ACMA directs.

## **Division 8—Future offences**

### **553 Offences that are going to be committed**

- (1) If:
  - (a) there are reasonable grounds for suspecting that an offence against this Act is going to be committed; and
  - (b) the commission of that offence would pose a threat to the safety of human life or cause substantial loss or damage;this Part applies in relation to the offence as if there were reasonable grounds for suspecting that it had been committed.
- (2) A reference in this section to an *offence against this Act* includes a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to this Act.
- (3) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

## Part 29—Review of decisions

### 554 Simplified outline

The following is a simplified outline of this Part:

- Certain decisions of the ACMA may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the ACMA.

### 555 Decisions that may be subject to reconsideration by the ACMA

An application may be made to the ACMA for reconsideration of a decision of a kind specified in Part 1 of Schedule 4.

### 556 Deadlines for reaching certain decisions

- (1) This section applies to a decision of a kind referred to in section 555, other than a decision of a kind specified in Part 2 of Schedule 4.
- (2) If this Act provides for a person to make an application to the ACMA for such a decision, the ACMA must make the decision:
  - (a) within 90 days after receiving the application; or
  - (b) if the ACMA has, within those 90 days, given the applicant a written request for further information about the application—within 90 days after receiving that further information.
- (3) The ACMA is taken, for the purposes of this Part, to have made a decision to refuse the application if it has not informed the applicant of its decision before the end of the relevant period of 90 days.

**557 Statements to accompany notification of decisions**

- (1) If the ACMA makes a decision of a kind referred to in section 555 and gives written notice of the decision to a person whose interests it affects, the notice must include:
  - (a) a statement to the effect that a person affected by the decision may, if he or she is dissatisfied with the decision, seek a reconsideration of the decision by the ACMA under subsection 558(1); and
  - (b) a statement to the effect that, if a person who has applied for a reconsideration is dissatisfied with the ACMA's decision on the reconsideration:
    - (i) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision on that reconsideration; and
    - (ii) the person may request a statement under section 28 of that Act in relation to the decision on that reconsideration.
- (2) Failure to comply with this section does not affect the validity of a decision.

**558 Applications for reconsideration of decisions**

- (1) A person affected by a decision of a kind referred to in section 555 who is dissatisfied with the decision may apply to the ACMA for the ACMA to reconsider the decision.
- (2) The application must:
  - (a) be in a form approved in writing by the ACMA; and
  - (b) set out the reasons for the application.
- (3) The application must be made within:
  - (a) 28 days after the applicant is informed of the decision; or
  - (b) if, either before or after the end of that period of 28 days, the ACMA extends the period within which the application may be made—the extended period for making the application.

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- (4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

**559 Reconsideration by the ACMA**

- (1) Upon receiving such an application, the ACMA must:
  - (a) reconsider the decision; and
  - (b) affirm, vary or revoke the decision.
- (2) The ACMA's decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.
- (3) The ACMA must give to the applicant a notice stating its decision on the reconsideration together with a statement of its reasons for its decision.

**560 Deadlines for reconsiderations**

- (1) The ACMA must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.
- (2) The ACMA is taken, for the purposes of this Part, to have made a decision affirming the original decision if it has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

**561 Statements to accompany notification of decisions on reconsideration**

- (1) A notice under subsection 559(3) notifying the applicant that a decision has been affirmed or varied must include:
  - (a) a statement to the effect that a person affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision so affirmed or varied, apply to the Administrative Appeals Tribunal for review of the decision; and



- (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision so affirmed or varied.
- (2) Failure to comply with this section does not affect the validity of a decision.

### **562 Review by the Administrative Appeals Tribunal**

Applications may be made to the Administrative Appeals Tribunal to review a decision of a kind referred to in section 555 if the ACMA has affirmed or varied the decision under section 559.

## Part 30—Injunctions

### 563 Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions in relation to contraventions of:
  - (a) this Act; or
  - (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
  - (c) regulations under that Act.

### 564 Injunctions

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of this Act, the Federal Court may, on the application of the Minister, the ACMA, the ACCC or the Home Affairs Minister, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
  - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of this Act;

the Federal Court may, on the application of the Minister, the ACMA, the ACCC or the Home Affairs Minister, grant an injunction requiring the person to do that act or thing.

*Limit on standing of the ACMA*

- (3) Despite subsections (1) and (2), the ACMA is not entitled to apply for an injunction in relation to a contravention of:
- (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369; or
  - (aa) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED; or
  - (b) a carrier licence condition set out in Part 3, 4 or 5 of Schedule 1; or
  - (ba) the carrier licence condition set out in clause 84 of Schedule 1; or
  - (c) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369; or
  - (d) the carrier licence condition set out in section 152AZ of the *Competition and Consumer Act 2010*; or
  - (e) the service provider rule set out in subsection 152BA(2) of the *Competition and Consumer Act 2010*; or
  - (f) the carrier licence condition set out in section 152BCO of the *Competition and Consumer Act 2010*; or
  - (g) the service provider rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*; or
  - (h) the carrier licence condition set out in section 152BDF of the *Competition and Consumer Act 2010*; or
  - (i) the service provider rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*; or
  - (j) the carrier licence condition set out in section 152BEC of the *Competition and Consumer Act 2010*; or
  - (k) the service provider rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*; or

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- (l) the carrier licence condition set out in section 152CJC of the *Competition and Consumer Act 2010*; or
- (m) the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*; or
- (n) the carrier licence condition set out in section 37 of the *National Broadband Network Companies Act 2011*; or
- (o) the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*; or
- (p) a carrier licence condition covered by section 41 of the *National Broadband Network Companies Act 2011*.

Note 1: Section 369 deals with Rules of Conduct under section 367.

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

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

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

Note 3: Section 152AZ of the *Competition and Consumer Act 2010* deals with standard access obligations.

Note 4: Subsection 152BA(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any standard access obligations, and certain ancillary obligations, that are applicable to the provider.

Note 5: Section 152BCO of the *Competition and Consumer Act 2010* deals with access determinations.

Note 6: Subsection 152BCP(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any access determinations that are applicable to the provider.

Note 7: Section 152BDF of the *Competition and Consumer Act 2010* deals with binding rules of conduct.

Note 8: Subsection 152BDG(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any binding rules of conduct that are applicable to the provider.

Note 9: Section 152BEC of the *Competition and Consumer Act 2010* deals with access agreements.

Note 10: Subsection 152BED(2) of the *Competition and Consumer Act 2010* deals with access agreements.

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- Note 11: Section 152CJC of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 12: Subsection 152CJD(2) of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 13: Section 37 of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
  - (b) the investment of money by NBN corporations; and
  - (c) the functional separation of NBN corporations; and
  - (d) the divestment of assets by NBN corporations.
- Note 14: Subsection 38(2) of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
  - (b) the investment of money by NBN corporations; and
  - (c) the functional separation of NBN corporations; and
  - (d) the divestment of assets by NBN corporations.
- Note 15: Section 41 of the *National Broadband Network Companies Act 2011* deals with rules about the supply of services by NBN corporations.

*Limit on standing of the Home Affairs Minister*

- (3A) Despite subsections (1) and (2), the Home Affairs Minister is not entitled to apply for an injunction unless the application relates to a contravention of:
- (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to subsection 313(1A), 314A(3), 315A(5), 315B(12) or 315C(3); or
  - (b) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to subsection 313(1A) or (2A), 314A(3), 315A(5), 315B(12) or 315C(3).

*Definitions*

- (4) In this section:

***this Act*** includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

### **565 Interim injunctions**

#### *Grant of interim injunction*

- (1) If an application is made to the court for an injunction under section 564, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

#### *No undertakings as to damages*

- (2) The court is not to require an applicant for an injunction under section 564, as a condition of granting an interim injunction, to give any undertakings as to damages.

### **566 Discharge etc. of injunctions**

The court may discharge or vary an injunction granted under this Part.

### **567 Certain limits on granting injunctions not to apply**

#### *Restraining injunctions*

- (1) The power of the court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

**568 Other powers of the court unaffected**

The powers conferred on the court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

## Part 31—Civil penalties

### 569 Simplified outline

The following is a simplified outline of this Part:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

### 570 Pecuniary penalties for contravention of civil penalty provisions

- (1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the Court determines to be appropriate.
- (2) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.
- (3) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed:
  - (a) in the case of a contravention of subsection 68(1) or (2) or 101(1) or (2)—\$10 million for each contravention; or
  - (aa) in the case of a contravention of subsection 317ZA(1) or (2)—47,619 penalty units for each contravention; or
  - (b) in any other case—\$250,000 for each contravention.



- (4) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed \$50,000 for each contravention.
- (4A) Subsections (3) and (4) do not apply to a contravention of subsection 139(1) or (2).
- (4B) Section 25 of the *Do Not Call Register Act 2006* applies to a contravention of subsection 139(1) or (2) of this Act in a corresponding way to the way in which it applies to a contravention of subsection 12(1) or (2) of the *Do Not Call Register Act 2006*, subject to the following modifications:
- (a) each reference in section 25 of the *Do Not Call Register Act 2006* to subsection 24(1) of that Act includes a reference to subsection (1) of this section;
  - (b) each reference in section 25 of the *Do Not Call Register Act 2006* to a civil penalty provision includes a reference to subsection 139(1) or (2) of this Act;
  - (c) each reference in section 25 of the *Do Not Call Register Act 2006* to a civil penalty order includes a reference to an order under subsection (1) of this section.
- (4C) Subsection (4) does not apply to a contravention of subsection 317ZA(1) or (2).
- (4D) The pecuniary penalty payable under subsection (1) by a person other than a body corporate for a contravention of subsection 317ZA(1) or (2) is not to exceed 238 penalty units for each contravention.
- (5) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct. This subsection has effect subject to subsection (6).
- (6) If conduct constitutes a contravention of:
- (a) section 68 or 101; and

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(b) one or more other civil penalty provisions; proceedings must not be instituted under this Act against the person in relation to the contravention of section 68 or 101, as the case may be.

(7) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**571 Civil action for recovery of pecuniary penalties**

- (1) The Minister, the ACMA, the ACCC or the Home Affairs Minister may institute a proceeding in the Federal Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in section 570.
- (2) A proceeding under subsection (1) may be commenced within 6 years after the contravention.

*Limit on standing of the ACMA*

- (3) Despite subsection (1), the ACMA is not entitled to institute a proceeding for the recovery of a pecuniary penalty in respect of a contravention of:
  - (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369; or
  - (aa) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED; or
  - (b) a carrier licence condition set out in Part 3, 4 or 5 of Schedule 1; or
  - (ba) the carrier licence condition set out in clause 84 of Schedule 1; or
  - (c) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369; or
  - (d) the carrier licence condition set out in section 152AZ of the *Competition and Consumer Act 2010*; or

- (e) the service provider rule set out in subsection 152BA(2) of the *Competition and Consumer Act 2010*; or
- (f) the carrier licence condition set out in section 152BCO of the *Competition and Consumer Act 2010*; or
- (g) the service provider rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*; or
- (h) the carrier licence condition set out in section 152BDF of the *Competition and Consumer Act 2010*; or
- (i) the service provider rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*; or
- (j) the carrier licence condition set out in section 152BEC of the *Competition and Consumer Act 2010*; or
- (k) the service provider rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*; or
- (l) the carrier licence condition set out in section 152CJC of the *Competition and Consumer Act 2010*; or
- (m) the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*; or
- (n) the carrier licence condition set out in section 37 of the *National Broadband Network Companies Act 2011*; or
- (o) the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*; or
- (p) a carrier licence condition covered by section 41 of the *National Broadband Network Companies Act 2011*.

