



Telecommunications Act 1997

No. 47, 1997

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Volume 1: sections 1–310
Volume 2: sections 311–594
Volume 3: Schedules
Endnotes

Each volume has its own contents

This compilation includes a commenced amendment made by Act No. 77, 2021

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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 23 January 2022 (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). 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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

- (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

Section 4

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.

Section 5

- 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*.

Section 5

- 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.
- Numbering may be administered by a *numbering scheme manager* or by the ACMA.
- 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.

Section 6

- 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

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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

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- (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;

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- (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.

demerged Telstra company has the meaning given by section 581J.

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

designated radiocommunications facility has the meaning given by section 31.

designated Telstra successor company: see section 581G.

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

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

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) if there is a numbering scheme manager—a service specified by the ACMA for the purposes of this subparagraph in a legislative instrument; or
 - (iva) if there is no numbering scheme manager—a service specified for the purposes of this subparagraph in the numbering plan made by the ACMA; or
 - (v) a service for despatching a force or service referred to in subparagraph (i), (ii), (iii), (iv) or (iva).

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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.

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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 subsection 372W(1).

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.

functional fibre-ready facility has the meaning given by subsection 372W(2).

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

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- (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 the *Online Safety Act 2021*.

Layer 2 bitstream service means a carriage service that is:

- (a) a Layer 2 bitstream service (within the ordinary meaning of that expression); and
- (b) a listed carriage service; and
- (c) supplied using a line to premises occupied or used by an end-user.

For the purposes of determining the ordinary meaning of the expression used in paragraph (a), assume that **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

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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
- (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.

numbering scheme means the scheme for planning and managing:

- (a) the numbering of carriage services in Australia; and
- (b) the use of numbers in connection with the supply of such services; and
- (c) the specification, allocation and issuing of numbers for that use.

numbering scheme manager: see subsection 454A(2).

numbering scheme principles: see subsection 454C(2).

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

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- (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*.

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

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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

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- (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*.

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;

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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*.

Telstra successor company: see section 581F.

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.

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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).
- (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:

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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;

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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);
- 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.

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- (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:
- (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.

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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 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

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- (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

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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;
- 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;

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- (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;
- (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;

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- (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):

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- (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).
- (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).

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- (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.

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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

(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:

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- (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:

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- (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).

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

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- (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

- (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.

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- (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.

- (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.

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- (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.

- (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

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- (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.

- (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:

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- (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

- (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.

- (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.

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(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

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

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- (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).

- (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), (2A) or (2B); 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), (2A) or (2B); 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.

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*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

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 individual is **disqualified**—failure to pay funding charge*

- (4B) 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(2B) because of a failure by the body corporate or partnership to pay in full the charge referred to in that subsection; and

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- (b) in the case of a body corporate—at the time when the charge referred to in subsection 72(2B) 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(2B) 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), (2A) or (2B); 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).
- (4A) 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 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.
- Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).
- (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.

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

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

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

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

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

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

- (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.

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69AA Remedial directions—breach of conditions relating to access

Scope

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

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

Direction

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

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.
- (1A) 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 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.
- Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).
- (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*.

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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*.

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:

- (aaa) the condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI;

- (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*.

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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*.

Failure to pay funding charge

- (2B) The ACMA may cancel a carrier licence held by a carrier if the carrier fails to pay in full any funding charge on or before the date on which the funding charge becomes due and payable. For this purpose, **funding charge** means charge imposed by the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

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.

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.

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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.

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

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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.

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- (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.

- (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.

Part 3 Carriers

Division 4 Nominated carrier declarations

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- (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);

- (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**.

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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

- (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:

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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.

- (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*.

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- (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.

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- (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***.

- (1A) The Minister may, by legislative instrument, make a determination setting out rules that apply to carriage service providers in relation to the supply of specified carriage 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.
- (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.
- (6) A service provider determination under subsection (1) has no effect to the extent to which it is inconsistent with a service provider determination under subsection (1A).

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.

Section 102

- (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).

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- (4A) 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 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

- (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*.

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.

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- (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.

- (1A) 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 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

- (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.

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- (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.

- (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*.

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- (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*.
- (4F) 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 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.
- (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.

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 financial year on 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

(5A) The ACMA must monitor, and report each financial year 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 publish a report under subsection (5A) on its website as soon as practicable and no later than 6 months after the end of the financial year concerned.

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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
 - (b) if the direction requires the report to be given before a specified time—before that time.
- (3) If the direction requires the report to be in a specified form, the report must be in that form.
- (4) The ACMA must comply with any requirement in the direction as to the publication of the report.

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*.

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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:

- (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

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- (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*.

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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.

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- (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*.

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- (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.

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- (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.

Section 136A

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.

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

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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.

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 8—Local access lines

Division 1—Introduction

142 Simplified outline of this Part

- A controller of a local access line (other than a line that is part of the infrastructure of the national broadband network) must not use the line to supply an eligible service to a person other than a carrier or a service provider, if:
 - (a) the line came into existence, or was upgraded, on or after the designated commencement date; and
 - (b) the line is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential customers, or prospective residential customers, in Australia; and
 - (c) no functional separation undertaking is in force.
- 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 line is part of the infrastructure of the network; and
 - (b) the network came into existence, or was upgraded, on or after 1 January 2011, but before the designated commencement date; and
 - (c) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential customers, or prospective residential customers, in Australia; and
 - (d) no functional separation undertaking is in force.

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142A Definitions

In this Part:

alter, in relation to a telecommunications network or line, has a meaning affected by section 159.

associate has the meaning given by section 152.

business unit means a part of a corporation.

close proximity has a meaning affected by section 162.

corporation means a body corporate.

customer interface means an interface for the purposes of:

- (a) ordering; and
- (b) provisioning; and
- (c) billing; and
- (d) service activation; and
- (e) fault rectification;

in relation to the supply of local access line services.

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

designated carriage service has the meaning given by section 142BD.

designated commencement date means the date on which Schedule 2 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* commences.

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*.

fixed-line carriage service means a carriage service that is supplied using a line to premises occupied or used by an end-user.

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functional includes organisational.

functional separation undertaking means:

- (a) a standard functional separation undertaking; or
- (b) a joint functional separation undertaking.

fundamental provision of a functional separation undertaking has the meaning given by subsection 151A(9) or 151C(9).

gas supply body has the same meaning as in the *National Broadband Network Companies Act 2011*.

joint functional separation undertaking means an undertaking under section 151C.

local access line has the meaning given by section 158.

local access line service means an eligible service supplied using a local access line.

multi-unit building means:

- (a) a building that has 2 or more units for occupation as a place of residence or business; or
- (b) a building in a complex, where each building has 2 or more units for occupation as a place of residence or business.

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*.

residential customer has a meaning affected by section 161.

retail business unit of a corporation means a business unit by which the corporation deals with the corporation's retail customers in relation to the supply of local access line services.

retail customer means a customer other than a wholesale customer.

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retailer, when used in relation to a joint functional separation undertaking, means a person identified in the undertaking as the retailer, or one of the retailers, for the purposes of the undertaking.

Note: See paragraph 151C(2)(a).

sewerage services body has the same meaning as in the *National Broadband Network Companies Act 2011*.

standard functional separation undertaking means an undertaking under section 151A.

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 25 megabits per second or more; and
- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

supply, in relation to a service, includes supply of the service by a corporation to itself. This definition does not apply to subsection 142C(2) or 143(2).

unsatisfactory compliance record has a meaning affected by section 142BC.

upgrade, in relation to a telecommunications network or line, has a meaning affected by section 160.

water supply body has the same meaning as in the *National Broadband Network Companies Act 2011*.

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wholesale business unit of a corporation means a business unit by which the corporation deals with its wholesale customers, and its retail business unit, in relation to the supply of local access line services.

wholesale customer means a customer that is:

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

wholesaler, when used in relation to a joint functional separation undertaking, means a person identified in the undertaking as the wholesaler, or one of the wholesalers, for the purposes of the undertaking.

Note: See paragraph 151C(2)(a).

worker means an individual who is:

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor.

142B Functional separation undertaking given by a person

A reference in this Part to a functional separation undertaking given by a person is a reference to a functional separation undertaking given by the person either:

- (a) alone; or
- (b) jointly with one or more other persons.

142BA 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 Part, 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*.

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142BB Terms and conditions

For the purposes of this Part:

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

142BC Unsatisfactory compliance record

For the purposes of this Part, the question of whether a person has an unsatisfactory compliance record in relation to functional separation is to be determined having regard only to:

- (a) any breaches by the person of functional separation undertakings given by the person, so long as the breaches occurred when the undertakings were in force; and
- (b) any contraventions by the person of section 143B, 151ZA, 151ZB, 151ZF, 151ZG, 151ZH or 151ZI.

142BD Designated carriage service

- (1) For the purposes of this Part, *designated carriage service* means:
 - (a) if a carriage service is specified in an instrument under subsection (2)—that carriage service; or
 - (b) otherwise—a Layer 2 bitstream service.
- (2) The ACCC may, by legislative instrument, specify a carriage service for the purposes of paragraph (1)(a).
- (3) The ACCC must not specify a carriage service under subsection (2) unless:
 - (a) the carriage service enables end-users to download communications; and
 - (b) the download transmission speed of the carriage service is normally 25 megabits per second or more; and

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- (c) the carriage service is supplied using a line to premises occupied or used by an end-user; and
- (d) there is in force a declaration under subsection 152AL(3) of the *Competition and Consumer Act 2010* that relates to the carriage service.

Division 2—Supply of eligible services to be on wholesale basis

142C Supply of eligible services to be on wholesale basis—lines that come into existence on or after the designated commencement date etc.

Scope

- (1) This section applies to a local access line if:
- (a) the line is part of the infrastructure of a telecommunications network in Australia; and
 - (b) the network is not the national broadband network; and
 - (c) the line is used, or proposed to be used, to supply a superfast carriage service wholly or principally to residential customers, or prospective residential customers, in Australia; and
 - (d) either:
 - (i) the line came into existence on or after the designated commencement date; or
 - (ii) the line was altered or upgraded on or after the designated commencement date, and as a result of the alteration or upgrade, the line became capable of being used to supply a superfast carriage service to residential customers in Australia.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

Note 3: For exemptions, see sections 143A to 151.

Use of line

- (2) If a person (the ***first person***):

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- (a) is in a position to exercise control of the line; or
- (b) is an associate of a person who is in a position to exercise control of the line;

the first person must not, on or after the designated commencement date, use the line, either alone or jointly with one or more other persons, to supply an eligible service unless the service is supplied to:

- (c) a carrier; or
- (d) a service provider.

Note: For when a person is in a position to exercise control of a line, see section 155A.

- (3) Subsection (2) does not apply to the use of the line if a functional separation undertaking given by the first person is in force, unless:
 - (a) the ACCC has given a notice under section 151W revoking the undertaking; and
 - (b) the revocation has not taken effect; and
 - (c) the line came into existence after the notice was given.

Note 1: A functional separation undertaking relates to the supply of eligible services using a local access line, irrespective of when the line came into existence.

Note 2: See also section 142B.

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).

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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.

143 Supply of eligible services to be on wholesale basis—networks in existence before the designated commencement date etc.

