



Telecommunications Act 1997

No. 47, 1997

An Act about telecommunications, and for related purposes

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Telecommunications Act 1997

No. 47, 1997

An Act about telecommunications, and for related purposes

[Assented to 22 April 1997]

The Parliament of Australia enacts:

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;
 - (e) Part 33;
 - (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 *Trade Practices Act 1974*, 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.
- (2) The other objects of this Act, when read together with Parts XIB and XIC of the *Trade Practices Act 1974*, are as follows:
 - (a) to ensure that standard telephone services, payphones and other carriage services of social importance 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;
 - (b) to provide a framework under which a carriage service that provides digital data capability comparable to an ISDN channel is to become available to all people in Australia:
 - (i) by 1 January 2000; or
 - (ii) by another date having regard to the findings of the review into the timing of the availability of that service;
 - (c) to promote the supply of diverse and innovative carriage services and content services;
 - (d) to promote the development of an Australian telecommunications industry that is efficient, competitive and responsive to the needs of the Australian community;
 - (e) to promote the effective participation by all sectors of the Australian telecommunications industry in markets (whether in Australia or elsewhere);
 - (f) to promote:
 - (i) the development of the technical capabilities and skills of the Australian telecommunications industry; and
 - (ii) the development of the value-adding and export-oriented activities of the Australian telecommunications industry; and
 - (iii) research and development that contributes to the growth of the Australian telecommunications industry;
 - (g) to promote the equitable distribution of benefits from improvements in the efficiency and effectiveness of:
 - (i) the provision of telecommunications networks and facilities; and
 - (ii) the supply of carriage services;
 - (h) to provide appropriate community safeguards in relation to telecommunications activities and to regulate adequately participants in sections of the Australian telecommunications industry;
 - (i) to promote the placement of lines underground, taking into account economic and technical issues, where placing such lines underground is supported by the affected community.

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.
- 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 Authority (*ACA*) 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 may develop *industry codes*.
- Industry codes may be *registered* by the ACA.
- Compliance with an industry code is *voluntary* unless the ACA directs a particular participant in the telecommunications industry to comply with the code.
- The ACA 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*.
- A *universal service regime* is established. The main object of the universal service regime is to ensure that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:
 - (a) standard telephone services; and
 - (b) payphones; and
 - (c) prescribed carriage services.
- Certain local calls are to be charged for on an *untimed basis*.
- The ACA may make *performance standards* to be complied with by carriage service providers in relation to *customer service*.
- Certain carriers and carriage service providers must enter into the *Telecommunications Industry Ombudsman scheme*.
- Provision is made for the *protection of residential customers* of carriage service providers against failure by the providers to supply standard telephone services.
- The ACA may impose requirements on carriers, carriage service providers and certain other persons in relation to *emergency call services*.
- Carriers and carriage service providers must protect the *confidentiality* of communications.
- The ACA, carriers and carriage service providers must do their best to prevent telecommunications networks and facilities from being used to commit offences.

- A carrier or carriage service provider may be required to have an *interception capability*.
- Carriers and carriage service providers must ensure that it is possible to execute a *warrant* issued under the *Telecommunications (Interception) Act 1979*.
- 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 ACA may require certain carriers and carriage service providers to provide *pre-selection* in favour of carriage service providers.
- The Advanced Mobile Phone System is to be phased out by 1 January 2000.
- Carriers and carriage service providers may be required to comply with certain international conventions.
- The Minister may make *Rules of Conduct* about dealings with international telecommunications operators.
- Provision is made for the *technical regulation* of customer equipment, customer cabling and cabling work.
- The ACA may regulate numbering by means of a *numbering plan*.
- Provision is made for *standard agreements* for the supply of carriage services.
- The ACA and the ACCC may hold *public inquiries* about certain matters relating to telecommunications.
- The ACA 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;
- (e) the prohibition of false and misleading statements.

6 Main index

The following is a main index to this Act:

Main Index		
Item	Topic	Provisions
1	AMPS (Advanced Mobile Phone System)	Part 19
2	Calling line identification	Part 18
3	Carriers' powers and immunities	Part 24, Schedule 3
4	Carrier licence conditions	Part 3, Schedule 1
5	Carriers	Part 3
6	Communications, protection of	Part 13
7	Customer service guarantee	Part 9
8	Decisions, review of	Part 29, Schedule 4
9	Defence requirements and disaster plans	Part 16
10	Emergency call services	Part 12
11	Enforcement	Part 28
12	Industry codes and industry standards	Part 6
13	Information-gathering powers	Part 27
14	Injunctions	Part 30
15	Inquiries, public	Part 25
16	International aspects	Part 20
17	Investigations	Part 26
18	Law enforcement agencies, co-operation with	Part 15
19	Liability, vicarious	Part 32
20	Local calls, untimed	Part 8
21	National interest matters	Part 14
22	Network units	Part 2
23	Numbering and electronic addressing	Part 22
24	Penalties, civil	Part 31
25	Performance of carriers and carriage service providers, monitoring of	Part 5
26	Pre-selection	Part 17
27	Residential customers, protection of	Part 11
28	Service provider rules	Part 4, Schedule 2
29	Service providers	Part 4
30	Standard agreements for the supply of carriage services	Part 23

31	Statements, false and misleading	Part 33
32	Technical regulation	Part 21
33	Telecommunications Industry Ombudsman	Part 10
34	Universal service regime	Part 7

7 Definitions

In this Act, unless the contrary intention appears:

ACA means the Australian Communications Authority.