Note 1: Section 369 deals with Rules of Conduct under section 367.

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

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

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

Note 3: Section 152AZ of the *Competition and Consumer Act 2010* deals with standard access obligations.

Note 4: Subsection 152BA(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any

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standard access obligations, and certain ancillary obligations, that are applicable to the provider.

- Note 5: Section 152BCO of the *Competition and Consumer Act 2010* deals with access determinations.
- Note 6: Subsection 152BCP(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any access determinations that are applicable to the provider.
- Note 7: Section 152BDF of the *Competition and Consumer Act 2010* deals with binding rules of conduct.
- Note 8: Subsection 152BDG(2) of the *Competition and Consumer Act 2010* provides that a carriage service provider must comply with any binding rules of conduct that are applicable to the provider.
- Note 9: Section 152BEC of the *Competition and Consumer Act 2010* deals with access agreements.
- Note 10: Subsection 152BED(2) of the *Competition and Consumer Act 2010* deals with access agreements.
- Note 11: Section 152CJC of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 12: Subsection 152CJD(2) of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 13: Section 37 of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
  - (b) the investment of money by NBN corporations; and
  - (c) the functional separation of NBN corporations; and
  - (d) the divestment of assets by NBN corporations.
- Note 14: Subsection 38(2) of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
  - (b) the investment of money by NBN corporations; and
  - (c) the functional separation of NBN corporations; and
  - (d) the divestment of assets by NBN corporations.
- Note 15: Section 41 of the *National Broadband Network Companies Act 2011* deals with rules about the supply of services by NBN corporations.

*Limit on standing of the Home Affairs Minister*

- (4) Despite subsection (1), the Home Affairs Minister is not entitled to institute a proceeding for the recovery of a pecuniary penalty unless the proceeding relates to a contravention of:
- (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to subsection 313(1A), 314A(3), 315A(5), 315B(12) or 315C(3); or
  - (b) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to subsection 313(1A) or (2A), 314A(3), 315A(5), 315B(12) or 315C(3).

**572 Criminal proceedings not to be brought for contravention of civil penalty provisions**

Criminal proceedings do not lie against a person only because the person has contravened a civil penalty provision.

## Part 31A—Enforceable undertakings

### 572A Simplified outline

The following is a simplified outline of this Part:

- A person may give the ACMA or the Home Affairs Minister an enforceable undertaking about compliance with this Act.

### 572B Acceptance of undertakings

- (1) The ACMA or the Home Affairs Minister may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with this Act, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with this Act, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act, or is unlikely to contravene this Act, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the ACMA or the Home Affairs Minister.
- (4) The ACMA or the Home Affairs Minister may, by written notice given to the person, cancel the undertaking.
- (5) The ACMA may publish the undertaking on its website. The Home Affairs Minister may arrange for the publishing of the undertaking on the Home Affairs Department's website.

- (5A) Despite subsection (1), the Home Affairs Minister is not entitled to accept an undertaking under this section unless the undertaking relates to compliance with:
- (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to subsection 313(1A), 314A(3), 315A(5), 315B(12) or 315C(3); or
  - (b) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to subsection 313(1A) or (2A), 314A(3), 315A(5), 315B(12) or 315C(3).
- (5B) The ACMA's powers under subsections (3) to (5) are only in relation to undertakings it has accepted. The Home Affairs Minister's powers under those subsections are only in relation to undertakings he or she has accepted.
- (6) In this section:
- this Act* includes:
- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
  - (b) the *Do Not Call Register Act 2006*.

### **572C Enforcement of undertakings**

- (1) If:
- (a) a person has given an undertaking under section 572B; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the ACMA or the Home Affairs Minister considers that the person has breached the undertaking;
- the ACMA or the Home Affairs Minister may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the

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- person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.
- (3) The ACMA's power under subsection (1) is only in relation to undertakings it has accepted. The Home Affairs Minister's power under that subsection is only in relation to undertakings he or she has accepted.



## **Part 31B—Infringement notices for contraventions of civil penalty provisions**

### **572D Simplified outline**

The following is a simplified outline of this Part:

- This Part sets up a system of infringement notices for contraventions of civil penalty provisions as an alternative to the institution of court proceedings.

### **572E When an infringement notice can be given**

- (1) If an authorised infringement notice officer has reasonable grounds to believe that a person has contravened a particular civil penalty provision, the authorised infringement notice officer may give to the person an infringement notice relating to the contravention.

Note: See also section 572M (guidelines).

#### *Time limit*

- (2) An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

#### *Carrier licence conditions and service provider rules*

- (3) If a person's conduct constitutes a contravention of:
  - (a) section 68 or 101; and
  - (b) one or more other civil penalty provisions;an infringement notice must not be given to the person in relation to the contravention of section 68 or 101, as the case may be.
- (4) If:
  - (a) a person's conduct constitutes a contravention of section 68 or 101; and

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- (b) the contravention consists of a breach of:
  - (i) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369; or
  - (ia) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 577AD, 577CD or 577ED; or
  - (ii) a carrier licence condition set out in Part 3, 4 or 5 of Schedule 1; or
  - (iii) a carrier licence condition set out in Part 9 of Schedule 1; or
  - (iv) the carrier licence condition set out in clause 84 of Schedule 1; or
  - (v) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369; or
  - (vi) the carrier licence condition set out in section 152AZ of the *Competition and Consumer Act 2010*; or
  - (vii) the service provider rule set out in subsection 152BA(2) of the *Competition and Consumer Act 2010*; or
  - (viii) the carrier licence condition set out in section 152BCO of the *Competition and Consumer Act 2010*; or
  - (ix) the service provider rule set out in subsection 152BCP(2) of the *Competition and Consumer Act 2010*; or
  - (x) the carrier licence condition set out in section 152BDF of the *Competition and Consumer Act 2010*; or
  - (xi) the service provider rule set out in subsection 152BDG(2) of the *Competition and Consumer Act 2010*; or
  - (xii) the carrier licence condition set out in section 152BEC of the *Competition and Consumer Act 2010*; or
  - (xiii) the service provider rule set out in subsection 152BED(2) of the *Competition and Consumer Act 2010*; or
  - (xiv) the carrier licence condition set out in section 152CJC of the *Competition and Consumer Act 2010*; or

- (xv) the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*; or
  - (xvi) the carrier licence condition set out in section 37 of the *National Broadband Network Companies Act 2011*; or
  - (xvii) the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*; or
  - (xviii) a carrier licence condition covered by section 41 of the *National Broadband Network Companies Act 2011*;
- an infringement notice must not be given to the person in relation to the contravention of section 68 or 101, as the case may be.

(5) If:

- (a) a person's conduct constitutes a contravention of section 68 or 101; and
- (b) the contravention consists of a breach of:
  - (i) a carrier licence condition set out in a provision of this Act other than Part 1 of Schedule 1; or
  - (ii) a carrier licence condition set out in a provision of a declaration in force under section 63; or
  - (iii) a service provider rule set out in a provision of this Act other than Part 1 of Schedule 2; or
  - (iv) a service provider rule set out in a provision of a determination in force under section 99;

an infringement notice must not be given to the person in relation to the contravention of section 68 or 101, as the case may be, unless the provision mentioned in subparagraph (b)(i), (ii), (iii) or (iv), as the case may be:

- (c) is a listed infringement notice provision; and
- (d) has been a listed infringement notice provision for at least 3 months before the day on which the contravention is alleged to have taken place.

Note: For *listed infringement notice provision*, see subsection (7).

(6) If:

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- (a) a person's conduct constitutes a contravention of section 68 or 101; and
- (b) the contravention consists of a breach of:
  - (i) the carrier licence condition set out in Part 1 of Schedule 1; or
  - (ii) the service provider rule set out in Part 1 of Schedule 2; and
- (c) the contravention consists of a breach of another provision of this Act;

an infringement notice must not be given to the person in relation to the contravention of section 68 or 101, as the case may be, unless:

- (d) the other provision is a listed infringement notice provision; and
- (e) the other provision has been a listed infringement notice provision for at least 3 months before the day on which the contravention is alleged to have taken place.

Note: For *listed infringement notice provision*, see subsection (7).

*Listed infringement notice provision*

- (7) The ACMA may, by legislative instrument, declare that:
  - (a) a specified provision of this Act; or
  - (b) a specified provision of a declaration in force under section 63; or
  - (c) a specified provision of a determination in force under section 99;

is a *listed infringement notice provision* for the purposes of this section.

*Consultation*

- (8) Before making or varying a declaration under subsection (7), the ACMA must:
  - (a) cause to be published on the ACMA's website a notice:
    - (i) setting out the draft declaration or variation; and

- (ii) inviting persons to make submissions to the ACMA about the draft declaration or variation within 14 days after the notice is published; and
- (b) consider any submissions received within the 14-day period mentioned in paragraph (a).

*Definition*

- (9) In this section:

**this Act** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) Chapter 5 of the *Telecommunications (Interception and Access) Act 1979*.

**572F Matters to be included in an infringement notice**

- (1) An infringement notice must:
- (a) set out the name of the person to whom the notice is given; and
  - (b) set out the name of the authorised infringement notice officer who gave the notice; and
  - (c) set out brief details of the alleged contravention; and
  - (d) contain a statement to the effect that the matter will not be dealt with by the Federal Court if the penalty specified in the notice is paid to the ACMA, on behalf of the Commonwealth, within:
    - (i) 28 days after the notice is given; or
    - (ii) if the ACMA allows a longer period—that longer period; and
  - (e) give an explanation of how payment of the penalty is to be made; and
  - (f) set out such other matters (if any) as are specified by the regulations.

Note: For the amount of penalty, see section 572G.

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- (2) For the purposes of paragraph (1)(c), the brief details must include the following information in relation to the alleged contravention:
- (a) the date of the alleged contravention;
  - (b) the civil penalty provision that was allegedly contravened.

### **572G Amount of penalty**

#### *Infringement notice given to a body corporate*

- (1) The penalty to be specified in an infringement notice given to a body corporate must be a pecuniary penalty equal to:
- (a) if the alleged contravention is of a kind specified in a determination under subsection (2)—the number of penalty units specified in the determination in relation to that kind of contravention; or
  - (b) otherwise—60 penalty units.
- (2) For the purposes of paragraph (1)(a), the Minister may, by legislative instrument, make a determination that:
- (a) sets out one or more kinds of contraventions of section 68 or 101; and
  - (b) for each kind of contravention set out in the determination, specifies a particular number of penalty units.
- (3) The number of penalty units specified in a determination for a particular kind of contravention must not exceed 18,000.

#### *Infringement notice given to a person other than a body corporate*

- (4) The penalty to be specified in an infringement notice given to a person other than a body corporate must be a pecuniary penalty equal to 12 penalty units.

### **572H Withdrawal of an infringement notice**

#### *Scope*

- (1) This section applies if an infringement notice is given to a person.

*Withdrawal*

- (2) An authorised infringement notice officer may, by written notice (the ***withdrawal notice***) given to the person, withdraw the infringement notice.
- (3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

*Refund of penalty if infringement notice withdrawn*

- (4) If:
  - (a) the penalty specified in the infringement notice is paid; and
  - (b) the infringement notice is withdrawn after the penalty is paid;the Commonwealth is liable to refund the penalty.

**572J What happens if the penalty is paid**

*Scope*

- (1) This section applies if:
  - (a) an infringement notice relating to an alleged contravention is given to a person; and
  - (b) the penalty is paid in accordance with the infringement notice; and
  - (c) the infringement notice is not withdrawn.

*What happens*

- (2) Any liability of the person for the alleged contravention is discharged.
- (3) Proceedings under Part 31 may not be brought against the person for the alleged contravention.