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 customers, or prospective residential 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, but before the designated commencement date; or
 - (ii) the network was altered or upgraded on or after 1 January 2011, but before the designated commencement date, and, as a result of the alteration or upgrade, the network became capable of being used to supply a superfast carriage service to residential customers, or prospective residential customers, in Australia.

Note 1: See also section 156 (deemed networks).

Note 2: For exemptions, see sections 143A to 151.

Use of network

- (2) If a person (the ***first person***):
- (a) is in a position to exercise control of the network; or

- (b) is an associate of a person who is in a position to exercise control of the network;

the first person must not use the line, either alone or jointly with one or more other persons, to supply an eligible service unless the service is supplied to:

- (c) a carrier; or
- (d) a service provider.

Note: For when a person is in a position to exercise control of a network, see section 155.

- (3) Subsection (2) does not apply to the use of the line if a functional separation undertaking given by the first person is in force, unless:
 - (a) the ACCC has given a notice under section 151W revoking the undertaking; and
 - (b) the revocation has not taken effect; and
 - (c) the line came into existence after the notice was given.

Note 1: A functional separation undertaking relates to the supply of eligible services using a local access line, irrespective of when the line came into existence.

Note 2: See also section 142B.

- (4) Subsection (2) does not apply to the use of the line if:
 - (a) the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014* is in force; and
 - (b) the line is part of the infrastructure of a designated telecommunications network (within the meaning of that declaration); and
 - (c) a carrier owns or operates the network; and
 - (d) as a result of the application of section 5 of that declaration to the network, the carrier licence held by the carrier is subject to the conditions set out in subsections 6(5), (5A), (6), (7) and (8) of that declaration.

Ancillary contraventions

- (5) A person must not:

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- (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.

143AA Judicial enforcement of prohibitions

- (1) If the Federal Court is satisfied that a person has, on or after the designated commencement date, contravened subsection 142C(2) or (4) or 143(2) or (5), the Court may, on the application of:
- (a) the ACCC; or
 - (b) a carrier; or
 - (c) a carriage service provider;
- make all or any of the following orders:
- (d) an order directing the person to comply with that subsection;
 - (e) an order directing the person to compensate any other person (who may be the applicant) who has suffered loss or damage as a result of the contravention;
 - (f) any other order that the Court thinks appropriate.
- (2) The Federal Court may discharge or vary an order granted under this section.

Division 2A—Exemptions

143A Class exemptions

Determination providing for exemption

- (1) The ACCC may, by legislative instrument, determine that, if:
- (a) a person is included in a specified class of persons; and
 - (b) the person has, by written notice given to the ACCC, elected to be bound by the determination; and
 - (c) the person has not, by written notice given to the ACCC, cancelled the election; and
 - (d) in a case where the person is not a member of an associated group—the number of residential customers to whom the person supplies fixed-line carriage services does not exceed:
 - (i) 2,000; or
 - (ii) if a higher number (not exceeding 12,000) is specified in the regulations—that higher number; and
 - (e) in a case where the person is a member of an associated group—the total number of residential customers to whom the members of the group supply fixed-line carriage services does not exceed:
 - (i) 2,000; or
 - (ii) if a higher number (not exceeding 12,000) is specified in the regulations—that higher number;
- the person is exempt from section 142C.

Note: For *associated group*, see subsection (10) of this section.

- (2) The ACCC may, by legislative instrument, determine that, if:
- (a) a person is included in a specified class of persons; and
 - (b) the person has, by written notice given to the ACCC, elected to be bound by the determination; and
 - (c) the person has not, by written notice given to the ACCC, cancelled the election; and

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- (d) in a case where the person is not a member of an associated group—the number of residential customers to whom the person supplies fixed-line carriage services does not exceed:
 - (i) 2,000; or
 - (ii) if a higher number (not exceeding 12,000) is specified in the regulations—that higher number; and
- (e) in a case where the person is a member of an associated group—the total number of residential customers to whom the members of the group supply fixed-line carriage services does not exceed:
 - (i) 2,000; or
 - (ii) if a higher number (not exceeding 12,000) is specified in the regulations—that higher number;

the person is exempt from section 143.

Note: For *associated group*, see subsection (10) of this section.

- (3) A determination under subsection (1) or (2) is subject to the following conditions and limitations:
 - (a) the person must ensure that a designated carriage service is available for supply to wholesale customers, or prospective wholesale customers, of the person;
 - (b) the person must not discriminate between the person's wholesale customers, or the person's prospective wholesale customers, in relation to the supply of designated carriage services;
 - (c) the person must not discriminate in favour of itself in relation to the supply of designated carriage services;
 - (d) the person must not, in carrying on any of the following activities, discriminate between the person's wholesale customers or the person's prospective wholesale customers:
 - (i) developing a new eligible service;
 - (ii) enhancing an eligible service;
 - (iii) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;

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- (iv) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (v) an activity that is preparatory to the supply of an eligible service;
 - (vi) an activity that is ancillary or incidental to the supply of an eligible service;
 - (vii) giving information to service providers about any of the above activities;
- (e) the person must not discriminate in favour of itself in relation to the carrying on of any of the following activities:
- (i) developing a new eligible service;
 - (ii) enhancing an eligible service;
 - (iii) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (iv) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (v) an activity that is preparatory to the supply of an eligible service;
 - (vi) an activity that is ancillary or incidental to the supply of an eligible service;
 - (vii) giving information to service providers about any of the above activities;
- (f) such other conditions and limitations as are specified in the determination.

Note 1: For compliance with conditions and limitations, see section 143B.

Note 2: For judicial enforcement of conditions and limitations, see section 143C.

- (4) The rule in paragraph (3)(b) does not prevent discrimination against a wholesale customer, or prospective wholesale customer, if the person has reasonable grounds to believe that the wholesale customer or prospective wholesale customer would fail, to a

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material extent, to comply with the terms and conditions on which the person supplies designated carriage services.

- (5) Examples of grounds for believing as mentioned in subsection (4) include:
- (a) evidence that the wholesale customer or prospective wholesale customer is not creditworthy; and
 - (b) repeated failures by the wholesale customer or prospective wholesale customer to comply with the terms and conditions on which the person supplied eligible services (whether or not using the line).
- (6) A determination under subsection (1) or (2) must not specify a condition or limitation of a kind specified in a determination under subsection (7).
- (7) The Minister may, by legislative instrument, determine one or more kinds of condition or limitation for the purposes of subsection (6).

Criteria for making determination

- (8) In deciding whether to make a determination under subsection (1) or (2), the ACCC must have regard to:
- (a) whether the determination promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services; and
 - (b) the matters (if any) specified in a determination under subsection (9); and
 - (c) such other matters (if any) as the ACCC considers relevant.
- (9) The Minister may, by legislative instrument, determine one or more matters for the purposes of paragraph (8)(b).

Associated group

- (10) For the purposes of this section, if:
- (a) a person is in a position to exercise control of:
 - (i) a local access line; or

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- (ii) a telecommunications network; and
 - (b) the person has one or more associates;
- then:
- (c) the person is taken to belong to an associated group; and
 - (d) the associated group consists of the person and those associates.

143B Compliance with conditions and limitations of exemption determinations

- (1) A person must, on or after the designated commencement date, comply with the conditions or limitations of a determination under subsection 143A(1) or (2).

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.

143C Judicial enforcement of conditions and limitations of exemption determinations

- (1) If the Federal Court is satisfied that a person has, on or after the designated commencement date, contravened any of the conditions

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or limitations of a determination under subsection 143A(1) or (2), the Court may, on the application of:

- (a) the ACCC; or
- (b) a carrier; or
- (c) a carriage service provider;

make all or any of the following orders:

- (d) an order directing the person to comply with the condition or limitation;
 - (e) an order directing the person to compensate any other person (who may be the applicant) who has suffered loss or damage as a result of the contravention;
 - (f) any other order that the Court thinks appropriate.
- (2) The Federal Court may discharge or vary an order granted under this section.

143D Publication of list of persons who have elected to be bound by exemption determinations

If a determination is in force under subsection 143A(1) or (2), the ACCC must publish on its website a list setting out the names of the persons who:

- (a) have elected to be bound by the determination; and
- (b) have not cancelled the election concerned.

143E Exemptions—certain real estate development projects etc.

- (1) If:
- (a) a part of the infrastructure of a telecommunications network is situated in a particular area that:
 - (i) on 1 January 2011, was being developed as a particular stage of a real estate development project; or
 - (ii) before 1 January 2011, was developed as a particular stage of a real estate development project; and

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- (b) on or after the designated commencement date, the network is extended to another area that is being, or is to be, developed as another stage of the project; and
 - (c) a carrier installs telecommunications network infrastructure; and
 - (d) the infrastructure mentioned in paragraph (c) is part of the extension;
- the infrastructure mentioned in paragraph (c) is exempt from sections 142C and 143.

(2) If:

- (a) a part of the infrastructure of a telecommunications network is situated in a particular area that:
 - (i) on 1 January 2011, was being developed as a particular stage of a real estate development project; or
 - (ii) before 1 January 2011, was developed as a particular stage of a real estate development project; and
 - (b) during the period:
 - (i) beginning at the start of the designated commencement date; and
 - (ii) ending when the Minister makes a declaration under section 48 of the *National Broadband Network Companies Act 2011* that, in the Minister's opinion, the national broadband network should be treated as built and fully operational;
- the network is extended to an area that is:
- (iii) the project area of a real estate development project specified under subsection (3); or
 - (iv) the project area of a real estate development project that belongs to a class of real estate development projects specified under subsection (5); or
 - (v) the project area of a building redevelopment project specified under subsection (6); or
 - (vi) the project area of a building redevelopment project that belongs to a class of building redevelopment projects specified under subsection (8); and

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- (c) a carrier installs telecommunications network infrastructure;
and
 - (d) the infrastructure mentioned in paragraph (c) is part of the
extension;
- the infrastructure mentioned in paragraph (c) is exempt from
sections 142C and 143.
- (3) The Minister may, by notifiable instrument, specify one or more
real estate development projects for the purposes of
subparagraph (2)(b)(iii).
- (4) Subsection 13(3) of the *Legislation Act 2003* does not apply to
subsection (3) of this section.
- (5) The Minister may, by legislative instrument, specify one or more
classes of real estate development projects for the purposes of
subparagraph (2)(b)(iv).
- (6) The Minister may, by notifiable instrument, specify one or more
building redevelopment projects for the purposes of
subparagraph (2)(b)(v).
- (7) Subsection 13(3) of the *Legislation Act 2003* does not apply to
subsection (6) of this section.
- (8) The Minister may, by legislative instrument, specify one or more
classes of building redevelopment projects for the purposes of
subparagraph (2)(b)(vi).

Building redevelopment project

- (9) For the purposes of this section, a project is a ***building
redevelopment project*** if the project involves:
 - (a) the significant refurbishment or repurposing of one or more
buildings so as to bring into existence one or more building
units; and
 - (b) the making available of any or all of those building units for
sale or lease.