**572K Effect of this Part on civil proceedings**

This Part does not:

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- (a) require an infringement notice to be given in relation to an alleged contravention; or
- (b) affect the liability of a person to have proceedings under Part 31 brought against the person for an alleged contravention if:
  - (i) the person does not comply with an infringement notice relating to the contravention; or
  - (ii) an infringement notice relating to the contravention is not given to the person; or
  - (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit the Federal Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under Part 31 to have contravened a civil penalty provision.

**572L Appointment of authorised infringement notice officer**

- (1) The ACMA may, by writing, appoint a member of the staff of the ACMA as an authorised infringement notice officer for the purposes of this Part.
- (2) The ACMA must not appoint a person under subsection (1) unless the person:
  - (a) is an SES employee or acting SES employee; or
  - (b) holds, or is acting in, an Executive Level 1 or 2 position or an equivalent position.

Note: *SES employee* is defined in the *Acts Interpretation Act 1901*.

**572M Guidelines relating to infringement notices**

- (1) In exercising a power conferred on an authorised infringement notice officer by this Part, the officer must have regard to any relevant guidelines in force under subsection (2).



*Formulation of guidelines*

- (2) The ACMA may, by legislative instrument, formulate guidelines for the purposes of subsection (1).

Note: For consultation requirements, see section 17 (consultation) of the *Legislation Act 2003*.

- (3) An authorised infringement notice officer must not give an infringement notice to a person unless guidelines are in force under subsection (2).

**572N Regulations**

The regulations may make further provision in relation to infringement notices.

## Part 32—Vicarious liability

### 573 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with the proof of matters that involve employees, agents etc.

### 574 Proceedings under this Act

A reference in this Part to a proceeding under this Act includes a reference to:

- (a) an action under this Act; and
- (b) a proceeding for an offence against:
  - (i) this Act; or
  - (ii) an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to this Act.

### 574A Definition

In this Part:

*this Act* includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**575 Liability of corporations***State of mind*

- (1) If, in a proceeding under this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:
- (a) a director, employee or agent of the corporation engaged in that conduct; and
  - (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
  - (c) the director, employee or agent had that state of mind.

*Conduct*

- (2) If:
- (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
  - (b) the conduct is within the scope of his or her actual or apparent authority;
- the conduct is taken, for the purposes of a proceeding under this Act, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

*Extended meaning of state of mind*

- (3) A reference in subsection (1) to the **state of mind** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

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*Extended meaning of director*

- (4) A reference in this section to a **director** of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

*Extended meaning of engaging in conduct*

- (5) A reference in this section to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

**576 Liability of persons other than corporations**

*This section does not apply to proceedings for certain offences*

- (1) This section does not apply to proceedings for:
- (a) an offence against section 42; or
  - (b) an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to section 42 of this Act.

*State of mind*

- (2) If, in proceedings under this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:
- (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) the employee or agent had that state of mind.

*Conduct*

- (3) If:
- (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and
  - (b) the conduct is within the employee's or agent's actual or apparent authority;

the conduct is taken, for the purposes of a proceeding under this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

*Limitation on imprisonment*

- (4) Despite any other provision of this Act, if:
- (a) a person is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (2) and (3) had not been in force;
- the person is not liable to be punished by imprisonment for that offence.

*Extended meaning of **state of mind***

- (5) A reference in this section to the **state of mind** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of **engaging in conduct***

- (6) A reference in this section to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

## Part 33—Voluntary undertakings given by Telstra

### Division 1—Introduction

#### 577 Simplified outline

The following is a simplified outline of this Part:

- Telstra may give the following undertakings:
  - (a) an undertaking about structural separation;
  - (b) an undertaking about hybrid fibre-coaxial networks;
  - (c) an undertaking about subscription television broadcasting licences.
- An undertaking comes into force when it is accepted by the ACCC.
- The Minister may, by legislative instrument, determine that the excluded spectrum regime applies to Telstra. If the Minister does so, Telstra will not be allowed to supply services using a designated part of the spectrum unless all 3 undertakings given by Telstra are in force.
- However, the Minister may exempt Telstra from the requirement to have an undertaking about hybrid fibre-coaxial networks or subscription television broadcasting licences if the Minister is satisfied that Telstra's undertaking about structural separation is sufficient to address concerns about the degree of Telstra's power in telecommunications markets.

## **Division 2—Structural separation**

### **Subdivision A—Undertaking about structural separation**

#### **577A Acceptance of undertaking about structural separation**

- (1) The ACCC may accept a written undertaking given by Telstra that:
- (a) at all times after the designated day:
    - (i) Telstra will not supply fixed-line carriage services to retail customers in Australia using a telecommunications network over which Telstra is in a position to exercise control; and
    - (ii) Telstra will not be in a position to exercise control of a company that supplies fixed-line carriage services to retail customers in Australia using a telecommunications network over which Telstra is in a position to exercise control; and
  - (b) Telstra will, in connection with paragraph (a), take specified action and/or refrain from taking specified action.

Note 1: For when Telstra is in a position to exercise control of a network, see section 577Q.

Note 2: For control of a company, see section 577P.

#### *Transparency and equivalence*

- (2) For the purposes of paragraph (1)(b), a matter relating to transparency and equivalence in relation to the supply by Telstra of regulated services to:
- (a) Telstra's wholesale customers; and
  - (b) Telstra's retail business units;
- during the period:
- (c) beginning when the undertaking comes into force; and
  - (d) ending at the start of the designated day;
- is taken to be a matter that is in connection with paragraph (1)(a).

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- (3) The ACCC must not accept an undertaking under this section unless the ACCC is satisfied that:
- (a) the undertaking provides for transparency and equivalence in relation to the supply by Telstra of regulated services to:
    - (i) Telstra's wholesale customers; and
    - (ii) Telstra's retail business units;during the period:
    - (iii) beginning when the undertaking comes into force; and
    - (iv) ending at the start of the designated day; and
  - (b) the undertaking does so in an appropriate and effective manner.
- (4) In subsections (2) and (3), *equivalence*, *supply*, *regulated service* and *retail business unit* have the same meaning as in Part 9 of Schedule 1.

*Monitoring of compliance*

- (5) The ACCC must not accept an undertaking under this section unless the ACCC is satisfied that:
- (a) the undertaking provides for:
    - (i) the ACCC to monitor Telstra's compliance with the undertaking; and
    - (ii) Telstra to have systems, procedures and processes that promote and facilitate the ACCC's monitoring of Telstra's compliance with the undertaking; and
  - (b) the undertaking does so in an appropriate and effective manner.

*Matters to which ACCC must have regard*

- (6) In deciding whether to accept an undertaking under this section, the ACCC must have regard to:
- (a) the matters set out in an instrument in force under subsection (7); and
  - (aa) the national interest in structural reform of the telecommunications industry; and



- (ab) the impact of that structural reform on:
    - (i) consumers; and
    - (ii) competition in telecommunications markets; and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (7) The Minister may, by writing, set out matters for the purposes of paragraph (6)(a).
- (7A) Before making or varying an instrument under subsection (7), the Minister must:
- (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (8) The Minister must take all reasonable steps to ensure that an instrument comes into force under subsection (7) as soon as practicable after the commencement of this section.
- (9) Telstra is not entitled to give an undertaking under this section unless an instrument is in force under subsection (7).

*Designated day*

- (10) For the purposes of this section, the **designated day** is:
- (a) 1 July 2018; or
  - (b) if the Minister, by written instrument, specifies another day—that other day.
- (11) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a power conferred on the Minister by paragraph (10)(b), but it applies with the following changes:
- (a) an instrument made under paragraph (10)(b) cannot be varied;

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- (b) an instrument made under paragraph (10)(b) must not be revoked unless:
  - (i) a fresh instrument is made under that paragraph; and
  - (ii) the fresh instrument specifies a day that is later than the day specified in the revoked instrument.
- (12) If:
  - (a) the ACCC has accepted an undertaking given by Telstra under subsection (1); and
  - (b) when the undertaking was accepted, a particular day (the *relevant day*) was the designated day;the Minister must not make an instrument under paragraph (10)(b) specifying a day earlier than the relevant day.
- (13) Telstra may, before the designated day, request the Minister to:
  - (a) if no instrument is in force under paragraph (10)(b)—make an instrument under that paragraph specifying a particular day; or
  - (b) if an instrument is in force under paragraph (10)(b):
    - (i) revoke that instrument; and
    - (ii) make a fresh instrument under that paragraph specifying a particular day that is later than the day specified in the revoked instrument.
- (14) If Telstra gives the Minister a request under subsection (13), the Minister must consider the request.
- (15) However, the Minister is not required to consider the request if the Minister is satisfied that the request:
  - (a) is frivolous or vexatious; or
  - (b) was not made in good faith.

*General provisions*

- (16) An undertaking under this section must be expressed to be an undertaking under this section.

- (17) An undertaking under this section may not be withdrawn after it has been accepted by the ACCC.
- (18) If an undertaking under this section provides for the ACCC to perform functions or exercise powers in relation to the undertaking, the ACCC may perform those functions, and exercise those powers, in accordance with the undertaking.
- (19) Part 9 of Schedule 1 does not, by implication, limit the matters that may be included in an undertaking under this section.

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

*Exemptions*

- (20) The Minister may, by legislative instrument, exempt a specified fixed-line carriage service from the scope of subsection (1) and the associated provisions, either:
- (a) unconditionally; or
  - (b) subject to such conditions or limitations as are specified in the instrument.
- (21) The Minister may, by legislative instrument, exempt a specified telecommunications network from the scope of subsection (1) and the associated provisions, either:
- (a) unconditionally; or
  - (b) subject to such conditions or limitations as are specified in the instrument.
- (22) The Minister must cause a copy of an instrument under subsection (7) or paragraph (10)(b) to be published on the Department's website.
- (23) An instrument under subsection (7) or paragraph (10)(b) is not a legislative instrument.

*Definitions*

- (24) In this section:
- associated provision*** means:

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- (a) subsection 577BA(11); or
- (b) subsection 577BC(2).

*fixed-line carriage service* means:

- (a) a carriage service that is supplied using a line to premises occupied or used by an end-user; or
- (b) a service that facilitates the supply of a carriage service covered by paragraph (a).

*telecommunications market* has the same meaning as in Part XIB of the *Competition and Consumer Act 2010*.

**577AA Acceptance of undertaking about structural separation may be subject to the occurrence of events**

(1) If:

- (a) Telstra has, in a document accompanying an undertaking under section 577A, nominated one or more events; and
- (b) the nomination is expressed to be a nomination under this subsection; and
- (c) each of those events is:
  - (i) the passage of a resolution covered by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*; or
  - (ii) an approval covered by paragraph 411(4)(b) of that Act; or
  - (iii) the passage of a resolution, where Telstra's members (within the meaning of that Act) were entitled to vote on the resolution; or
  - (iv) an approval covered by Chapter 11 of the ASX Listing Rules; or
  - (v) the granting of a waiver under rule 18.1 of the ASX Listing Rules; or
  - (vi) the approval of a draft migration plan by the ACCC under section 577BDA or 577BDC; or
  - (vii) the making of a declaration under subsection 577J(3); or

- (viii) the making of a declaration under subsection 577J(5); or
  - (ix) an event specified in an instrument in force under subsection (3); and
  - (d) the ACCC decides to accept the undertaking;  
the decision to accept the undertaking must be expressed to be subject to the occurrence of those events within a specified period after the undertaking is accepted.
- (2) A nomination under subsection (1) must not specify an event by reference to the timing of the event.
- (3) The Minister may, by writing, specify events for the purposes of subparagraph (1)(c)(ix).
- (4) A period specified by the ACCC under subsection (1) must be:
- (a) 6 months; or
  - (b) if another period is specified in an instrument under subsection (5)—that period.
- (5) The Minister may, by writing, specify a period for the purposes of paragraph (4)(b).

*Notification requirement*

- (6) If:
- (a) a decision to accept an undertaking under section 577A is expressed to be subject to the occurrence of one or more specified events within a specified period; and
  - (b) such an event occurs within that period;
- Telstra must notify the ACCC in writing of the occurrence of the event as soon as practicable after the occurrence.
- (6A) Subsection (6) does not apply to an event mentioned in subparagraph (1)(c)(vi).

*If event does not occur*

- (7) If:

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- (a) a decision to accept an undertaking under section 577A is expressed to be subject to the occurrence of a single specified event within a specified period; and
  - (b) the event does not occur within that period;
- this Act (other than subclause 76(4) of Schedule 1) has effect as if the undertaking had never been accepted by the ACCC.
- (8) If:
- (a) a decision to accept an undertaking under section 577A is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (b) one or more of those events do not occur within that period;
- this Act (other than subclause 76(4) of Schedule 1) has effect as if the undertaking had never been accepted by the ACCC.

*Publication requirement*

- (9) The Minister must cause a copy of an instrument under subsection (3) or (5) to be published on the Department's website.

*Instruments are not legislative instruments*

- (10) An instrument under subsection (3) or (5) is not a legislative instrument.

**577AB When undertaking about structural separation comes into force**

An undertaking under section 577A comes into force:

- (a) if:
  - (i) the decision to accept the undertaking is expressed to be subject to the occurrence of a single specified event within a specified period; and
  - (ii) the event occurs within that period; when the event occurs; or
- (b) if:

- (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at the same time; and
  - (iii) that time occurs within that period; at that time; or
- (c) if:
- (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at different times; and
  - (iii) each of those times occur within that period; at the last of those times; or
- (d) if the decision to accept the undertaking is not expressed to be subject to the occurrence of one or more specified events within a specified period—when the undertaking is accepted by the ACCC.

**577AC Publication requirements for undertaking about structural separation**

- (1) If a decision to accept an undertaking under section 577A is expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must:
- (a) as soon as practicable after making the decision, publish on its website:
    - (i) the undertaking; and
    - (ii) the terms of the decision; and
  - (b) as soon as practicable after the ACCC becomes aware that the undertaking has come into force, publish on its website a notice announcing that the undertaking has come into force.
- (2) If a decision to accept an undertaking under section 577A is not expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must, as soon as

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practicable after accepting the undertaking, publish the undertaking on its website.

**577AD Compliance with undertaking about structural separation**

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

**577B Variation of undertaking about structural separation**

- (1) This section applies if an undertaking given by Telstra is in force under section 577A.
- (2) Telstra may give the ACCC a variation of the undertaking, in so far as the undertaking:
  - (a) is covered by paragraph 577A(1)(b); and
  - (b) does not consist of provisions of a final migration plan.

Note: For variation of a final migration plan, see section 577BF.
- (3) After considering the variation, the ACCC must decide to:
  - (a) accept the variation; or
  - (b) reject the variation.
- (4) In deciding whether to accept the variation, the ACCC must have regard to:
  - (a) the matters (if any) set out in an instrument in force under subsection (5); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (5) The Minister may, by writing, set out matters for the purposes of paragraph (4)(a).
- (5A) Before making or varying an instrument under subsection (5), the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and



- (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (6) The variation takes effect when it is accepted by the ACCC.
- (7) As soon as practicable after the variation takes effect, the ACCC must publish the variation on its website.
- (8) The Minister must cause a copy of an instrument under subsection (5) to be published on the Department's website.
- (9) An instrument under subsection (5) is not a legislative instrument.

**577BA Authorised conduct—subsection 51(1) of the *Competition and Consumer Act 2010***

*Object*

- (1) The object of this section is to promote the national interest in structural reform of the telecommunications industry by authorising, for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, certain conduct engaged in by:
  - (a) Telstra; and
  - (b) NBN corporations; and
  - (c) certain other persons.

Note: If conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the conduct is disregarded in deciding whether a person has contravened Part IV of that Act.

*Authorised conduct*

- (2) The giving by Telstra of:
  - (a) an undertaking under section 577A; or
  - (b) a variation of an undertaking in force under section 577A; or

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- (c) a draft migration plan in accordance with an undertaking in force under section 577A; or
  - (d) a variation of a final migration plan;
- is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.
- (3) If:
- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
  - (b) when the contract, arrangement or understanding is entered into, no undertaking is in force under section 577A; and
  - (c) the operative provisions of the contract, arrangement or understanding are subject to a condition precedent, namely, the coming into force of an undertaking under section 577A;
- then:
- (d) the entering into of the contract, arrangement or understanding by Telstra is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
  - (e) the entering into of the contract, arrangement or understanding by the NBN corporation is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
  - (f) if:
    - (i) the undertaking under section 577A comes into force; and
    - (ii) if the contract, arrangement or understanding was in writing—before the undertaking was accepted by the ACCC, Telstra or the NBN corporation gave the ACCC a copy of the contract, arrangement or understanding; and
    - (iii) if the contract, arrangement or understanding was not in writing—before the undertaking was accepted by the ACCC, the contract, arrangement or understanding was reduced to writing and Telstra or the NBN corporation

gave the ACCC a copy of the contract, arrangement or understanding;

then:

- (iv) conduct engaged in by Telstra or the NBN corporation after the undertaking comes into force in order to give effect to a provision of the contract, arrangement or understanding is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
- (v) conduct engaged in by another NBN corporation after the undertaking comes into force in order to facilitate the first-mentioned NBN corporation giving effect to a provision of the contract, arrangement or understanding is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

(4) If:

- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
- (b) the contract, arrangement or understanding contains a migration provision; and
- (c) when the contract, arrangement or understanding is entered into, no undertaking is in force under section 577A;

then:

- (d) the entering into of the contract, arrangement or understanding by Telstra is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, to the extent to which the contract, arrangement or understanding contains the migration provision; and
- (e) the entering into of the contract, arrangement or understanding by the NBN corporation is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, to the extent to which the contract, arrangement or understanding contains the migration provision.

(5) If:

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- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
- (b) the contract, arrangement or understanding contains a migration provision; and
- (c) Telstra or the NBN corporation engages in conduct in order to give effect to the migration provision; and
- (d) when the conduct is engaged in, no undertaking is in force under section 577A;

the conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010* unless, before the conduct was engaged in:

- (e) the ACCC refused to accept the most recent undertaking given by Telstra under section 577A; or
  - (f) as a result of subsection 577AA(7) or (8), this Act (other than subclause 76(4) of Schedule 1) had effect as if the most recent undertaking given by Telstra under section 577A had never been accepted by the ACCC; or
  - (g) a final functional separation undertaking came into force.
- (6) If Telstra is required to engage in conduct in order to comply with an undertaking in force under section 577A, the conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.
- (7) If:
- (a) a person directly or indirectly acquires an asset from Telstra; and
  - (b) the disposal of the asset by Telstra is required for the compliance by Telstra with an undertaking in force under section 577A; and
  - (c) the person is identified in the undertaking as the person by whom the asset is to be directly or indirectly acquired;
- the acquisition of the asset is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.
- (8) If:

- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
- (b) Telstra enters into the contract, arrangement or understanding in order to comply with an undertaking in force under section 577A;

then:

- (c) the entering into of the contract, arrangement or understanding by Telstra; and
- (d) the entering into of the contract, arrangement or understanding by the NBN corporation; and
- (e) conduct engaged in by Telstra or the NBN corporation in order to give effect to a provision of the contract, arrangement or understanding; and
- (f) conduct engaged in by another NBN corporation in order to facilitate the first-mentioned NBN corporation giving effect to a provision of the contract, arrangement or understanding;

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

(9) If:

- (a) an undertaking given by Telstra is in force under section 577A; and
- (b) Telstra enters into a contract, arrangement or understanding with an NBN corporation;

the Minister may, by legislative instrument, determine that subsection (8) applies, and is taken to have always applied, as if Telstra had entered into the contract, arrangement or understanding in order to comply with the undertaking.

(10) If:

- (a) a final migration plan is in force; and
- (b) the final migration plan sets out a method for determining a timetable for the taking of the action specified in the plan in accordance with paragraph 577BC(2)(a); and
- (c) Telstra or an NBN corporation engages in conduct for the purposes of determining the timetable; and

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(d) the conduct is consistent with the method;  
the conduct is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

*Migration provisions*

(11) If:

- (a) Telstra enters into a contract, arrangement or understanding with an NBN corporation; and
- (b) the contract, arrangement or understanding contains one or more provisions for:
  - (i) Telstra to cease to supply fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control; or
  - (ii) Telstra to cease to supply one or more types of fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control; or
  - (iii) Telstra to cease to supply, in particular circumstances, one or more types of fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control; or
  - (iv) Telstra to commence to supply fixed-line carriage services to customers using the national broadband network;

then:

- (c) each of the provisions mentioned in paragraph (b) is a ***migration provision***; and
- (d) if the contract, arrangement or understanding contains one or more provisions for Telstra to supply services to an NBN corporation in connection with any or all of the matters mentioned in paragraph (b)—each of those provisions is a ***migration provision***; and
- (e) if the contract, arrangement or understanding contains one or more provisions for an NBN corporation to supply services to Telstra in connection with any or all of the matters

mentioned in paragraph (b)—each of those provisions is a **migration provision**; and

- (f) if the contract, arrangement or understanding contains one or more provisions for Telstra to give information to an NBN corporation in connection with any or all of the matters mentioned in paragraph (b)—each of those provisions is a **migration provision**; and
- (g) if the contract, arrangement or understanding contains one or more provisions for an NBN corporation to give information to Telstra in connection with any or all of the matters mentioned in paragraph (b)—each of those provisions is a **migration provision**.

*Definitions*

(12) In this section:

**asset** means:

- (a) any legal or equitable estate or interest in real or personal property, including a contingent or prospective one; and
- (b) any right, privilege or immunity, including a contingent or prospective one.

**enter into**:

- (a) when used in relation to an arrangement—includes make; or
- (b) when used in relation to an understanding—includes arrive at or reach.

**fixed-line carriage service** means:

- (a) a carriage service that is supplied using a line to premises occupied or used by an end-user; or
- (b) a service that facilitates the supply of a carriage service covered by paragraph (a).

**give effect to**, in relation to a provision of a contract, arrangement or understanding, has the same meaning as in the *Competition and Consumer Act 2010*.

**migration provision** has the meaning given by subsection (11).

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***national broadband network*** means a telecommunications network for the high-speed carriage of communications, where an NBN corporation has been, is, or is to be, involved in the creation or development of the network. To avoid doubt, it is immaterial whether the creation or development of the network is, to any extent, attributable to:

- (a) the acquisition of assets that were used, or for use, in connection with another telecommunications network; or
- (b) the obtaining of access to assets that are also used, or for use, in connection with another telecommunications network.

***NBN Co*** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

***NBN corporation*** means:

- (a) NBN Co; or
- (b) NBN Tasmania; or
- (c) a company that is a related body corporate of NBN Co.

***NBN Tasmania*** means NBN Tasmania Limited (ACN 138 338 271), as the company exists from time to time (even if its name is later changed).

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

## Subdivision B—Migration plan

### 577BB Migration plan principles

- (1) The Minister may, by writing, determine that specified principles are ***migration plan principles*** for the purposes of this Act.

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



*Consultation*

- (2) Before making or varying a determination under subsection (1), the Minister must:
- (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft determination or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft determination or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).