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- (10) For the purposes of this section, the area or areas occupied by the building or buildings are the *project area* for the building redevelopment project.
- (11) For the purposes of subsection (9), it is immaterial whether:
 - (a) the project has been, is being, or will be, implemented in stages; or
 - (b) different elements of the project have been, are being, or will be, carried out by different persons; or
 - (c) one or more approvals are given, are required, or will be required, under a law of the Commonwealth, a State or a Territory, for the project, or any element of the project.

143F Exemptions—lines installed in close proximity to other lines

- (1) If:
 - (a) a telecommunications network came into existence on or after 1 January 2011; and
 - (b) a line came into existence on or after the designated commencement date for the purposes of connecting particular premises to the network; and
 - (c) the coming into existence of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the line; and
 - (d) the premises are in close proximity to a line that forms part of the infrastructure of the network as the network stood immediately before the designated commencement date; and
 - (e) the line mentioned in paragraph (b) is used to supply a superfast carriage service;

the line mentioned in paragraph (b) is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

- (2) If:

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- (a) a designated telecommunications network (within the meaning of the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014*) was in existence immediately before the designated commencement date; and
- (b) a line came into existence on or after the designated commencement date for the purposes of connecting particular premises to the network; and
- (c) the coming into existence of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the line; and
- (d) the premises are in close proximity to a line that forms part of the infrastructure of the network as the network stood immediately before the designated commencement date; and
- (e) the line mentioned in paragraph (b) is used to supply a superfast carriage service;

the line mentioned in paragraph (b) is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

143G Exemptions—networks covered by exemption instruments

(1) If:

- (a) the *Telecommunications (Network Exemption—TransACT Very Small Scale Networks) Instrument 2012* was in force at the start of the designated commencement date; and
- (b) a line came into existence on or after the designated commencement date; and
- (c) the line forms part of the infrastructure of:
 - (i) an ACT Very Small Scale Network that is a FTTP network or a VDSL network (within the meaning of that instrument); or

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- (ii) a Victorian Very Small Scale Network that is a FTTP network, a VDSL network or a HFC network (within the meaning of that instrument); and

- (d) that instrument has not ceased to be in force;

the line is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

- (2) If:

- (a) the *Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012* was in force at the start of the designated commencement date; and

- (b) a line came into existence on or after the designated commencement date; and

- (c) the line forms part of the infrastructure of the Telstra South Brisbane Network (within the meaning of that instrument); and

- (d) that instrument has not ceased to be in force;

the line is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

- (3) If:

- (a) the *Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012* was in force at the start of the designated commencement date; and

- (b) a line came into existence on or after the designated commencement date; and

- (c) the line forms part of the infrastructure of a TransACT Upgraded VDSL Network (within the meaning of that instrument); and

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(d) that instrument has not ceased to be in force;
the line is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

(4) If:

(a) the *Telecommunications (Network Exemption—Specified Velocity Networks) Instrument 2012* was in force at the start of the designated commencement date; and

(b) a line came into existence on or after the designated commencement date; and

(c) the line forms part of the infrastructure of a Specified Velocity Network (within the meaning of that instrument); and

(d) that instrument has not ceased to be in force;
the line is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

(5) For the purposes of paragraph (4)(c) of this section, assume that paragraph (c) of the definition of ***Specified Velocity Network*** in the *Telecommunications (Network Exemption—Specified Velocity Networks) Instrument 2012* were modified by omitting all the words from and including “in accordance with” to and including “project”.

143H Exemption—networks marketed as business networks

(1) If:

(a) a local access line is part of the infrastructure of a telecommunications network operated by a carrier; and

- (b) the network is marketed by the carrier exclusively as a business network; and
 - (c) the line is used, or proposed to be used, to supply a superfast carriage service wholly or principally to residential customers, or prospective residential customers, in Australia; and
 - (d) that use or proposed use, when considered in relation to the use or proposed use of all of the local access lines that are part of the infrastructure of the network, is minor; and
 - (e) the other conditions (if any) determined under subsection (2) have been satisfied;
- the line is exempt from section 142C.
- (2) The Minister may, by legislative instrument, determine one or more conditions for the purposes of paragraph (1)(e).

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

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- (b) the ACMA.
- (6) An instrument under subsection (1), (2) or (3) is not a legislative instrument.
- (7) The Minister must not make an instrument under subsection (1), (2) or (3) on or after the designated commencement date.
- (8) Subsection (7) does not prevent the Minister from varying an instrument that was in force immediately after the start of the designated commencement date.

145 Exemption—transport authorities

- (1) Subsections 142C(2) and 143(2) do 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) Subsections 142C(2) and 143(2) do 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

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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 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.
- (5) Subsections 142C(2) and 143(2) do 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) Subsections 142C(2) and 143(2) do 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.

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147 Exemption—gas supply bodies

- (1) Subsections 142C(2) and 143(2) do 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) Subsections 142C(2) and 143(2) do 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) Subsections 142C(2) and 143(2) do not apply if:

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- (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
 - (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) Subsections 142C(2) and 143(2) do 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) Subsections 142C(2) and 143(2) do 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

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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 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 2B—Functional separation undertakings

151A Standard functional separation undertaking

- (1) If a person is a corporation, the person may give a written undertaking (a ***standard functional separation undertaking***) to the ACCC.
- (2) The undertaking must:
 - (a) provide that the person will maintain:
 - (i) a single wholesale business unit; and
 - (ii) a single retail business unit; and
 - (b) provide that the person will maintain arm's length functional separation between:
 - (i) the person's wholesale business unit; and
 - (ii) the person's retail business unit; and
 - (c) provide that the person will ensure that:
 - (i) the terms and conditions relating to price or a method of ascertaining price; and
 - (ii) other terms and conditions;
on which the person's wholesale business unit supplies local access line services to the person's retail business unit are documented; and
 - (d) provide that the person will, to the extent specified in the undertaking, ensure that the workers who perform their duties for the person's wholesale business unit are different from the workers who perform their duties for the person's retail business unit; and
 - (e) provide that the person will, to the extent specified in the undertaking, ensure that there are separate:
 - (i) operational support systems; and
 - (ii) business systems; and
 - (iii) communications systems; and
 - (iv) accounts;for:

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- (v) the person's wholesale business unit; and
- (vi) the person's retail business unit; and
- (f) provide that the person will publish on the person's website:
 - (i) the terms and conditions relating to price or a method of ascertaining price; and
 - (ii) other terms and conditions;on which the person's wholesale business unit offers to supply local access line services to the following:
 - (iii) the person's retail business unit;
 - (iv) the person's wholesale customers or prospective wholesale customers; and
- (g) provide that the person will:
 - (i) if requested to do so by a wholesale customer or prospective wholesale customer, supply a local access line service to the wholesale customer or prospective wholesale customer; and
 - (ii) do so on the terms and conditions that were published on the person's website at the time when the request was made; and
- (h) provide that the person will ensure that information provided to the person's wholesale business unit by the person's wholesale customers is not disclosed to the person's retail business unit; and
- (i) provide that the person will ensure that the person's retail business unit does not obtain, access or use information provided to the person's wholesale business unit by the person's wholesale customers; and
- (j) provide that the person will ensure that information provided to the person's retail business unit by a carrier or carriage service provider (other than information of a kind specified in a determination under subsection (13)) is not disclosed to the person's wholesale business unit; and
- (k) provide that the person will ensure that the person's wholesale business unit does not obtain, access or use information provided to the person's retail business unit by a carrier or carriage service provider (other than information of

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a kind specified in a determination under subsection (13));
and

- (l) provide that the person will use the same customer interface for dealings between:
 - (i) the person's wholesale business unit; and
 - (ii) the person's wholesale customers;as the person uses for dealings between:
 - (iii) the person's wholesale business unit; and
 - (iv) the person's retail business unit; and
- (m) contain such other provisions (if any) as are specified in a determination under subsection (14); and
- (n) not contain a provision of a kind specified in a determination under subsection (15).

Note: A standard functional separation undertaking is supplemented by section 151ZF (which requires eligible services to be supplied on a non-discriminatory basis) and section 151ZG (which requires related activities to be carried on on a non-discriminatory basis).

- (3) An extent specified under paragraph (2)(d) or (e) may be a nil extent.

Form etc.

- (4) The undertaking must:
 - (a) be in a form approved in writing by the ACCC; and
 - (b) be accompanied by such information as is reasonably likely to assist the ACCC to decide whether to accept or reject the undertaking; and
 - (c) be accompanied by the fee (if any) specified in, or ascertained in accordance with, a determination under subsection (16).

Expiry time

- (5) The undertaking must specify the expiry time of the undertaking.

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- (6) The expiry time of the undertaking may be described by reference to the end of a period beginning when the undertaking comes into force.
- (7) Subsection (6) does not, by implication, limit subsection (5).
- (8) The expiry time of the undertaking must not be more than 10 years after the undertaking comes into force.

Fundamental provisions

- (9) The undertaking:
 - (a) must state that the provisions of the undertaking covered by paragraphs (2)(a), (b), (c), (f), (g), (h), (i), (j) and (k) are fundamental provisions; and
 - (b) may state that one or more other provisions of the undertaking are fundamental provisions.

Compliance reports

- (10) The undertaking must provide that the person will give the ACCC periodic reports (to be known as compliance reports) that:
 - (a) relate to the person's compliance with the undertaking; and
 - (b) are in a form approved in writing by the ACCC.

Note: See section 151ZJ (self-incrimination).

Compliance plans

- (11) The undertaking must provide that the person will:
 - (a) prepare a plan (to be known as a compliance plan) setting out the actions to be taken by the person for the purpose of ensuring that the person complies with the undertaking; and
 - (b) give the ACCC:
 - (i) a copy of the compliance plan; and
 - (ii) a copy of any variation of the compliance plan.

ACCC may perform functions or exercise powers

- (12) 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.

Determinations

- (13) The ACCC may, by legislative instrument, determine one or more kinds of information for the purposes of paragraphs (2)(j) and (k).
- (14) The Minister may, by legislative instrument, determine one or more provisions for the purposes of paragraph (2)(m).
- (15) The Minister may, by legislative instrument, determine one or more kinds of provisions for the purposes of paragraph (2)(n).
- (16) The ACCC may, by legislative instrument, determine a fee, or a method of ascertaining a fee, for the purposes of paragraph (4)(c).
- (17) A fee determined under, or ascertained in accordance with, subsection (16) must not be such as to amount to taxation.

151B Deemed standard functional separation undertaking

- (1) The ACCC may, by legislative instrument, determine that, if:
- (a) a corporation is included in a specified class of corporations; and
 - (b) the corporation has, by written notice given to the ACCC, elected to be bound by the determination; and
 - (c) the corporation has not, by written notice given to the ACCC, cancelled the election; and
 - (d) the ACCC has not revoked the election under subsection (7);
- this Act has effect as if:
- (e) the corporation had given a standard functional separation undertaking in the terms set out in the determination; and
 - (f) the ACCC had accepted the undertaking; and

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- (g) if the election was given before the designated commencement date—the undertaking had come into force on the designated commencement date; and
 - (h) if the election was given on or after the designated commencement date—the undertaking had come into force when the election was given to the ACCC.
- (1A) A functional separation undertaking covered by a determination under subsection (1) must comply with the following provisions:
 - (a) paragraphs 151A(2)(a) to (m);
 - (b) subsections 151A(9), (10) and (11).
- (1B) A functional separation undertaking covered by a determination under subsection (1) must not contain a provision of a kind specified in a determination under subsection 151A(15).
- (2) The following provisions do not apply to a functional separation undertaking covered by a determination under subsection (1):
 - (a) subsections 151A(4) to (8);
 - (b) section 151N;
 - (c) section 151P;
 - (d) section 151Q;
 - (e) section 151W.
- (3) If, as a result of an election under a determination under subsection (1), a corporation is taken to have given a standard functional separation undertaking:
 - (a) this Act does not prevent the corporation from giving the ACCC another standard functional separation undertaking; and
 - (b) if the other standard functional separation undertaking comes into force—the corporation is taken to have cancelled the election immediately before the other standard functional separation undertaking comes into force.
- (4) If, as a result of an election under a determination under subsection (1), a corporation is taken to have given a standard functional separation undertaking:

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- (a) this Act does not prevent the corporation, together with one or more other persons, from giving the ACCC a joint functional separation undertaking; and
 - (b) if the joint functional separation undertaking comes into force—the corporation is taken to have cancelled the election immediately before the joint functional separation undertaking comes into force.
- (5) Before making a determination under subsection (1), the ACCC must:
 - (a) publish on the ACCC’s website a notice:
 - (i) setting out the draft determination; and
 - (ii) inviting persons to make submissions to the ACCC about the draft determination within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (6) The time limit must not be shorter than 15 business days after the notice is published.
- (7) If:
 - (a) a standard functional separation undertaking is in force as the result of an election made by a person as mentioned in paragraph (1)(b); and
 - (b) any of the following conditions is satisfied:
 - (i) the person has breached a fundamental provision of the undertaking;
 - (ii) the person has contravened section 151ZF or 151ZG;
 - (iii) the ACCC is satisfied that the person has an unsatisfactory compliance record in relation to functional separation;the ACCC may, by written notice given to the person, revoke the election.

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151C Joint functional separation undertaking

- (1) If 2 or more persons are corporations, those persons may give a joint written undertaking (a *joint functional separation undertaking*) to the ACCC.
- (2) The undertaking must:
 - (a) identify:
 - (i) one or more (but not all) of those persons as the wholesaler or wholesalers for the purposes of the undertaking; and
 - (ii) the remaining person or persons as the retailer or retailers for the purposes of the undertaking; and
 - (b) provide that a wholesaler will not supply a local access line service to a person unless the person is a wholesale customer; and
 - (c) provide that a retailer will not supply a local access line service to a person unless the person is a retail customer; and
 - (d) provide that a wholesaler will, to the extent specified in the undertaking, ensure that the wholesaler's workers will perform their duties exclusively for the wholesaler; and
 - (e) provide that a retailer will, to the extent specified in the undertaking, ensure that the retailer's workers will perform their duties exclusively for the retailer; and
 - (f) provide that a wholesaler will, to the extent specified in the undertaking, ensure that the workers who:
 - (i) are engaged by persons other than the wholesaler; and
 - (ii) perform duties for the wholesaler;are different from the workers who:
 - (iii) are engaged by persons other than the wholesaler; and
 - (iv) perform duties for a retailer; and
 - (g) provide that a retailer will, to the extent specified in the undertaking, ensure that the workers who:
 - (i) are engaged by persons other than the retailer; and
 - (ii) perform duties for the retailer;are different from the workers who:

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- (iii) are engaged by persons other than the retailer; and
 - (iv) perform duties for a wholesaler; and
- (h) provide that a wholesaler will ensure that no director of the wholesaler is a director of a retailer; and
- (i) provide that a retailer will ensure that no director of the retailer is a director of a wholesaler; and
- (j) provide that:
 - (i) the wholesaler or wholesalers; and
 - (ii) the retailer or retailers;will, to the extent specified in the undertaking, have separate:
 - (iii) operational support systems; and
 - (iv) business systems; and
 - (v) communications systems; and
 - (vi) accounts; and
- (k) provide that a wholesaler will publish on the wholesaler's website:
 - (i) the terms and conditions relating to price or a method of ascertaining price; and
 - (ii) other terms and conditions;on which the wholesaler offers to supply local access line services to the following:
 - (iii) a retailer;
 - (iv) its wholesale customers or prospective wholesale customers; and
- (l) provide that a wholesaler will:
 - (i) if requested to do so by a wholesale customer or prospective wholesale customer, supply a local access line service to the wholesale customer or prospective wholesale customer; and
 - (ii) do so on the terms and conditions that were published on the wholesaler's website at the time when the request was made; and
- (m) provide that a wholesaler will ensure that information provided by its wholesale customers (other than the retailer or retailers) is not disclosed to any of the retailers; and

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- (n) provide that a retailer will ensure that it does not obtain, access or use information provided to any of the wholesalers by the wholesaler's wholesale customers; and
- (o) provide that a retailer will ensure that information provided to the retailer by a carrier or carriage service provider, other than:
 - (i) information provided by a wholesaler; or
 - (ii) information of a kind specified in a determination under subsection (15);is not disclosed to any of the wholesalers; and
- (p) provide that a wholesaler will ensure that it does not obtain, access or use information provided to any of the retailers by a carrier or carriage service provider, other than:
 - (i) information provided by a wholesaler; or
 - (ii) information of a kind specified in a determination under subsection (15); and
- (q) provide that a wholesaler will use the same customer interface for dealings between:
 - (i) the wholesaler; and
 - (ii) the wholesaler's wholesale customers (other than the retailer or retailers);as the wholesaler uses for dealings between:
 - (iii) the wholesaler; and
 - (iv) a retailer; and
- (r) contain such other provisions (if any) as are specified in a determination under subsection (16); and
- (s) not contain a provision of a kind specified in a determination under subsection (17).

Note: A joint functional separation undertaking is supplemented by section 151ZF (which requires eligible services to be supplied on a non-discriminatory basis) and section 151ZG (which requires related activities to be carried on on a non-discriminatory basis).

- (3) An extent specified under paragraph (2)(d), (e), (f), (g) or (j) may be a nil extent.

Form etc.

- (4) The undertaking must:
- (a) be in a form approved in writing by the ACCC; and
 - (b) be accompanied by such information as is reasonably likely to assist the ACCC to decide whether to accept or reject the undertaking; and
 - (c) be accompanied by the fee (if any) specified in, or ascertained in accordance with, a determination under subsection (18).

Expiry time

- (5) The undertaking must specify the expiry time of the undertaking.
- (6) The expiry time of the undertaking may be described by reference to the end of a period beginning when the undertaking comes into force.
- (7) Subsection (6) does not, by implication, limit subsection (5).
- (8) The expiry time of the undertaking must not be more than 10 years after the undertaking comes into force.

Fundamental provisions

- (9) The undertaking:
- (a) must state that the provisions of the undertaking covered by paragraphs (2)(a), (b), (c), (h), (i), (k), (l), (m), (n), (o) and (p) are fundamental provisions; and
 - (b) may state that one or more other provisions of the undertaking are fundamental provisions.

Compliance reports

- (10) The undertaking must provide that a wholesaler will give the ACCC periodic reports (to be known as compliance reports) that:
- (a) relate to the wholesaler's compliance with the undertaking; and

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(b) are in a form approved in writing by the ACCC.

Note: See section 151ZJ (self-incrimination).

- (11) The undertaking must provide that a retailer will give the ACCC periodic reports (to be known as compliance reports) that:
- (a) relate to the retailer's compliance with the undertaking; and
 - (b) are in a form approved in writing by the ACCC.

Note: See section 151ZJ (self-incrimination).

Compliance plans

- (12) The undertaking must provide that a wholesaler will:
- (a) prepare a plan (to be known as a compliance plan) setting out the actions to be taken by the wholesaler for the purpose of ensuring that the wholesaler complies with the undertaking; and
 - (b) give the ACCC:
 - (i) a copy of the compliance plan; and
 - (ii) a copy of any variation of the compliance plan.
- (13) The undertaking must provide that a retailer will:
- (a) prepare a plan (to be known as a compliance plan) setting out the actions to be taken by the retailer for the purpose of ensuring that the retailer complies with the undertaking; and
 - (b) give the ACCC:
 - (i) a copy of the compliance plan; and
 - (ii) a copy of any variation of the compliance plan.

ACCC may perform functions or exercise powers

- (14) 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.

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Determinations

- (15) The ACCC may, by legislative instrument, determine one or more kinds of information for the purposes of paragraphs (2)(o) and (p).
- (16) The Minister may, by legislative instrument, determine one or more provisions for the purposes of paragraph (2)(r).
- (17) The Minister may, by legislative instrument, determine one or more kinds of provisions for the purposes of paragraph (2)(s).
- (18) The ACCC may, by legislative instrument, determine a fee, or a method of ascertaining a fee, for the purposes of paragraph (4)(c).
- (19) A fee determined under, or ascertained in accordance with, subsection (18) must not be such as to amount to taxation.

151D Further information about undertaking

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking.

Request for further information

- (2) The ACCC may request the person or persons to give the ACCC further information about the undertaking.
- (3) The ACCC may refuse to consider the undertaking until the person or persons give the ACCC the information.
- (4) The ACCC may withdraw its request for further information, in whole or in part.

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151E Withdrawal of undertaking that is under consideration

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking.

Withdrawal

- (2) The person or persons may withdraw the undertaking at any time before the ACCC makes a decision to accept or reject the undertaking.
- (3) This Act does not prevent the person or persons from giving a fresh undertaking.

Refund of fee

- (4) If:
 - (a) the person or persons withdraw the undertaking; and
 - (b) the person or persons have paid a fee in relation to the undertaking;the ACCC may, on behalf of the Commonwealth, refund the whole or a part of the fee.

151F ACCC to accept or reject functional separation undertaking

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking.

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Decision to accept or reject undertaking

- (2) After considering the undertaking, the ACCC must:
- (a) accept the undertaking; or
 - (b) reject the undertaking.

Notice of decision

- (3) If the ACCC accepts the undertaking, the ACCC must give the person or persons a written notice stating that the undertaking has been accepted.
- (4) If the ACCC rejects the undertaking, the ACCC must give the person or persons a written notice:
- (a) stating that the undertaking has been rejected; and
 - (b) setting out the reasons for the rejection.

ACCC to make decision within 3 months

- (5) The ACCC must take all reasonable steps to ensure that a decision about the undertaking is made under subsection (2) within 3 months after receiving the undertaking.
- (6) In calculating the 3-month period referred to in subsection (5), disregard:
- (a) if:
 - (i) the ACCC has given a notice under section 151K in relation to the undertaking; and
 - (ii) no varied undertaking was given to the ACCC in response to the notice;a day in the period specified in the notice; and
 - (b) if:
 - (i) the ACCC has given a notice under section 151K in relation to the undertaking; and
 - (ii) a varied undertaking was given to the ACCC in response to the notice;a day in the period:

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- (iii) beginning on the day on which the notice was given; and
- (iv) ending at the end of the time limit specified by the ACCC when it published the varied undertaking under section 151G; and
- (c) if the ACCC has not given a notice under section 151K in relation to the undertaking—a day in the period:
 - (i) beginning on the day on which the ACCC published the undertaking under section 151G; and
 - (ii) ending at the end of the time limit specified by the ACCC when it published the undertaking under section 151G; and
- (d) if the ACCC has requested further information under section 151D in relation to the undertaking—a day during any part of which the request, or any part of the request, remains unfulfilled.