*Publication requirement*

- (3) The Minister must cause a copy of a determination under subsection (1) to be published on the Department's website.

*Determination is not a legislative instrument*

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

**577BC Migration plan**

- (1) The specified action first mentioned in paragraph 577A(1)(b) may include giving the ACCC a draft migration plan after the relevant undertaking has come into force.
- (2) A draft or final migration plan must:
- (a) specify the action to be taken by Telstra to:
    - (i) cease to supply fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control; and
    - (ii) commence to supply fixed-line carriage services to customers using the national broadband network; and
  - (b) either:
    - (i) set out a timetable for the taking of that action; or

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- (ii) set out a method for determining a timetable for the taking of that action.
- (3) A draft or final migration plan may contain provisions dealing with such other matters (if any) as are specified in a written instrument made by the Minister.
- (4) A draft or final migration plan must not contain provisions dealing with such matters (if any) as are specified in a written instrument made by the Minister.

*Migration plan principles*

- (5) A draft migration plan must not be given to the ACCC unless a determination is in force under subsection 577BB(1).

*Publication requirement*

- (6) The Minister must cause a copy of an instrument under subsection (3) or (4) to be published on the Department's website.

*Instrument is not a legislative instrument*

- (7) An instrument under subsection (3) or (4) is not a legislative instrument.

*Definitions*

- (8) In this section:

***fixed-line carriage service*** means:

- (a) a carriage service that is supplied using a line to premises occupied or used by an end-user; or
- (b) a service that facilitates the supply of a carriage service covered by paragraph (a).

***national broadband network*** means a telecommunications network for the high-speed carriage of communications, where an NBN corporation has been, is, or is to be, involved in the creation or development of the network. To avoid doubt, it is immaterial

whether the creation or development of the network is, to any extent, attributable to:

- (a) the acquisition of assets that were used, or for use, in connection with another telecommunications network; or
- (b) the obtaining of access to assets that are also used, or for use, in connection with another telecommunications network.

**NBN Co** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

**NBN corporation** means:

- (a) NBN Co; or
- (b) NBN Tasmania; or
- (c) a company that is a related body corporate of NBN Co.

**NBN Tasmania** means NBN Tasmania Limited (ACN 138 338 271), as the company exists from time to time (even if its name is later changed).

**related body corporate** has the same meaning as in the *Corporations Act 2001*.

**577BD Approval of draft migration plan by the ACCC—plan given after undertaking about structural separation comes into force**

*Scope*

- (1) This section applies if Telstra gives the ACCC a draft migration plan (the **original plan**) in accordance with an undertaking in force under section 577A.

*Decision*

- (2) The ACCC must:
  - (a) if the ACCC is satisfied that the original plan complies with the migration plan principles—approve the original plan; or

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(b) otherwise:

- (i) refuse to approve the original plan; and
- (ii) by written notice given to Telstra, direct Telstra to give the ACCC, within 30 days after the notice is given, a replacement draft migration plan that complies with the migration plan principles.

Note: For migration plan principles, see section 577BB.

*Consultation*

- (3) Before making a decision under subsection (2), the ACCC must:
- (a) cause to be published on the ACCC's website a notice:
    - (i) setting out the original plan; and
    - (ii) inviting persons to make submissions to the ACCC about the original plan within 28 days after the notice is published; and
  - (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
  - (c) consider any submissions received within the 28-day period mentioned in paragraph (a).

*Compliance with direction*

- (4) Telstra must comply with a direction under subparagraph (2)(b)(ii).

Note: The ACCC will make a decision about the plan under section 577BDB.

*Replacement plan to be treated as if it had been given in accordance with the undertaking*

- (5) A draft migration plan given by Telstra in compliance with a direction under subparagraph (2)(b)(ii) is taken, for the purposes of this Act (other than this section and section 577BDB), to be given in accordance with the undertaking.

*Notification of decision*

- (6) As soon as practicable after making a decision under subsection (2), the ACCC must notify Telstra in writing of the decision.

**577BDA Approval of draft migration plan by the ACCC—plan given before undertaking about structural separation comes into force**

- (1) If:
- (a) Telstra gives the ACCC an undertaking under section 577A; and
  - (b) the specified action first mentioned in paragraph 577A(1)(b) consists of, or includes, giving the ACCC a draft migration plan after the undertaking has come into force; and
  - (c) the following conditions are satisfied:
    - (i) Telstra has, in a document accompanying the undertaking, nominated the event mentioned in subparagraph 577AA(1)(c)(vi);
    - (ii) the nomination meets the requirements of paragraph 577AA(1)(b) and subsection 577AA(2);
- Telstra may give the ACCC a draft migration plan (the *original plan*) during the period:
- (d) beginning when Telstra gives the ACCC the undertaking; and
  - (e) ending when the undertaking comes into force;
- as if the undertaking had come into force.

*Decision*

- (2) The ACCC must:
- (a) if the ACCC is satisfied that the original plan complies with the migration plan principles—approve the original plan; or
  - (b) otherwise:
    - (i) refuse to approve the original plan; and
    - (ii) by written notice given to Telstra, request Telstra to give the ACCC, within 30 days after the notice is given,

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a replacement draft migration plan that complies with the migration plan principles.

Note 1: For migration plan principles, see section 577BB.

Note 2: If Telstra gives the ACCC a replacement draft migration plan in response to the request, the ACCC will make a decision about the plan under section 577BDC.

- (3) The ACCC must not make a decision under subsection (2) before it accepts the undertaking.
- (4) After the undertaking comes into force, this Act (other than section 577BD and this section) has effect as if the original plan had been given to the ACCC in accordance with the undertaking.

*Consultation*

- (5) Before making a decision under subsection (2), the ACCC must:
  - (a) cause to be published on the ACCC's website a notice:
    - (i) setting out the original plan; and
    - (ii) inviting persons to make submissions to the ACCC about the original plan within 28 days after the notice is published; and
  - (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
  - (c) consider any submissions received within the 28-day period mentioned in paragraph (a).

*Replacement plan to be treated as if it had been given in accordance with the undertaking*

- (6) A draft migration plan given by Telstra in response to a request under subparagraph (2)(b)(ii) is taken, for the purposes of this Act (other than sections 577BD, 577BDB and 577BDC and this section), to be given in accordance with the undertaking.

*Notification of decision*

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

**577BDB Approval of draft migration plan by the ACCC—plan given in compliance with a direction**

*Scope*

- (1) This section applies if:
- (a) Telstra has given the ACCC an undertaking under section 577A; and
  - (b) Telstra gives the ACCC a draft migration plan (the ***original plan***) in compliance with a direction under:
    - (i) subparagraph 577BD(2)(b)(ii); or
    - (ii) subparagraph (2)(b)(ii) of this section.

*Decision*

- (2) The ACCC must:
- (a) if the ACCC is satisfied that the original plan complies with the migration plan principles—approve the original plan; or
  - (b) otherwise:
    - (i) refuse to approve the original plan; and
    - (ii) by written notice given to Telstra, direct Telstra to give the ACCC, within 30 days after the notice is given, a replacement draft migration plan that complies with the migration plan principles.

Note: For migration plan principles, see section 577BB.

*Consultation*

- (3) Before making a decision under subsection (2), the ACCC must:
- (a) cause to be published on the ACCC's website a notice:
    - (i) setting out the original plan; and

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- (ii) inviting persons to make submissions to the ACCC about the original plan within 28 days after the notice is published; and
- (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
- (c) consider any submissions received within the 28-day period mentioned in paragraph (a).

*Compliance with direction*

- (4) Telstra must comply with a direction under subparagraph (2)(b)(ii).

Note: The ACCC will make a decision about the plan under subsection (2).

*Replacement plan to be treated as if it had been given in accordance with the undertaking*

- (5) A draft migration plan given by Telstra in compliance with a direction under subparagraph (2)(b)(ii) is taken, for the purposes of this Act (other than sections 577BD, 577BDA and 577BDC and this section), to be given in accordance with the undertaking.

*Notification of decision*

- (6) As soon as practicable after making a decision under subsection (2), the ACCC must notify Telstra in writing of the decision.

**577BDC Approval of draft migration plan by the ACCC—plan given in response to a request**

*Scope*

- (1) This section applies if:
  - (a) Telstra gives the ACCC an undertaking under section 577A; and
  - (b) Telstra gives the ACCC a draft migration plan (the ***original plan***) in response to a request under:



- (i) subparagraph 577BDA(2)(b)(ii); or
- (ii) subparagraph (2)(b)(ii) of this section.

*Decision*

- (2) The ACCC must:
  - (a) if the ACCC is satisfied that the original plan complies with the migration plan principles—approve the original plan; or
  - (b) otherwise:
    - (i) refuse to approve the original plan; and
    - (ii) by written notice given to Telstra, request Telstra to give the ACCC, within 30 days after the notice is given, a replacement draft migration plan that complies with the migration plan principles.

Note 1: For migration plan principles, see section 577BB.

Note 2: If Telstra gives the ACCC a replacement draft migration plan in response to the request, the ACCC will make a decision about the plan under this section.

*Consultation*

- (3) Before making a decision under subsection (2), the ACCC must:
  - (a) cause to be published on the ACCC's website a notice:
    - (i) setting out the original plan; and
    - (ii) inviting persons to make submissions to the ACCC about the original plan within 28 days after the notice is published; and
  - (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
  - (c) consider any submissions received within the 28-day period mentioned in paragraph (a).

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*Plan to be treated as if it had been given in accordance with the undertaking*

- (4) A draft migration plan given by Telstra in response to a request under subparagraph (2)(b)(ii) is taken, for the purposes of this Act (other than sections 577BD, 577BDA and 577BDB and this section), to be given in accordance with the undertaking.

*Notification of decision*

- (5) As soon as practicable after making a decision under subsection (2), the ACCC must notify Telstra in writing of the decision.

**577BE Effect of approval of draft migration plan**

- (1) If the ACCC approves a draft migration plan, the plan becomes a final migration plan.
- (2) If the ACCC approves a draft migration plan under subsection 577BD(2), the plan comes into force at the start of the day after notice of the decision to approve the plan is given to Telstra in accordance with subsection 577BD(6).
- (3) If the ACCC approves a draft migration plan under subsection 577BDA(2), 577BDB(2) or 577BDC(2), the plan comes into force at the later of:
- (a) the start of the day after notice of the decision to approve the plan is given to Telstra in accordance with subsection 577BDA(7), 577BDB(6) or 577BDC(5), as the case requires; or
  - (b) when the relevant undertaking under section 577A comes into force.
- (4) A final migration plan may not be withdrawn.
- (5) When a final migration plan comes into force, the relevant undertaking under section 577A has effect as if the provisions of the plan were provisions of the undertaking.

*Publication requirement*

- (6) As soon as practicable after a final migration plan comes into force, the ACCC must publish a copy of the plan on the ACCC's website.

*ACCC's functions and powers*

- (7) If a final migration plan provides for the ACCC to perform functions or exercise powers in relation to the plan, the ACCC may perform those functions, and exercise those powers, in accordance with the plan.

*Plan is not a legislative instrument*

- (8) A final migration plan is not a legislative instrument.

**577BF Variation of final migration plan**

- (1) This section applies if a final migration plan is in force.
- (2) Telstra may give the ACCC a variation of the final migration plan.
- (3) The ACCC must:
- (a) if the ACCC is satisfied that the final migration plan as varied complies with the migration plan principles—approve the variation; or
  - (b) otherwise—refuse to approve the variation.