Extension of decision-making period

- (7) The ACCC may, by written notice given to the person or persons, extend the 3-month period referred to in subsection (5) (the ***initial 3-month period***), so long as:
 - (a) the extension is for a period of not more than 3 months; and
 - (b) the notice includes a statement explaining why the ACCC has been unable to make a decision on the undertaking within the initial 3-month period.
- (8) As soon as practicable after the ACCC gives a notice under subsection (7), the ACCC must publish a copy of the notice on the ACCC's website.

151G Consultation—acceptance or rejection of undertaking

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking; or
-

- (b) 2 or more persons give the ACCC a joint functional separation undertaking.

Consultation

- (2) Before making a decision to accept or reject the undertaking, the ACCC must:
 - (a) publish on the ACCC's website a notice:
 - (i) setting out the undertaking; and
 - (ii) inviting persons to make submissions to the ACCC about the undertaking within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (3) The time limit must not be shorter than 15 business days after the notice is published.

151H Serial undertakings

- (1) If:
 - (a) a person gives the ACCC a standard functional separation undertaking (the ***first functional separation undertaking***); and
 - (b) the ACCC rejects the first functional separation undertaking; and
 - (c) the person subsequently gives the ACCC another standard functional separation undertaking; and
 - (d) the ACCC is satisfied that any or all of the provisions of the first functional separation undertaking are materially similar to any or all of the provisions of the other functional separation undertaking;the ACCC may refuse to consider the other functional separation undertaking.
- (2) If:

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- (a) 2 or more persons give the ACCC a joint functional separation undertaking (the ***first functional separation undertaking***); and
- (b) the ACCC rejects the first functional separation undertaking; and
- (c) those persons subsequently give the ACCC another joint functional separation undertaking; and
- (d) the ACCC is satisfied that any or all of the provisions of the first functional separation undertaking are materially similar to any or all of the provisions of the other functional separation undertaking;

the ACCC may refuse to consider the other functional separation undertaking.

Refund of fee

- (3) If:
 - (a) the ACCC refuses to consider a functional separation undertaking under this section; and
 - (b) a person or persons have paid a fee in relation to the undertaking;the ACCC must, on behalf of the Commonwealth, refund the fee.

151J Criteria for accepting functional separation undertaking

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking.

Criteria

- (2) In deciding whether to accept the undertaking, the ACCC must have regard to:

- (a) whether the undertaking promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services; and
 - (b) the matters (if any) specified in a determination that was in force under subsection (3) at the time the undertaking was given; and
 - (c) such other matters (if any) as the ACCC considers relevant.
- (3) The Minister may, by legislative instrument, determine one or more matters for the purposes of paragraph (2)(b).

151K Variation of functional separation undertaking that is under consideration

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking (the ***original undertaking***); or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking (the ***original undertaking***).

Notice

- (2) The ACCC may give the person or persons a written notice stating that, if:
 - (a) the person makes, or the persons make, such variations to the original undertaking as are specified in the notice; and
 - (b) the person gives, or the persons give, the varied undertaking to the ACCC within the period specified in the notice;the ACCC will consider the varied undertaking under section 151F as if the varied undertaking had been given to the ACCC instead of the original undertaking.

Treatment of varied undertaking

- (3) If the person gives, or the persons give, the ACCC a varied undertaking in response to the notice, the ACCC must consider the

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varied undertaking under section 151F as if the varied undertaking had been given to the ACCC instead of the original undertaking.

No duty to consider whether to give a notice

- (4) The ACCC does not have a duty to consider whether to give a notice under subsection (2).

151L Replacement of functional separation undertaking that is under consideration

Scope

- (1) This section applies if a person gives the ACCC a standard functional separation undertaking (the ***original undertaking***).

Notice

- (2) The ACCC may give the person a written notice stating that, if:
- (a) the person withdraws the original undertaking; and
 - (b) the person, together with one or more other persons specified in the notice, gives a joint functional separation undertaking in the terms specified in the notice; and
 - (c) the person does the things mentioned in paragraphs (a) and (b) within the time limit specified in the notice;
- the ACCC would be inclined to accept the joint functional separation undertaking.
- (3) The ACCC does not have a duty to consider whether to give a notice under subsection (2).

151M Renewal of functional separation undertaking

- (1) If:
- (a) a standard functional separation undertaking (the ***existing undertaking***) given by a person is in force; and

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- (b) at least 12 months before the expiry of the existing undertaking, the person gives the ACCC another standard functional separation undertaking;
the other undertaking may be expressed to be given by way of renewal of the existing undertaking.

Note: For acceptance or rejection of the other undertaking, see section 151F.

(2) If:

- (a) a joint functional separation undertaking (the ***existing undertaking***) given by 2 or more persons is in force; and
(b) at least 12 months before the expiry of the existing undertaking, those persons give another joint functional separation undertaking to the ACCC;
the other undertaking may be expressed to be given by way of renewal of the existing undertaking.

Note 1: For acceptance or rejection of the other undertaking, see section 151F.

Note 2: For consultation on a decision to accept or reject the other undertaking, see section 151G.

151N Variation of expiry time of certain functional separation undertakings

Standard functional separation undertaking

(1) If:

- (a) a standard functional separation undertaking (the ***existing undertaking***) given by a person is in force; and
(b) another functional separation undertaking is given to the ACCC by the person; and
(c) the ACCC rejects the other undertaking;
the ACCC may, by written notice given to the person, vary the existing undertaking by:
(d) omitting the expiry time specified in the existing undertaking; and
(e) substituting the expiry time specified in the notice.

Note: See also section 142B.

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- (2) The expiry time specified in the notice:
 - (a) must be later than the rejection of the other undertaking; and
 - (b) must not be later than 12 months after the rejection of the other undertaking.
- (3) Subsection 151A(8) does not apply to an expiry time specified in a notice under subsection (1).

Joint functional separation undertaking

- (4) If:
 - (a) a joint functional separation undertaking (the ***existing undertaking***) given by 2 or more persons is in force; and
 - (b) another functional separation undertaking is given to the ACCC by a person who is one of the persons mentioned in paragraph (a); and
 - (c) the ACCC rejects the other undertaking;the ACCC may, by written notice given to each of the persons mentioned in paragraph (a), vary the existing undertaking by:
 - (d) omitting the expiry time specified in the existing undertaking; and
 - (e) substituting the expiry time specified in the notice.

Note: See also section 142B.

- (5) The expiry time specified in the notice:
 - (a) must be later than the rejection of the other undertaking; and
 - (b) must not be later than 12 months after the rejection of the other undertaking.
- (6) Subsection 151C(8) does not apply to an expiry time specified in a notice under subsection (4).

Consultation

- (7) Before making a decision under this section to vary a functional separation undertaking, the ACCC must:
 - (a) publish on the ACCC's website a notice:

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- (i) setting out the proposed variation; and
 - (ii) inviting persons to make submissions to the ACCC about the proposed variation within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (8) The time limit must not be shorter than 15 business days after the notice is published.

151P Duration of functional separation undertaking

Scope

- (1) This section applies if:
- (a) either:
 - (i) a person gives the ACCC a standard functional separation undertaking (the ***new undertaking***); or
 - (ii) 2 or more persons give the ACCC a joint functional separation undertaking (the ***new undertaking***); and
 - (b) the ACCC accepts the new undertaking.

Duration

- (2) If the new undertaking is not expressed to be given by way of renewal of another functional separation undertaking:
- (a) in a case where the new undertaking is accepted before the designated commencement date—the new undertaking comes into force:
 - (i) on the designated commencement date; or
 - (ii) if a later day is specified in the new undertaking—on that day; and
 - (b) in a case where the new undertaking is accepted on or after the designated commencement date—the new undertaking comes into force:
 - (i) on the day after it is accepted; or

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- (ii) if a later day is specified in the new undertaking—on that day; and
 - (c) unless sooner revoked, the new undertaking continues in force until it expires.
- (3) If the new undertaking is expressed to be given by way of renewal of another functional separation undertaking:
 - (a) the new undertaking comes into force immediately after the expiry of the other undertaking; and
 - (b) unless sooner revoked, the new undertaking continues in force until it expires.

151Q Variation of functional separation undertaking that is in force

Scope

- (1) This section applies if:
 - (a) a standard functional separation undertaking given by a person is in force; or
 - (b) a joint functional separation undertaking given by 2 or more persons is in force.

Variation

- (2) The person or persons may give the ACCC a variation of the undertaking.
- (3) If the undertaking is a standard functional separation undertaking, the undertaking as varied must comply with subsections 151A(2), (5), (8), (9), (10) and (11) and paragraph 151A(4)(a).
- (4) If the undertaking is a joint functional separation undertaking, the undertaking as varied must comply with subsections 151C(2), (5), (8), (9), (10), (11), (12) and (13) and paragraph 151C(4)(a).

Form etc.

- (5) The variation must:

- (a) be accompanied by such information as is reasonably likely to assist the ACCC to decide whether to accept or reject the variation; and
 - (b) be accompanied by the fee (if any) specified in, or ascertained in accordance with, a determination under subsection (6).
- (6) The ACCC may, by legislative instrument, determine a fee, or a method of ascertaining a fee, for the purposes of paragraph (5)(b).
- (7) A fee determined under, or ascertained in accordance with, subsection (6) must not be such as to amount to taxation.

151R Further information about variation of functional separation undertaking

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

Request for further information

- (2) The ACCC may request the person or persons to give the ACCC further information about the variation.
- (3) The ACCC may refuse to consider the variation until the person or persons give the ACCC the information.
- (4) The ACCC may withdraw its request for further information, in whole or in part.

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151S Withdrawal of variation that is under consideration

Scope

- (1) This section applies if:
- (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

Withdrawal

- (2) The person or persons may withdraw the variation at any time before the ACCC makes a decision to accept or reject the variation.
- (3) This Act does not prevent the person or persons from giving a fresh variation.

Refund of fee

- (4) If:
- (a) the person or persons withdraw the variation; and
 - (b) the person or persons have paid a fee in relation to the variation;
- the ACCC may, on behalf of the Commonwealth, refund the whole or a part of the fee.

151T ACCC to accept or reject variation

Scope

- (1) This section applies if:
- (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

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Decision to accept or reject variation

- (2) After considering the variation, the ACCC must:
- (a) accept the variation; or
 - (b) reject the variation.

Notice of decision

- (3) If the ACCC accepts the variation, the ACCC must give the person or persons a written notice:
- (a) stating that the variation has been accepted; and
 - (b) setting out the terms of the variation.
- (4) If the ACCC rejects the variation, the ACCC must give the person or persons a written notice:
- (a) stating that the variation has been rejected; and
 - (b) setting out the reasons for the rejection.

ACCC to make decision within 3 months

- (5) The ACCC must take all reasonable steps to ensure that a decision about the variation is made under subsection (2) within 3 months after receiving the variation.
- (6) In calculating the 3-month period referred to in subsection (5), disregard:
- (a) a day in the period:
 - (i) beginning on the day on which the ACCC published the variation under section 151U; and
 - (ii) ending at the end of the time limit specified by the ACCC when it published the variation under section 151U; and
 - (b) if the ACCC has requested further information under section 151R in relation to the variation—a day during any part of which the request, or any part of the request, remains unfulfilled.

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Extension of decision-making period

- (7) The ACCC may, by written notice given to the person or persons, extend the 3-month period referred to in subsection (5) (the ***initial 3-month period***), so long as:
 - (a) the extension is for a period of not more than 3 months; and
 - (b) the notice includes a statement explaining why the ACCC has been unable to make a decision on the variation within the initial 3-month period.
- (8) As soon as practicable after the ACCC gives a notice under subsection (7), the ACCC must publish a copy of the notice on the ACCC's website.

151U Consultation—acceptance or rejection of variation

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

Consultation

- (2) Before making a decision to accept or reject the variation, the ACCC must:
 - (a) publish 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 the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (3) The time limit must not be shorter than 15 business days after the notice is published.

151V Criteria for accepting variation

Scope

- (1) This section applies if:
- (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

Criteria

- (2) In deciding whether to accept the variation, the ACCC must have regard to:
- (a) whether the variation promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services; and
 - (b) the matters (if any) specified in a determination under subsection (3); and
 - (c) such other matters (if any) as the ACCC considers relevant.
- (3) The Minister may, by legislative instrument, determine one or more matters for the purposes of paragraph (2)(b).

151W Revocation of functional separation undertaking

Standard functional separation undertaking

- (1) If:
- (a) a standard functional separation undertaking given by a person is in force; and
 - (b) the person has:
 - (i) breached a fundamental provision of the undertaking; or
 - (ii) contravened section 151ZF or 151ZG;
- the ACCC may, by written notice given to the person, revoke the undertaking.
- (2) If:

Section 151W

- (a) a standard functional separation undertaking given by a person is in force; and
 - (b) the ACCC is satisfied that the person has an unsatisfactory compliance record in relation to functional separation;the ACCC may, by written notice given to the person, revoke the undertaking.
- (3) If:
 - (a) a standard functional separation undertaking given by a person is in force; and
 - (b) the person requests the ACCC, in writing, to revoke the undertaking;the ACCC must, by written notice given to the person, revoke the undertaking.
- (4) A revocation under subsection (1), (2) or (3) takes effect at the time specified in the notice of revocation. The specified time:
 - (a) must not be earlier than the time the notice is given; and
 - (b) must not be later than 12 months after the notice is given.
- (5) After the giving of a notice of revocation of a standard functional separation undertaking under subsection (1), (2) or (3):
 - (a) the undertaking does not apply to local access line services supplied using a local access line that came into existence after the notice was given; and
 - (b) the definitions of **retail business unit** and **wholesale business unit** in section 142A (in so far as those definitions relate to the undertaking) have effect as if references in those definitions to the supply of local access line services did not include the supply of local access line services using a local access line that came into existence after the notice was given.

Joint functional separation undertaking

- (6) If:
 - (a) a joint functional separation undertaking given by 2 or more persons is in force; and

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- (b) any of those persons has:
 - (i) breached a fundamental provision of the undertaking; or
 - (ii) contravened section 151ZF or 151ZG;the ACCC may, by written notice given to each of those persons, revoke the undertaking.
- (7) If:
 - (a) a joint functional separation undertaking given by 2 or more persons is in force; and
 - (b) the ACCC is satisfied that any of those persons has an unsatisfactory compliance record in relation to functional separation;the ACCC may, by written notice given to each of those persons, revoke the undertaking.
- (8) If:
 - (a) a joint functional separation undertaking given by 2 or more persons is in force; and
 - (b) those persons request the ACCC, in writing, to revoke the undertaking;the ACCC must, by written notice given to each of those persons, revoke the undertaking.
- (9) A revocation under subsection (6), (7) or (8) takes effect at the time specified in the notice of revocation. The specified time:
 - (a) must not be earlier than the time the notice is given; and
 - (b) must not be later than 12 months after the notice is given.
- (10) After the giving of a notice of revocation of a joint functional separation undertaking under subsection (6), (7) or (8), the undertaking does not apply to local access line services supplied using a local access line that came into existence after the notice was given.

Matters to which the ACCC must have regard

- (11) In exercising its powers under this section, the ACCC must have regard to the following matters:

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- (a) whether arrangements to maintain the continuity of the supply of superfast carriage services to residential customers using local access lines:
 - (i) have been made; or
 - (ii) can be made before the relevant revocation takes effect;
- (b) in the case of a revocation under subsection (1) or (6)—the consequences of the breach;
- (c) in the case of a revocation under subsection (2) or (7)—the consequences of the person’s unsatisfactory compliance record;
- (d) such other matters (if any) as the ACCC considers relevant.

151X Consultation—revocation of functional separation undertaking

Revocation of standard functional separation undertaking

- (1) Before making a decision under subsection 151W(1) or (2) to revoke a standard functional separation undertaking given by a person, the ACCC must:
 - (a) give the person a written notice:
 - (i) stating that the ACCC proposes to revoke the undertaking; and
 - (ii) inviting the person to make a submission to the ACCC about the revocation within the time limit specified in the notice; and
 - (b) consider any submission received within the time limit specified in the notice.
- (2) The time limit must not be shorter than 15 business days after the notice is given.

Revocation of joint functional separation undertaking

- (3) Before making a decision under subsection 151W(6) or (7) to revoke a joint functional separation undertaking given by 2 or more persons, the ACCC must:

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- (a) give each of those persons a written notice:
 - (i) stating that the ACCC proposes to revoke the undertaking; and
 - (ii) inviting those persons to make submissions to the ACCC about the revocation within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (4) The time limit must not be shorter than 15 business days after the notice is given.

151Y Notification that a person is at risk of having an unsatisfactory compliance record in relation to functional separation

Scope

- (1) This section applies to:
- (a) a breach by a person of a functional separation undertaking given by the person, so long as the breach occurred when the undertaking was in force; and
 - (b) a contravention by a person of section 143B, 151ZA, 151ZB, 151ZF, 151ZG, 151ZH or 151ZI.

Note: See section 142B.

Notification

- (2) If:
- (a) a functional separation undertaking given by a person is in force; and
 - (b) the ACCC is aware of one or more breaches or contraventions by the person; and
 - (c) the ACCC is satisfied that those breaches or contraventions do not mean that the person has an unsatisfactory compliance record in relation to functional separation; and
 - (d) the ACCC is satisfied that, if there were to be a particular kind of additional breach or contravention by the person, the

Section 151Z

person would have an unsatisfactory compliance record in relation to functional separation;

the ACCC must:

- (e) give the person a written notice:
 - (i) stating that the ACCC considers that the person is at risk of having an unsatisfactory compliance record in relation to functional separation; and
 - (ii) informing the person that an unsatisfactory compliance record is a ground for revoking the undertaking; and
- (f) do so as soon as practicable after becoming satisfied as mentioned in paragraph (d).

Note: See section 142B.

- (3) A failure to comply with subsection (2) does not affect the validity of a revocation of a functional separation undertaking.

151Z Variation of functional separation undertaking following giving of revocation notice

Standard functional separation undertaking

- (1) If:
 - (a) the ACCC has given a notice under section 151W revoking a standard functional separation undertaking; and
 - (b) the revocation has not taken effect;the ACCC may, by written notice given to the person who gave the undertaking, vary the undertaking.
- (2) The ACCC must not vary a standard functional separation undertaking under subsection (1) unless the variation:
 - (a) addresses the matter or matters that constituted the grounds for the revocation of the undertaking under section 151W; and
 - (b) does not address any other matter.

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Joint functional separation undertaking

- (3) If:
- (a) the ACCC has given a notice under section 151W revoking a joint functional separation undertaking; and
 - (b) the revocation has not taken effect;
- the ACCC may, by written notice given to each of the persons who gave the undertaking, vary the undertaking.
- (4) The ACCC must not vary a joint functional separation undertaking under subsection (3) unless the variation:
- (a) addresses the matter or matters that constituted the grounds for the revocation of the undertaking under section 151W; and
 - (b) does not address any other matter.

When variation takes effect

- (5) A variation under subsection (1) or (3) takes effect at the time the notice is given.

151ZA Reporting obligations following giving of revocation notice

Standard functional separation undertaking

- (1) If:
- (a) the ACCC has given a notice under section 151W revoking a standard functional separation undertaking; and
 - (b) the revocation has not taken effect;
- the ACCC may, by written notice given to the person who gave the undertaking, direct the person:
- (c) to give the ACCC:
 - (i) a report about the person's compliance with the undertaking; or
 - (ii) information about the person's compliance with the undertaking; or

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- (iii) a report about action that the person has taken, is taking, or proposes to take for the purpose of ensuring that the person complies with sections 142C and 143 after the revocation takes effect; or
- (iv) information about action that the person has taken, is taking, or proposes to take for the purpose of ensuring that the person complies with sections 142C and 143 after the revocation takes effect; and
- (d) to do so within the period specified in the direction.

Note: See section 151ZJ (self-incrimination).

Joint functional separation undertaking

(2) If:

- (a) the ACCC has given a notice under section 151W revoking a joint functional separation undertaking; and
- (b) the revocation has not taken effect;

the ACCC may, by written notice given to a person who gave the undertaking jointly with one or more other persons, direct the person:

- (c) to give the ACCC:
 - (i) a report about the person's compliance with the undertaking; or
 - (ii) information about the person's compliance with the undertaking; or
 - (iii) a report about action that the person has taken, is taking, or proposes to take for the purpose of ensuring that the person complies with sections 142C and 143 after the revocation takes effect; or
 - (iv) information about action that the person has taken, is taking, or proposes to take for the purpose of ensuring that the person complies with sections 142C and 143 after the revocation takes effect; and
- (d) to do so within the period specified in the direction.

Note: See section 151ZJ (self-incrimination).

Compliance with direction

- (3) A person must comply with a direction under subsection (1) or (2).

Ancillary contraventions

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

Civil penalty provisions

- (5) Subsections (3) and (4) are ***civil penalty provisions***.

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

151ZB Requirement to notify changes in control of person who gave undertaking

Notification by person who gave undertaking

- (1) If:
- (a) a functional separation undertaking given by a person (the ***first person***) is in force; and
 - (b) the first person becomes aware that:
 - (i) a person who was not in a position to exercise control of the first person has become in a position to exercise control of the first person; or
 - (ii) a person who was in a position to control the first person has ceased to be in that position;
- the first person must:

Section 151ZB

- (c) notify the ACCC, in writing, of that event; and
- (d) do so as soon as practicable, but not later than 10 business days, after becoming so aware.

Note: See section 154.

- (2) The notice must be in a form approved, in writing, by the ACCC.

Notification by controller of person who gave undertaking

- (3) If:
 - (a) a functional separation undertaking given by a person (the **first person**) is in force; and
 - (b) another person becomes aware that the other person is in a position to exercise control of the first person;the other person must:
 - (c) notify the ACCC, in writing, of that position; and
 - (d) do so as soon as practicable, but not later than 10 business days, after becoming so aware.

Note: See section 154.