*Consultation*

- (4) Before making a decision under subsection (3), the ACCC must:
- (a) cause to be published on the ACCC's website a notice:
    - (i) setting out the variation; and
    - (ii) inviting persons to make submissions to the ACCC about the variation within 28 days after the notice is published; and

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- (b) cause to be published on the ACCC's website a copy of each submission received within the 28-day period mentioned in paragraph (a); and
  - (c) consider any submissions received within the 28-day period mentioned in paragraph (a).
- (5) Subsection (4) does not apply to a variation if the variation is of a minor nature.

*When variation takes effect*

- (6) The variation takes effect when it is approved by the ACCC.
- (7) When the variation takes effect, the relevant undertaking under section 577A has effect as if the provisions of the final migration plan as varied were provisions of the undertaking.
- (8) As soon as practicable after the variation takes effect, the ACCC must publish a copy of the variation on the ACCC's website.

## **Division 3—Hybrid fibre-coaxial networks**

### **577C Acceptance of undertaking about hybrid fibre-coaxial networks**

- (1) The ACCC may accept a written undertaking given by Telstra that:
- (a) at all times after the end of the period specified in the undertaking, Telstra will not be in a position to exercise control of a hybrid fibre-coaxial network in Australia; and
  - (b) Telstra will, in connection with paragraph (a), take specified action and/or refrain from taking specified action.

Note: For when Telstra is in a position to exercise control of a network, see section 577Q.

- (1A) In deciding whether to accept an undertaking under subsection (1), the ACCC must have regard to:
- (a) the matters (if any) set out in an instrument in force under subsection (1B); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (1B) The Minister may, by writing, set out matters for the purposes of paragraph (1A)(a).
- (1C) Before making or varying an instrument under subsection (1B), the Minister must:
- (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (2) The period specified in the undertaking as mentioned in paragraph (1)(a) must not be longer than 12 months.

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- (3) The undertaking must be expressed to be an undertaking under this section.
- (4) The undertaking may not be withdrawn after it has been accepted by the ACCC.
- (5) If the undertaking provides for the ACCC to perform functions or exercise powers in relation to the undertaking, the ACCC may perform those functions, and exercise those powers, in accordance with the undertaking.
- (6) The Minister must cause a copy of an instrument under subsection (1B) to be published on the Department's website.
- (7) An instrument under subsection (1B) is not a legislative instrument.

**577CA Acceptance of undertaking about hybrid fibre-coaxial networks may be subject to the occurrence of events**

- (1) If:
  - (a) Telstra has, in a document accompanying an undertaking under section 577C, nominated one or more events; and
  - (b) the nomination is expressed to be a nomination under this subsection; and
  - (c) each of those events is:
    - (i) the passage of a resolution covered by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*; or
    - (ii) an approval covered by paragraph 411(4)(b) of that Act; or
    - (iii) the passage of a resolution, where Telstra's members (within the meaning of that Act) were entitled to vote on the resolution; or
    - (iv) an approval covered by Chapter 11 of the ASX Listing Rules; or
    - (v) the granting of a waiver under rule 18.1 of the ASX Listing Rules; or

- (vi) the making of a declaration under subsection 577J(5); or
  - (vii) an event specified in an instrument in force under subsection (3); and
  - (d) the ACCC decides to accept the undertaking;  
the decision to accept the undertaking must be expressed to be subject to the occurrence of those events within a specified period after the undertaking is accepted.
- (2) A nomination under subsection (1) must not specify an event by reference to the timing of the event.
- (3) The Minister may, by writing, specify events for the purposes of subparagraph (1)(c)(vii).
- (4) A period specified by the ACCC under subsection (1) must be:
- (a) 6 months; or
  - (b) if another period is specified in an instrument under subsection (5)—that period.
- (5) The Minister may, by writing, specify a period for the purposes of paragraph (4)(b).

*Notification requirement*

- (6) If:
- (a) a decision to accept an undertaking under section 577C is expressed to be subject to the occurrence of one or more specified events within a specified period; and
  - (b) such an event occurs within that period;
- Telstra must notify the ACCC in writing of the occurrence of the event as soon as practicable after the occurrence.

*If event does not occur*

- (7) If:
- (a) a decision to accept an undertaking under section 577C is expressed to be subject to the occurrence of a single specified event within a specified period; and

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(b) the event does not occur within that period;  
this Act has effect as if the undertaking had never been accepted by the ACCC.

(8) If:

(a) a decision to accept an undertaking under section 577C is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and

(b) one or more of those events do not occur within that period;  
this Act has effect as if the undertaking had never been accepted by the ACCC.

*Publication requirement*

(9) The Minister must cause a copy of an instrument under subsection (3) or (5) to be published on the Department's website.

*Instruments are not legislative instruments*

(10) An instrument under subsection (3) or (5) is not a legislative instrument.

**577CB When undertaking about hybrid fibre-coaxial networks comes into force**

An undertaking under section 577C comes into force:

(a) if:

(i) the decision to accept the undertaking is expressed to be subject to the occurrence of a single specified event within a specified period; and

(ii) the event occurs within that period;  
when the event occurs; or

(b) if:

(i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and

(ii) each of those events occur at the same time; and



- (iii) that time occurs within that period;  
at that time; or
- (c) if:
  - (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at different times; and
  - (iii) each of those times occur within that period;  
at the last of those times; or
- (d) if the decision to accept the undertaking is not expressed to be subject to the occurrence of one or more specified events within a specified period—when the undertaking is accepted by the ACCC.

**577CC Publication requirements for undertaking about hybrid fibre-coaxial networks**

- (1) If a decision to accept an undertaking under section 577C is expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must:
  - (a) as soon as practicable after making the decision, publish on its website:
    - (i) the undertaking; and
    - (ii) the terms of the decision; and
  - (b) as soon as practicable after the ACCC becomes aware that the undertaking has come into force, publish on its website a notice announcing that the undertaking has come into force.
- (2) If a decision to accept an undertaking under section 577C is not expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must, as soon as practicable after accepting the undertaking, publish the undertaking on its website.

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**577CD Compliance with undertaking about hybrid fibre-coaxial networks**

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

**577D Variation of undertaking about hybrid fibre-coaxial networks**

- (1) This section applies if an undertaking given by Telstra is in force under section 577C.
- (2) Telstra may give the ACCC a variation of the undertaking in so far as the undertaking is covered by paragraph 577C(1)(b).
- (3) After considering the variation, the ACCC must decide to:
  - (a) accept the variation; or
  - (b) reject the variation.
- (3A) In deciding whether to accept the variation, the ACCC must have regard to:
  - (a) the matters (if any) set out in an instrument in force under subsection (3B); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (3B) The Minister may, by writing, set out matters for the purposes of paragraph (3A)(a).
- (3C) Before making or varying an instrument under subsection (3B), the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (4) The variation takes effect when it is accepted by the ACCC.

- (5) As soon as practicable after the variation takes effect, the ACCC must publish the variation on its website.
- (6) The Minister must cause a copy of an instrument under subsection (3B) to be published on the Department's website.
- (7) An instrument under subsection (3B) is not a legislative instrument.

## **Division 4—Subscription television broadcasting licences**

### **577E Acceptance of undertaking about subscription television broadcasting licences**

- (1) The ACCC may accept a written undertaking given by Telstra that:
- (a) at all times after the end of the period specified in the undertaking, Telstra will not be in a position to exercise control of a subscription television broadcasting licence; and
  - (b) Telstra will, in connection with paragraph (a), take specified action and/or refrain from taking specified action.

Note: For when Telstra is in a position to exercise control of a subscription television broadcasting licence, see subsection (7).

- (1A) In deciding whether to accept an undertaking under subsection (1), the ACCC must have regard to:
- (a) the matters (if any) set out in an instrument in force under subsection (1B); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (1B) The Minister may, by writing, set out matters for the purposes of paragraph (1A)(a).
- (1C) Before making or varying an instrument under subsection (1B), the Minister must:
- (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (2) The period specified in the undertaking as mentioned in paragraph (1)(a) must not be longer than 12 months.

- (3) The undertaking must be expressed to be an undertaking under this section.
- (4) The undertaking may not be withdrawn after it has been accepted by the ACCC.
- (5) If the undertaking provides for the ACCC to perform functions or exercise powers in relation to the undertaking, the ACCC may perform those functions, and exercise those powers, in accordance with the undertaking.
- (6) For the purposes of this section, the question of whether Telstra is in a position to exercise control of a subscription television broadcasting licence is to be determined under Schedule 1 to the *Broadcasting Services Act 1992*.
- (7) The Minister must cause a copy of an instrument under subsection (1B) to be published on the Department's website.
- (8) An instrument under subsection (1B) is not a legislative instrument.

**577EA Acceptance of undertaking about subscription television broadcasting licences may be subject to the occurrence of events**

- (1) If:
  - (a) Telstra has, in a document accompanying an undertaking under section 577E, nominated one or more events; and
  - (b) the nomination is expressed to be a nomination under this subsection; and
  - (c) each of those events is:
    - (i) the passage of a resolution covered by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*; or
    - (ii) an approval covered by paragraph 411(4)(b) of that Act; or

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- (iii) the passage of a resolution, where Telstra's members (within the meaning of that Act) were entitled to vote on the resolution; or
  - (iv) an approval covered by Chapter 11 of the ASX Listing Rules; or
  - (v) the granting of a waiver under rule 18.1 of the ASX Listing Rules; or
  - (vi) the making of a declaration under subsection 577J(3); or
  - (vii) an event specified in an instrument in force under subsection (3); and
- (d) the ACCC decides to accept the undertaking;  
the decision to accept the undertaking must be expressed to be subject to the occurrence of those events within a specified period after the undertaking is accepted.
- (2) A nomination under subsection (1) must not specify an event by reference to the timing of the event.
- (3) The Minister may, by writing, specify events for the purposes of subparagraph (1)(c)(vii).
- (4) A period specified by the ACCC under subsection (1) must be:
- (a) 6 months; or
  - (b) if another period is specified in an instrument under subsection (5)—that period.
- (5) The Minister may, by writing, specify a period for the purposes of paragraph (4)(b).

*Notification requirement*

- (6) If:
- (a) a decision to accept an undertaking under section 577E is expressed to be subject to the occurrence of one or more specified events within a specified period; and
  - (b) such an event occurs within that period;
- Telstra must notify the ACCC in writing of the occurrence of the event as soon as practicable after the occurrence.

*If event does not occur*

- (7) If:
- (a) a decision to accept an undertaking under section 577E is expressed to be subject to the occurrence of a single specified event within a specified period; and
  - (b) the event does not occur within that period;
- this Act has effect as if the undertaking had never been accepted by the ACCC.
- (8) If:
- (a) a decision to accept an undertaking under section 577E is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (b) one or more of those events do not occur within that period;
- this Act has effect as if the undertaking had never been accepted by the ACCC.

*Publication requirement*

- (9) The Minister must cause a copy of an instrument under subsection (3) or (5) to be published on the Department's website.

*Instruments are not legislative instruments*

- (10) An instrument under subsection (3) or (5) is not a legislative instrument.

**577EB When undertaking about subscription television broadcasting licences comes into force**

An undertaking under section 577E comes into force:

- (a) if:
- (i) the decision to accept the undertaking is expressed to be subject to the occurrence of a single specified event within a specified period; and
  - (ii) the event occurs within that period; when the event occurs; or

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- (b) if:
  - (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at the same time; and
  - (iii) that time occurs within that period;  
at that time; or
- (c) if:
  - (i) the decision to accept the undertaking is expressed to be subject to the occurrence of 2 or more specified events within a specified period; and
  - (ii) each of those events occur at different times; and
  - (iii) each of those times occur within that period;  
at the last of those times; or
- (d) if the decision to accept the undertaking is not expressed to be subject to the occurrence of one or more specified events within a specified period—when the undertaking is accepted by the ACCC.