- (4) The notice must be in a form approved, in writing, by the ACCC.

Ancillary contraventions

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

Civil penalty provisions

- (6) Subsections (1), (3) and (5) are **civil penalty provisions**.

Section 151ZC

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

151ZC Register of functional separation undertakings

- (1) The ACCC is to maintain a Register in which the ACCC includes:
 - (a) all functional separation undertakings that have been accepted by the ACCC (including those that are no longer in force); and
 - (b) in the case of a functional separation undertaking that, under section 151B, is taken to have been given by a corporation:
 - (i) the name of the corporation; and
 - (ii) the date the undertaking came into force; and
 - (c) all variations of functional separation undertakings.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the ACCC's website.
- (4) The Register is not a legislative instrument.

151ZD Compliance with functional separation undertaking

- (1) If a functional separation undertaking given by a person is in force, the person must comply with the undertaking.

Note: See also section 142B.

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

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- (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.

151ZE Enforcement of functional separation undertaking

- (1) If:

- (a) a functional separation undertaking given by a person is in force; and
- (b) the Federal Court is satisfied, on the application of:
 - (i) the ACCC; or
 - (ii) a carrier; or
 - (iii) a carriage service provider;that the person has breached the undertaking;

the Court may make any or all of the following orders:

- (c) an order directing the person to comply with the undertaking;
- (d) an order directing the disposal of network units, lines, shares or other assets;
- (e) an order restraining the exercise of any rights attached to shares;
- (f) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person;
- (g) an order that any exercise of rights attached to shares be disregarded;
- (h) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (i) any order that the Court considers appropriate directing the person to compensate any other person (who may be the

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applicant) who has suffered loss or damage as a result of the breach;

(j) any other order that the Court considers appropriate.

Note: See also section 142B.

(2) In addition to the Federal Court's powers under subsection (1), the Court:

- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do, or refrain from doing, a specified act; and
- (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.

(3) 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.

(4) 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 2C—Non-discrimination rules

151ZF Eligible services to be supplied on a non-discriminatory basis

No discrimination between wholesale customers

- (1) If:
- (a) an eligible service is supplied, or proposed to be supplied, by a person using a local access line; and
 - (b) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line;
- the person must not, on or after the designated commencement date, discriminate between the person's wholesale customers, or the person's prospective wholesale customers, in relation to the supply of eligible services using the line.
- (2) The rule in subsection (1) does not prevent discrimination against a wholesale customer, or prospective wholesale customer, if the person has reasonable grounds to believe that the wholesale customer or prospective wholesale customer would fail, to a material extent, to comply with the terms and conditions on which the person supplies eligible services using the line.
- (3) Examples of grounds for believing as mentioned in subsection (2) include:
- (a) evidence that the wholesale customer or prospective wholesale customer is not creditworthy; and
 - (b) repeated failures by the wholesale customer or prospective wholesale customer to comply with the terms and conditions on which the person supplied eligible services (whether or not using the line).

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No discrimination by a person in favour of itself

- (4) If:
- (a) a person supplies, or proposes to supply, an eligible service using a local access line:
 - (i) to itself; and
 - (ii) to its wholesale customers or prospective wholesale customers; and
 - (b) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line;
- the person must not, on or after the designated commencement date, discriminate in favour of itself in relation to the supply of the eligible service.

Ancillary contraventions

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1) or (4); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1) or (4); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1) or (4); or
 - (d) conspire with others to effect a contravention of subsection (1) or (4).

Civil penalty provisions

- (6) Subsections (1), (4) and (5) are ***civil penalty provisions***.

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

Section 151ZG

151ZG Eligible services—related activities to be carried on on a non-discriminatory basis

Scope

- (1) This section applies to a person, on and after the designated commencement date, if:
 - (a) an eligible service is supplied, or proposed to be supplied, by a person using a local access line; and
 - (b) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line.

No discrimination between wholesale customers

- (2) The person must not, in carrying on any of the following activities, discriminate between the person's wholesale customers or the person's prospective wholesale customers:
 - (a) developing a new eligible service;
 - (b) enhancing an eligible service;
 - (c) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (d) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (e) an activity that is preparatory to the supply of an eligible service;
 - (f) an activity that is ancillary or incidental to the supply of an eligible service;
 - (g) giving information to service providers about any of the above activities.

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No discrimination by a person in favour of itself

- (3) The person must not discriminate in favour of itself in relation to the carrying on of any of the following activities:
- (a) developing a new eligible service;
 - (b) enhancing an eligible service;
 - (c) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (d) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (e) an activity that is preparatory to the supply of an eligible service;
 - (f) an activity that is ancillary or incidental to the supply of an eligible service;
 - (g) giving information to service providers about any of the above activities.

Ancillary contraventions

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

Civil penalty provisions

- (5) Subsections (2), (3) and (4) are ***civil penalty provisions***.

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

Section 151ZH

151ZH Statement about the differences between an access agreement and an offer etc.

- (1) If:
- (a) an access agreement is entered into by a person on or after the designated commencement date; and
 - (b) the eligible service to which the access agreement relates is an eligible service supplied, or proposed to be supplied, by the person using a local access line; and
 - (c) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line; and
 - (d) immediately before the access agreement was entered into, there was published on the person's website:
 - (i) the terms and conditions relating to price or a method of ascertaining price; or
 - (ii) other terms and conditions;
on which the person offers to supply eligible services using the line; and
 - (e) the terms and conditions set out in the access agreement are not the same as the terms and conditions set out in the offer;
the person must, within 5 business days after the day on which the access agreement was entered into, publish on the person's website a statement, in a form approved in writing by the ACCC:
 - (f) identifying the parties to the access agreement; and
 - (g) describing the differences between the terms and conditions set out in the access agreement and the terms and conditions set out in the offer; and
 - (h) setting out such other information (if any) about the access agreement as is required by the form.

Note: For *access agreement*, see subsection (5).

Variation agreement

(2) If:

- (a) a variation agreement is entered into by a person on or after the designated commencement date; and
- (b) the eligible service to which the relevant access agreement relates is an eligible service supplied, or proposed to be supplied, by the person using a local access line; and
- (c) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line; and
- (d) immediately before the variation agreement was entered into, there was published on the person's website:
 - (i) the terms and conditions relating to price or a method of ascertaining price; or
 - (ii) other terms and conditions;
on which the person offers to supply eligible services using the line; and
- (e) the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) are not the same as the terms and conditions set out in the offer;
the person must, within 5 business days after the day on which the variation agreement was entered into, publish on the person's website a statement, in a form approved in writing by the ACCC:
 - (f) identifying the parties to the relevant access agreement (as varied by the variation agreement); and
 - (g) describing the differences between the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) and the terms and conditions set out in the offer; and

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- (h) setting out such other information (if any) about the relevant access agreement (as varied by the variation agreement) as is required by the form.

Note: For *variation agreement*, see subsection (5).

Publication of offer

(2A) If:

- (a) a person offers to supply eligible services to the person's wholesale customers, or prospective wholesale customers, using a local access line; and
- (b) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line;

the person must publish on the person's website:

- (c) the terms and conditions relating to price or a method of ascertaining price; or
- (d) other terms and conditions;

on which the person offers to supply eligible services to the person's wholesale customers, or prospective wholesale customers, using the line.

Ancillary contraventions

(3) A person must not:

- (a) aid, abet, counsel or procure a contravention of subsection (1), (2) or (2A); or
- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1), (2) or (2A); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1), (2) or (2A); or

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- (d) conspire with others to effect a contravention of subsection (1), (2) or (2A).

Civil penalty provisions

- (4) Subsections (1), (2), (2A) and (3) are ***civil penalty provisions***.

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

Access agreement and variation agreement

- (5) For the purposes of this section, ***access agreement*** and ***variation agreement*** have the same respective meanings as in Part XIC of the *Competition and Consumer Act 2010*. For this purpose, assume that:
 - (a) each reference in section 152AF, subsections 152AG(1) and (3) and section 152BE of that Act to a declared service were a reference to an eligible service; and
 - (b) subsection 152BE(2) of that Act had not been enacted.

151ZHA Judicial enforcement of non-discrimination rules

- (1) If the Federal Court is satisfied that a person has, on or after the designated commencement date, contravened subsection 151ZF(1), (4) or (5), 151ZG(2), (3) or (4) or 151ZH(1), (2), (2A) or (3), the Court may, on the application of:
 - (a) the ACCC; or
 - (b) a carrier; or
 - (c) a carriage service provider;make all or any of the following orders:
 - (d) an order directing the person to comply with that subsection;
 - (e) an order directing the person to compensate any other person (who may be the applicant) who has suffered loss or damage as a result of the contravention;
 - (f) any other order that the Court thinks appropriate.
- (2) The Federal Court may discharge or vary an order granted under this section.

Division 3—Other provisions

151ZI Anti-avoidance

- (1) A corporation must not, either alone or together with one or more other persons:
- (a) enter into a scheme; or
 - (b) begin to carry out a scheme; or
 - (c) carry out a scheme;
- for the sole or dominant purpose of avoiding the application of any provision of this Part in relation to:
- (d) the corporation; or
 - (e) any other corporation.

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.

Scheme

- (4) For the purposes of this section, ***scheme*** means:

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- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or
 - (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;
- but does not include a functional separation undertaking.

151ZJ Self-incrimination

- (1) A person is not excused from:
 - (a) giving a report in compliance with a provision of a functional separation undertaking covered by subsection 151A(10) or 151C(10) or (11); or
 - (b) giving a report or information under section 151ZA:
on the ground that the report or information might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
 - (a) the report or information; or
 - (b) giving the report or information; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the report or information;is not admissible in evidence against the individual:
 - (d) in civil proceedings for the recovery of a penalty; or
 - (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to the report).

151ZK Delegation

The ACCC may, by writing, delegate to a person who is:

- (a) a member of the staff of the ACCC; and
 - (b) an SES employee or acting SES employee;
- the ACCC's powers under any of the following provisions:
- (c) subsection 103(4F) (formal warning);
 - (d) section 151D (further information);
 - (e) subsection 151F(7) (extension of decision-making period);

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- (f) section 151H (serial undertakings);
- (g) section 151R (further information);
- (h) subsection 151T(7) (extension of decision-making period).

151ZL Review by the Australian Competition Tribunal

- (1) If the ACCC makes a decision under section 151F to reject a functional separation undertaking that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (2) If the ACCC makes a decision under section 151N to vary a functional separation undertaking that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (3) If the ACCC makes a decision under section 151T to reject a variation that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (4) If the ACCC makes a decision under section 151W to revoke a functional separation undertaking that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (5) If the ACCC makes a decision under section 151Z to vary a functional separation undertaking that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (6) An application under this section for a review of a decision must be:
 - (a) in writing; and
 - (b) in the case of an application under subsection (1), (3), (4) or (5)—made within 21 days after the ACCC made the decision; and
 - (c) in the case of an application under subsection (2)—made within 14 days after the ACCC made the decision.

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- (7) If the Australian Competition Tribunal receives an application under this section for a review of a decision, the Australian Competition Tribunal must review the decision.

151ZM Functions and powers of the Australian Competition Tribunal etc.