**577EC Publication requirements for undertaking about  
subscription television broadcasting licences**

- (1) If a decision to accept an undertaking under section 577E is expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must:
  - (a) as soon as practicable after making the decision, publish on its website:
    - (i) the undertaking; and
    - (ii) the terms of the decision; and
  - (b) as soon as practicable after the ACCC becomes aware that the undertaking has come into force, publish on its website a notice announcing that the undertaking has come into force.
- (2) If a decision to accept an undertaking under section 577E is not expressed to be subject to the occurrence of one or more specified events within a specified period, the ACCC must, as soon as



practicable after accepting the undertaking, publish the undertaking on its website.

**577ED Compliance with undertaking about subscription television broadcasting licences**

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

**577F Variation of undertaking about subscription television broadcasting licences**

- (1) This section applies if an undertaking given by Telstra is in force under section 577E.
- (2) Telstra may give the ACCC a variation of the undertaking in so far as the undertaking is covered by paragraph 577E(1)(b).
- (3) After considering the variation, the ACCC must decide to:
  - (a) accept the variation; or
  - (b) reject the variation.
- (3A) In deciding whether to accept the variation, the ACCC must have regard to:
  - (a) the matters (if any) set out in an instrument in force under subsection (3B); and
  - (b) such other matters (if any) as the ACCC considers relevant.
- (3B) The Minister may, by writing, set out matters for the purposes of paragraph (3A)(a).
- (3C) Before making or varying an instrument under subsection (3B), the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and

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- (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (4) The variation takes effect when it is accepted by the ACCC.
- (5) As soon as practicable after the variation takes effect, the ACCC must publish the variation on its website.
- (6) The Minister must cause a copy of an instrument under subsection (3B) to be published on the Department's website.
- (7) An instrument under subsection (3B) is not a legislative instrument.

## **Division 5—Enforcement of undertakings**

### **577G Enforcement of undertakings**

- (1) If:
  - (a) an undertaking given by Telstra is in force under section 577A, 577C or 577E; and
  - (b) the ACCC considers that Telstra has breached the undertaking;the ACCC may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that Telstra has breached the undertaking, the Court may make any or all of the following orders:
  - (a) an order directing Telstra to comply with the undertaking;
  - (b) an order directing the disposal of network units, shares or other assets;
  - (c) an order restraining the exercise of any rights attached to shares;
  - (d) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by Telstra;
  - (e) an order that any exercise of rights attached to shares be disregarded;
  - (f) an order directing Telstra to pay to the Commonwealth an amount up to the amount of any financial benefit that Telstra has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (g) any order that the Court considers appropriate directing Telstra to compensate any other person who has suffered loss or damage as a result of the breach;
  - (h) any other order that the Court considers appropriate.
- (3) In addition to the Federal Court's powers under subsection (2), the court:

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- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (4) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (5) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

## **Division 6—Limits on allocation of spectrum licences etc.**

### **577GA Excluded spectrum regime**

- (1) The Minister may, by legislative instrument, determine that the excluded spectrum regime applies to Telstra.
- (2) A determination under subsection (1) has effect for the purposes of:
  - (a) this Division; and
  - (b) Part 10 of Schedule 1.

### **577H Designated part of the spectrum**

- (1) For the purposes of this Act, each of the following parts of the spectrum is a *designated part of the spectrum*:
  - (a) frequencies higher than 520 MHz, up to and including 820 MHz;
  - (b) frequencies higher than 2.5 GHz, up to and including 2.69 GHz.
- (2) Subsection (1) has effect subject to subsection (3).
- (3) The Minister may, by legislative instrument, determine that a specified part of the spectrum is not a *designated part of the spectrum* for the purposes of this Act.
- (4) The Minister may, by legislative instrument, determine that a specified part of the spectrum is a *designated part of the spectrum* for the purposes of this Act.

### **577J Limits on allocation of certain spectrum licences to Telstra**

- (1) If the excluded spectrum regime applies to Telstra, the ACMA must not allocate a spectrum licence to Telstra if the licence relates to a designated part of the spectrum.

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

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- (2) However, the rule in subsection (1) does not apply if:
- (a) both:
    - (i) an undertaking given by Telstra is in force under section 577A; and
    - (ii) the undertaking is covered by subsection (2A); and
  - (b) either:
    - (i) an undertaking given by Telstra is in force under section 577C; or
    - (ii) a declaration is in force under subsection (3); and
  - (c) either:
    - (i) an undertaking given by Telstra is in force under section 577E; or
    - (ii) a declaration is in force under subsection (5).

Note 1: Section 577A deals with undertakings about structural separation.

Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial networks.

Note 3: Section 577E deals with undertakings about subscription television broadcasting licences.

- (2A) This subsection covers a section 577A undertaking if:
- (a) the following conditions are satisfied:
    - (i) the undertaking requires Telstra to give the ACCC a draft migration plan;
    - (ii) in accordance with the undertaking, Telstra has given the ACCC a draft migration plan;
    - (iii) the ACCC has approved the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC; or
  - (b) the undertaking does not require Telstra to give the ACCC a draft migration plan.
- (3) The Minister may declare, in writing, that Telstra is exempt from the requirement to have an undertaking under section 577C.
- (4) The Minister must not make a declaration under subsection (3) unless the ACCC has made a decision to accept an undertaking given by Telstra under section 577A, and:

- (a) if the undertaking is in force—the Minister is satisfied that the undertaking is sufficient to address concerns about the degree of Telstra’s power in telecommunications markets; or
  - (b) if the undertaking is not in force—the Minister is satisfied that, subject to the undertaking coming into force, the undertaking is sufficient to address concerns about the degree of Telstra’s power in telecommunications markets.
- (4A) A declaration under subsection (3) comes into force:
- (a) if paragraph (4)(a) applies—when the declaration is made; or
  - (b) if paragraph (4)(b) applies—when the undertaking comes into force.
- (4B) If:
- (a) paragraph (4)(b) applies to a declaration; and
  - (b) as a result of subsection 577AA(7) or (8), this Act (other than subclause 76(4) of Schedule 1) has effect as if the undertaking had never been accepted by the ACCC;
- this Act has effect as if the declaration had never been made by the Minister.
- (5) The Minister may declare, in writing, that Telstra is exempt from the requirement to have an undertaking under section 577E.
- (6) The Minister must not make a declaration under subsection (5) unless the ACCC has made a decision to accept an undertaking given by Telstra under section 577A, and:
- (a) if the undertaking is in force—the Minister is satisfied that the undertaking is sufficient to address concerns about the degree of Telstra’s power in telecommunications markets; or
  - (b) if the undertaking is not in force—the Minister is satisfied that, subject to the undertaking coming into force, the undertaking is sufficient to address concerns about the degree of Telstra’s power in telecommunications markets.
- (6A) A declaration under subsection (5) comes into force:
- (a) if paragraph (6)(a) applies—when the declaration is made; or

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- (b) if paragraph (6)(b) applies—when the undertaking comes into force.
- (6B) If:
- (a) paragraph (6)(b) applies to a declaration; and
  - (b) as a result of subsection 577AA(7) or (8), this Act (other than subclause 76(4) of Schedule 1) has effect as if the undertaking had never been accepted by the ACCC;
- this Act has effect as if the declaration had never been made by the Minister.
- (6C) A declaration made under subsection (3) or (5) cannot be revoked.
- (7) A declaration made under subsection (3) or (5) is not a legislative instrument.
- (8) In this section:
- telecommunications market* has the same meaning as in Part XIB of the *Competition and Consumer Act 2010*.

**577K Limits on use of certain spectrum licences by Telstra**

- (1) If:
- (a) the excluded spectrum regime applies to Telstra; and
  - (b) a spectrum licence relates to a designated part of the spectrum;
- the licensee of the spectrum licence must not authorise Telstra to operate radiocommunications devices under the licence.
- Note: For excluded spectrum regime, see section 577GA.
- (2) However, the rule in subsection (1) does not apply if:
- (a) both:
    - (i) an undertaking given by Telstra is in force under section 577A; and
    - (ii) the undertaking is covered by subsection (2A); and
  - (b) either:



- (i) an undertaking given by Telstra is in force under section 577C; or
- (ii) a declaration is in force under subsection 577J(3); and
- (c) either:
  - (i) an undertaking given by Telstra is in force under section 577E; or
  - (ii) a declaration is in force under subsection 577J(5).

Note 1: Section 577A deals with undertakings about structural separation.

Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial networks.

Note 3: Section 577E deals with undertakings about subscription television broadcasting licences.

- (2A) This subsection covers a section 577A undertaking if:
- (a) the following conditions are satisfied:
    - (i) the undertaking requires Telstra to give the ACCC a draft migration plan;
    - (ii) in accordance with the undertaking, Telstra has given the ACCC a draft migration plan;
    - (iii) the ACCC has approved the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC; or
  - (b) the undertaking does not require Telstra to give the ACCC a draft migration plan.
- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).
- (4) Subsections (1) and (3) are ***civil penalty provisions***.

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Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

**577L Limits on assignment of certain spectrum licences to Telstra etc.**

- (1) If:
- (a) the excluded spectrum regime applies to Telstra; and
  - (b) a spectrum licence relates to a designated part of the spectrum;
- the licensee of the spectrum licence must not:
- (c) assign the whole or a part of the licence to Telstra; or
  - (d) otherwise deal with Telstra in relation to the whole or a part of the licence.

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

- (2) However, the rule in subsection (1) does not apply if:
- (a) both:
    - (i) an undertaking given by Telstra is in force under section 577A; and
    - (ii) the undertaking is covered by subsection (2A); and
  - (b) either:
    - (i) an undertaking given by Telstra is in force under section 577C; or
    - (ii) a declaration is in force under subsection 577J(3); and
  - (c) either:
    - (i) an undertaking given by Telstra is in force under section 577E; or
    - (ii) a declaration is in force under subsection 577J(5).

Note 1: Section 577A deals with undertakings about structural separation.

Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial networks.

Note 3: Section 577E deals with undertakings about subscription television broadcasting licences.

- (2A) This subsection covers a section 577A undertaking if:
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- (a) the following conditions are satisfied:
    - (i) the undertaking requires Telstra to give the ACCC a draft migration plan;
    - (ii) in accordance with the undertaking, Telstra has given the ACCC a draft migration plan;
    - (iii) the ACCC has approved the draft migration plan under section 577BD, 577BDA, 577BDB or 577BDC; or
  - (b) the undertaking does not require Telstra to give the ACCC a draft migration plan.
- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).
- (4) Subsections (1) and (3) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

## Division 7—Other provisions

### 577M Associate

- (1) For the purposes of this Part, an *associate* of Telstra in relation to control of:
- (a) a hybrid fibre-coaxial network; or
  - (b) another telecommunications network; or
  - (c) a company;
- is:
- (d) a partner of Telstra; or
  - (e) if Telstra or another person who is an associate of Telstra under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
  - (f) a person (whether a company or not) who:
    - (i) acts, or is accustomed to act; or
    - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;in accordance with the directions, instructions or wishes of, or in concert with:
    - (iii) Telstra; or
    - (iv) Telstra and another person who is an associate of Telstra under another paragraph; or
  - (g) another company if:
    - (i) the other company is a related body corporate of Telstra for the purposes of the *Corporations Act 2001*; or
    - (ii) Telstra, or Telstra and another person who is an associate of Telstra under another paragraph, are in a position to exercise control of the other company.
- (2) However, persons are not associates of each other if the ACCC is satisfied that:
- (a) they do not act together in any relevant dealings relating to the network or company; and

- (b) neither of them is in a position to exert influence over the business dealings of the other in relation to the network or company.

### **577N Control**

In this Part, **control** includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

### **577P Control of a company**

- (1) For the purposes of this Part, the question of whether a person is in a position to exercise control of a company is to be determined under Schedule 1 to the *Broadcasting Services Act 1992*.
- (2) However, in determining that question:
  - (a) the definition of **associate** in subsection 6(1) of the *Broadcasting Services Act 1992* does not apply; and
  - (b) the definition of **associate** in section 577M of this Act applies instead.

### **577Q When Telstra is in a position to exercise control of a network**

- (1) For the purposes of this Part, Telstra is in a position to exercise control of:
  - (a) a hybrid fibre-coaxial network; or
  - (b) another telecommunications network;if:
  - (c) Telstra legally or beneficially owns the network (whether alone or together with one or more other persons); or
  - (d) Telstra is in a position, either alone or together with an associate of Telstra and whether directly or indirectly:
    - (i) to exercise control of the operation of all or part of the network; or

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- (ii) to exercise control of the selection of the kinds of services that are supplied using the network; or
- (iii) to exercise control of the supply of services using the network; or
- (e) a company other than Telstra legally or beneficially owns the network (whether alone or together with one or more other persons), and:
  - (i) Telstra is in a position, either alone or together with an associate of Telstra, to exercise control of the company; or
  - (ii) Telstra, either alone or together with an associate of Telstra, is in a position to veto any action taken by the board of directors of the company; or
  - (iii) Telstra, either alone or together with an associate of Telstra, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
  - (iv) Telstra, either alone or together with an associate of Telstra, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
  - (v) the company or more than 50% of its directors act, or are accustomed to act in accordance with the directions, instructions or wishes of, or in concert with, Telstra or of Telstra and an associate of Telstra acting together or of the directors of Telstra; or
  - (vi) the company or more than 50% of its directors, under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act, in accordance with the directions, instructions or wishes of, or in concert with, Telstra or of Telstra and an associate of Telstra acting together or of the directors of Telstra.

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- (2) An employee is not, except through an association with another person, to be regarded as being in a position to exercise control of a network under subsection (1) purely because of being an employee.
- (3) More than one person may be in a position to exercise control of a network.

## Part 34—Special provisions relating to conventions and directions

### 579 Simplified outline

The following is a simplified outline of this Part:

- The ACMA is to have regard to certain international obligations when performing its telecommunications functions and exercising its telecommunications powers.
- The ACMA may give directions to a carrier or a service provider in connection with the ACMA's performance of its telecommunications functions or the exercise of its telecommunications powers.
- The eSafety Commissioner may give directions to a carrier or a service provider in connection with the Commissioner's performance of his or her functions or the exercise of his or her powers.

### 580 ACMA must have regard to conventions

- (1) In performing its telecommunications functions and exercising its telecommunications powers, the ACMA must have regard to Australia's obligations under any convention of which the Minister has notified the ACMA in writing.
- (2) In this section:  
*convention* means:
  - (a) a convention to which Australia is a party; or
  - (b) an agreement or arrangement between Australia and a foreign country;



and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

### **581 Power to give directions to carriers and service providers**

- (1) The ACMA may give written directions to:
- (a) a carrier; or
  - (b) a service provider;
- in connection with performing any of the ACMA's telecommunications functions or exercising any of the ACMA's telecommunications powers.
- (2) This section is not limited by any other provision of a law that:
- (a) confers a function or power on the ACMA; or
  - (b) prescribes the mode in which the ACMA is to perform a function or exercise a power; or
  - (c) prescribes conditions or restrictions which must be observed in relation to the performance by the ACMA of a function or the exercise by the ACMA of a power.
- (2A) The eSafety Commissioner may give written directions to:
- (a) a carrier; or
  - (b) a service provider;
- in connection with performing any of the Commissioner's functions or exercising any of the Commissioner's powers.
- (2B) This section is not limited by any other provision of a law that:
- (a) confers a function or power on the eSafety Commissioner; or
  - (b) prescribes the mode in which the eSafety Commissioner is to perform a function or exercise a power; or
  - (c) prescribes conditions or restrictions which must be observed in relation to the performance by the eSafety Commissioner of a function or the exercise by the eSafety Commissioner of a power.

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- (4) A person must comply with a direction given to the person under subsection (1).
- (4A) A person must comply with a direction given to the person under subsection (2A).

## **Part 35—Miscellaneous**

### **582 Simplified outline**

The following is a simplified outline of this Part:

- Provision is made in relation to continuing offences.
- Partnerships are to be treated as persons for the purposes of this Act, the *Spam Act 2003*, regulations under the *Spam Act 2003*, the *Do Not Call Register Act 2006*, regulations under the *Do Not Call Register Act 2006*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.
- Provision is made in relation to the service of documents.
- Instruments under this Act, the *Spam Act 2003*, the *Do Not Call Register Act 2006* or the *Telecommunications (Consumer Protection and Service Standards) Act 1999* may apply, adopt or incorporate certain other instruments.
- An arbitration under this Act or the *Telecommunications (Consumer Protection and Service Standards) Act 1999* must not result in the acquisition of property otherwise than on just terms.

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- In order to provide a constitutional safety-net, compensation is payable in the event that the operation of this Act, the *Spam Act 2003*, regulations under the *Spam Act 2003*, the *Do Not Call Register Act 2006*, regulations under the *Do Not Call Register Act 2006*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or regulations under that Act results in the acquisition of property otherwise than on just terms.
- This Act, the *Spam Act 2003*, regulations under the *Spam Act 2003*, the *Do Not Call Register Act 2006*, regulations under the *Do Not Call Register Act 2006*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* do not affect the performance of State or Territory functions.
- The Minister may make grants of financial assistance to consumer bodies for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues.
- The Minister may make grants of financial assistance for purposes in connection with research into the social, economic, environmental or technological implications of developments relating to telecommunications.
- The Governor-General may make regulations for the purposes of this Act.

**583 Penalties for certain continuing offences**

- (1) This section applies if an offence against this Act is a continuing offence (whether under this Act or because of section 4K of the *Crimes Act 1914*).

- (2) The maximum penalty for each day that the offence continues is 10% of the maximum penalty that could be imposed in respect of the principal offence.
- (3) In this section:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

#### **584 Procedure relating to certain continuing offences**

- (1) If section 43 applies to an offence against a provision of this Act, charges against the same person for any number of offences against that provision may be joined in the same information, complaint or summons if:
- (a) those charges are founded on the same facts; or
  - (b) form, or are part of, a series of offences of the same or a similar character.
- (2) If a person is convicted of 2 or more offences against such a provision, the court may impose one penalty in respect of both or all of those offences, but that penalty must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each offence.

#### **585 Treatment of partnerships**

- (1) This Act applies to a partnership as if the partnership were a person, but it applies with the following changes:
- (a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;
  - (b) any offence against this Act that would otherwise be committed by the partnership is taken to have been committed by each partner who:
    - (i) aided, abetted, counselled or procured the relevant act or omission; or

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- (ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

(2) In this section:

***civil penalty provision*** includes:

- (a) a civil penalty provision within the meaning of the *Spam Act 2003*; and
- (b) a civil penalty provision within the meaning of the *Do Not Call Register Act 2006*.

***offence*** includes a breach of a civil penalty provision.

***this Act*** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

### 586 Giving of documents to partnerships

(1) For the purposes of this Act, if a document is given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.

(2) In this section:

***this Act*** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**587 Nomination of address for service of documents**

- (1) For the purposes of this Act, a person may nominate an address for service in:
- (a) an application made by the person under this Act; or
  - (b) any other document given by the person to the ACCC or the ACMA.

The address must be in Australia.

- (2) For the purposes of this Act, a document may be given to the person by leaving it at, or by sending it by pre-paid post to, the nominated address for service.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

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

- (4) In this section:

*this Act* includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

**588 Service of summons or process on foreign corporations—  
criminal proceedings**

- (1) This section applies to a summons or process in any criminal proceedings under this Act, where:
- (a) the summons or process is required to be served on a body corporate incorporated outside Australia; and
  - (b) the body corporate does not have a registered office or a principal office in Australia; and
  - (c) the body corporate has an agent in Australia.

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- (2) Service of the summons or process may be effected by serving it on the agent.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

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

- (4) In this section:

***criminal proceeding*** includes a proceeding to determine whether a person should be tried for an offence.

***this Act*** includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**589 Instruments under this Act may provide for matters by reference to other instruments**

- (1) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act:
  - (a) as in force at a particular time; or
  - (b) as in force from time to time.
- (2) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing whatever:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time;even if the other instrument or writing does not yet exist when the instrument under this Act is made.
- (3) A reference in subsection (2) to any other instrument or writing includes a reference to an instrument or writing:
  - (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or



Territory, an officer or authority of the Commonwealth or of a State or Territory or an overseas entity); and

- (b) whether of a legislative, administrative or other official nature or of any other nature; and
- (c) whether or not having any legal force or effect;

for example:

- (d) regulations or rules under an Act; or
  - (e) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or
  - (f) an international technical standard or performance indicator; or
  - (g) a written agreement or arrangement or an instrument or writing made unilaterally.
- (4) Nothing in this section limits the generality of anything else in it.
- (5) Subsections (1) and (2) have effect despite anything in:
- (a) the *Acts Interpretation Act 1901*; or
  - (b) the *Legislation Act 2003*.
- (6) In this section:

***instrument under this Act*** means:

- (a) the regulations; or
- (b) any other instrument made under this Act.

***this Act*** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
- (b) Parts XIB and XIC of the *Competition and Consumer Act 2010*; and
- (c) the *Spam Act 2003*; and
- (d) the *Do Not Call Register Act 2006*.

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**590 Arbitration—acquisition of property**

- (1) This section applies to a provision of this Act that authorises the conduct of an arbitration (whether by the ACCC or another person).
- (2) The provision has no effect to the extent (if any) to which it purports to authorise the acquisition of property if that acquisition:
  - (a) is otherwise than on just terms; and
  - (b) would be invalid because of paragraph 51(xxxi) of the Constitution.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**591 Compensation—constitutional safety net**

- (1) If:
  - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

**acquisition of property** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**just terms** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**this Act** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

### **592 Act not to affect performance of State or Territory functions**

- (1) A power conferred by this Act must not be exercised in such a way as to prevent the exercise of the powers, or the performance of the functions, of government of a State, the Northern Territory or the Australian Capital Territory.

- (2) In this section:

**this Act** includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act; and
- (c) the *Do Not Call Register Act 2006* and regulations under that Act.

### **593 Funding of consumer representation, and of research, in relation to telecommunications**

- (1) The Minister may, on behalf of the Commonwealth, make a grant of financial assistance to a consumer body for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues.
- (2) The Minister may, on behalf of the Commonwealth, make a grant of financial assistance to a person or body for purposes in

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connection with research into the social, economic, environmental or technological implications of developments relating to telecommunications.

- (3) The terms and conditions on which financial assistance is to be granted under this section are to be set out in a written agreement between the Commonwealth and the person or body receiving the grant.
- (4) An agreement under subsection (3) may be entered into by the Minister on behalf of the Commonwealth.
- (5) The Minister must, as soon as practicable after the end of each financial year (and, in any event, within 6 months after the end of the financial year), cause to be prepared a report relating to the administration of this section during the financial year.
- (6) The Minister must cause copies of a report prepared under subsection (5) to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.
- (7) Grants under this section are to be paid out of money appropriated by the Parliament for the purposes of this section.
- (8) In this section:

*consumer body* means a body or association that represents the interests of consumers.

*telecommunications* means the carriage of communications by means of guided and/or unguided electromagnetic energy.

### 594 Regulations

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) The regulations may prescribe penalties, not exceeding 10 penalty units, for offences against the regulations.