Decision on review

- (1) On a review of a decision of the ACCC of a kind mentioned in section 151ZL, the Australian Competition Tribunal may make a decision:
- (a) affirming the ACCC's decision; or
 - (b) setting aside the ACCC's decision;
- and, for the purposes of the review, the Australian Competition Tribunal may perform all the functions and exercise all the powers of the ACCC.
- (2) A decision by the Australian Competition Tribunal:
- (a) affirming a decision of the ACCC; or
 - (b) setting aside a decision of the ACCC;
- is taken, for the purposes of this Act (other than this section or section 151ZL), to be a decision of the ACCC.
- (3) If the Australian Competition Tribunal sets aside a decision of the ACCC under section 151F to reject a functional separation undertaking, subsection 151F(5) has effect as if the undertaking had been received by the ACCC immediately after the decision was set aside.

Note: This subsection resets the start of the 3-month decision-making period set out in subsection 151F(5).

- (4) If the Australian Competition Tribunal sets aside a decision of the ACCC under section 151T to reject a variation, subsection 151T(5) has effect as if the variation had been received by the ACCC immediately after the decision was set aside.

Note: This subsection resets the start of the 3-month decision-making period set out in subsection 151T(5).

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Conduct of review

- (5) For the purposes of a review by the Australian Competition Tribunal, the member of the Australian Competition Tribunal presiding at the review may require the ACCC to give such information, make such reports and provide such other assistance to the Australian Competition Tribunal as the member specifies.
- (6) For the purposes of a review, the Australian Competition Tribunal may have regard to any information given, documents produced or evidence given to the ACCC in connection with the making of the decision to which the review relates.
- (7) Paragraphs 103(1)(a) and (b) and 108(b) of the *Competition and Consumer Act 2010* have effect, in relation to a review, as if a reference in those paragraphs to that Act included a reference to this Part.

Note: Division 2 of Part IX of the *Competition and Consumer Act 2010* applies to proceedings before the Australian Competition Tribunal.

151ZN Provisions that do not apply in relation to an Australian Competition Tribunal review

Division 1 of Part IX of the *Competition and Consumer Act 2010* does not apply in relation to a review by the Australian Competition Tribunal of a decision of the ACCC of a kind mentioned in section 151ZL of this Act.

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
 - (aa) a line; or
 - (b) a company;is:
 - (c) a partner of the controller; or

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- (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, line 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, line 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.

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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
 - (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

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- (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.
- (4) Subsections (1) to (3) do not apply in determining the meaning of an expression used in:
- (a) section 142C; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 142C applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 142C; or

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- (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 142C applies.

155A When a person is in a position to exercise control of a line

- (1) For the purposes of this Part, a person (the ***controller***) is in a position to exercise control of a line if:
 - (a) the controller legally or beneficially owns the line (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 line; or
 - (ii) to exercise control of the selection of the kinds of services that are supplied using the line; or
 - (iii) to exercise control of the supply of services using the line; or
 - (c) a company other than the controller legally or beneficially owns the line (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

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- (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 line under subsection (1) purely because of being an employee.
- (3) More than one person may be in a position to exercise control of a line.
- (4) Subsections (1) to (3) do not apply in determining the meaning of an expression used in:
 - (a) section 143; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 143 applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 143; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 143 applies.

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156 Deemed networks etc.

(1) For the purposes of this Part, if:

- (a) a telecommunications network is altered or upgraded on or after 1 January 2011, but before the designated commencement date; 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 customers, or prospective residential 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, but before the designated commencement date.

(2) For the purposes of this Part, if:

- (a) a telecommunications network is extended on or after 1 January 2011, but before the designated commencement date; and
- (b) the extended part of the network is capable of being used to supply a superfast carriage service to residential customers, or prospective residential 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, but before the designated commencement date.

(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

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(b) before the designated commencement date, 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;

then:

- (d) subsection (2) does not apply to the extension at any time before the designated commencement date; and
- (e) if, at a time that occurs on or after the designated commencement date, there is in force a legally enforceable agreement that satisfies the following conditions:
 - (i) the agreement provides for the transfer of ownership or control of the infrastructure of the extension to an NBN corporation;
 - (ii) the agreement is covered by a determination made under subsection 577BA(9);subsection (2) of this section does not apply to the extension at that time; and
- (f) if, at a time that occurs on or after the designated commencement date, there is in force a legally enforceable agreement that satisfies the following conditions:
 - (i) the contract provides for the deactivation or decommissioning of the infrastructure of the extension;
 - (ii) the contract was entered into between NBN Co and the listed Optus companies (see subsection (7));

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subsection (2) does not apply to the extension at that time.

- (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*.

- (6) Subsections (1) and (2) do not apply in determining the meaning of an expression used in:
- (a) section 142C; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 142C applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 142C; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 142C applies.

Listed Optus company

- (7) For the purposes of this section, ***listed Optus company*** means:
- (a) Optus Networks Pty Limited (ACN 008 570 330); or
 - (b) Optus Internet Pty Limited (ACN 083 164 532); or
 - (c) Optus Vision Pty Limited (ACN 066 518 821); or
 - (d) Optus Vision Media Pty Limited (ACN 070 870 647); or
 - (e) Optus Systems Pty Limited (ACN 056 541 167); or
 - (f) SingTel Optus Pty Limited (ACN 052 833 208).

156A Certain lines deemed to have come into existence on or after the designated commencement date

- (1) For the purposes of this Part, if:
- (a) a local access line came into existence before the designated commencement date; and
 - (b) before the designated commencement date, the line was used wholly or principally to supply a superfast carriage service to non-residential customers in Australia; and

- (c) on or after the designated commencement date, following:
 - (i) the construction or alteration of premises; or
 - (ii) changes to the activities carried out at premises;the line is used wholly or principally to supply a superfast carriage service to residential customers in Australia; the line is taken to have come into existence on or after the designated commencement date.
- (2) Subsection (1) does not apply in determining the meaning of an expression used in:
 - (a) section 143; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 143 applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 143; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 143 applies.

157 Certain installations and connections are not taken to be an extension, alteration or upgrade of a network

- (1) 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;

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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.

- (2) Subsection (1) does not apply in determining the meaning of an expression used in:
- (a) section 142C; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 142C applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 142C; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 142C applies.

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.
- (2A) Subsection (2) has effect subject to subsection (2B).
- (2B) For the purposes of:
- (a) section 142C; and
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 142C applies; and
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 142C; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 142C applies;

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if a line in a multi-unit building is used to supply a superfast carriage service to a residential customer living in a unit in the building:

- (d) the line is taken to be a **local access line**; and
 - (e) the line is taken to form part of the infrastructure 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.

158A Deemed local access lines

- (1) For the purposes of this Part, if:
- (a) a local access line was in existence immediately before the designated commencement date; and
 - (b) the line is extended on or after the designated commencement date;
- then:
- (c) the extension is taken to be a local access line in its own right; and
 - (d) the local access line referred to in paragraph (c) is taken to have come into existence on or after the designated commencement date.
- (2) Subsection (1) does not apply in determining the meaning of an expression used in:
- (a) section 143; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 143 applies; or
 - (c) any other provision of this Part, so far as that provision relates to:

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- (i) section 143; or
- (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 143 applies.

159 Alteration

- (1) For the purposes of this Part, an **alteration** of a telecommunications network does not include an extension of the network.
- (2) For the purposes of this Part, an **alteration** of a line does not include an extension of the line.

160 Upgrade of telecommunications network

- (1) For the purposes of this Part, an **upgrade** of a telecommunications network does not include an extension of the network.
- (2) For the purposes of this Part, an **upgrade** of a line does not include an extension of the line.

161 Extended meaning of *residential customer*

Home-based business carried on by an individual

- (1) For the purposes of this Part, if a business is carried on (otherwise than in the capacity of trustee) by an individual, and:
 - (a) most or all of the work of the business is carried out at the residence of the individual; or
 - (b) the business does not occupy any premises other than the residence of the individual;the individual, in the individual's capacity as a customer, is taken to be a **residential customer**.

Home-based business carried on by a partnership

- (2) For the purposes of this Part, if a business is carried on by a partnership, and:

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- (a) most or all of the work of the business is carried out at the residence of an individual who is:
 - (i) one of the partners of the partnership; or
 - (ii) the director, or one of the directors, of a corporation that is one of the partners of the partnership; or
 - (b) the business does not occupy any premises other than the residence of an individual who is:
 - (i) one of the partners of the partnership; or
 - (ii) the director, or one of the directors, of a corporation that is one of the partners of the partnership;
- the partnership, in its capacity as a customer, is taken to be a **residential customer**.

Home-based business carried on by a corporation

- (3) For the purposes of this Part, if a business is carried on (otherwise than in the capacity of trustee) by a corporation, and:
 - (a) most or all of the work of the business is carried out at the residence of an individual who is the director, or one of the directors, of the corporation; or
 - (b) the business does not occupy any premises other than the residence of an individual who is the director, or one of the directors, of the corporation;
- the corporation, in its capacity as a customer, is taken to be a **residential customer**.

Home-based business carried on by a trust

- (4) For the purposes of this Part, if a business is carried on by a trust, and:
 - (a) most or all of the work of the business is carried out at the residence of an individual who is:
 - (i) a trustee of the trust; or
 - (ii) the director, or one of the directors, of a corporation that is a trustee of the trust; or
 - (b) the business does not occupy any premises other than the residence of an individual who is:

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- (i) a trustee of the trust; or
 - (ii) the director, or one of the directors, of a corporation that is a trustee of the trust;
- a trustee of the trust, in the trustee's capacity as a customer, is taken to be a *residential customer*.

162 Close proximity

- (1) The Minister may, by legislative instrument, determine that, if specified circumstances exist in relation to premises and a line, the premises are taken, for the purposes of this Part, to be in close proximity to the line.
- (2) The Minister may, by legislative instrument, determine that, if specified circumstances exist in relation to premises and a line, the premises are taken, for the purposes of this Part, not to be in close proximity to the line.
- (3) A determination under subsection (1) or (2) must be of a legislative character.

Delegation to the ACCC

- (4) The Minister may, by writing, delegate to the ACCC any or all of the Minister's powers under the following provisions:
 - (a) subsection (1);
 - (b) subsection (2).
- (5) In performing a delegated function or exercising a delegated power, the ACCC must comply with any written directions of the Minister.

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

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- (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.

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.

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- (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

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- (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*.

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

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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*.

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*.

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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.

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.

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- (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

- (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*.

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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).

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.

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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

- (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

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- (b) an integrated public number database maintained by a person as mentioned in section 472.

public number means a number specified for use in connection with the supply of carriage services to the public in Australia (within the meaning of subsection 456(2)), 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

- (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).

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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

- (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) if there is a numbering scheme manager—a service specified by the ACMA for the purposes of this subparagraph in a legislative instrument; or
 - (va) if there is no numbering scheme manager—a service specified for the purposes of this subparagraph in the numbering plan made by the ACMA; or
 - (vi) a service for despatching a force or service referred to in subparagraph (i), (ii), (iii), (v) or (va);for purposes connected with dealing with the matter or matters raised by the call.

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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 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

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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.

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- (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
 - (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

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- (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:
 - (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.

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- (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;

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- (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

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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.

Section 302A

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

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- 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:

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- (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*.