ACA's telecommunications functions has the same meaning as in the *Australian Communications Authority Act 1997*.

ACA's telecommunications powers means the powers conferred on the ACA by or under:

- (a) this Act; or
- (b) Part XIC of the *Trade Practices Act 1974*; or
- (c) section 9 of the *Australian Communications Authority Act 1997*, in so far as that section relates to the ACA's telecommunications functions.

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 *Telstra Corporation Act 1991*; or
- (c) Part XIB of the *Trade Practices Act 1974*; or
- (d) Part XIC of the *Trade Practices Act 1974*; or
- (e) any other provision of the *Trade Practices Act 1974*, 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.

aircraft includes a balloon.

approved universal service plan means an approved universal service plan under Division 4 of Part 7.

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

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*.

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.

Chairman means the Chairman of the ACA.

civil penalty provision means:

- (a) subsection 68(1); or
- (b) subsection 68(2); or
- (c) subsection 101(1); or
- (d) subsection 101(2); or
- (e) subsection 121(2); or
- (f) subsection 121(3); or
- (g) subsection 128(1); or
- (h) subsection 128(2); or
- (i) subsection 221(1); or
- (j) subsection 221(2); or
- (k) subsection 266(1); or
- (l) subsection 266(3).

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.

connected, in relation to:

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

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 purposes means any one or more of the following:

- (a) the operation of command or control systems;
- (b) the operation, direction or use of a defence organisation;
- (c) the operation of intelligence systems;
- (d) the collection or dissemination of information relevant to the security or defence of:
 - (i) the Commonwealth; or
 - (ii) a foreign country that is allied or associated with the Commonwealth;
- (e) the operation or control of weapons systems, including any thing that, by itself or together with any other thing or things, is intended for defensive or offensive use in combat;
- (f) any other matter specified in the regulations.

designated radiocommunications facility has the meaning given by section 31.

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 universal service plan means a draft universal service plan under Division 4 of Part 7.

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

eligible Territory means:

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

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

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

emergency call person means:

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

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

emergency call service means a service for:

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

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

emergency service number has the meaning given by section 466.

exempt network-user means:

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

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

facility means:

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

Federal Court means the Federal Court of Australia.

fixed radiocommunications link has the meaning given by section 35.

immediate circle has the meaning given by section 23.

import means import into Australia.

inspector has the meaning given by section 533.

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

levy means levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*.

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

line link has the meaning given by section 30.

listed carriage service has the meaning given by section 16.

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

National Relay Service means the service operated by the Australian Communication Exchange from 30 May 1995 for the purpose of facilitating the transfer of messages between text telephone users and voice telephone users.

national universal service provider has the meaning given by section 150.

net cost area has the meaning given by section 179 or 181.

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

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.

numbering plan has the meaning given by section 455.

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).

participating carrier has the meaning given by section 146.

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.

public body means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority, or institution, of the Commonwealth, a State or a Territory; or
- (c) an incorporated company all the stock or shares in the capital of which is beneficially owned by one of the following:
 - (i) the Commonwealth;
 - (ii) a State;
 - (iii) a Territory; or

- (d) an incorporated company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by one of the following:
 - (i) the Commonwealth;
 - (ii) a State;
 - (iii) a Territory.

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

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

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

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

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.

regional universal service provider has the meaning given by section 150.

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

service provider has the meaning given by section 86.

service provider rules has the meaning given by section 98.

standard telephone service has the meaning given by section 17.

telecommunications industry includes an industry that involves:

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

Telecommunications Industry Ombudsman means the Telecommunications Industry Ombudsman appointed under the Telecommunications Industry Ombudsman scheme.

Telecommunications Industry Ombudsman scheme means the scheme referred to in section 246.

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.

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

this Act includes the regulations.

universal service obligation has the meaning given by section 149.

universal service provider means:

- (a) the national universal service provider; or
- (b) a regional universal service provider.

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, of the Northern Territory and of Norfolk Island.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

9 Extra-territorial application

This Act applies both within and outside Australia.

10 Extension to external Territories

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.

11 Extension to adjacent areas

- (1) This Act applies in relation to the adjacent 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 adjacent areas. This subsection has effect subject to subsection (2).
- (2) The application of this Act in accordance with subsection (1) in relation to an adjacent 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 adjacent 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 adjacent 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:

adjacent area, in relation to a State or Territory, has the same meaning as in the *Petroleum (Submerged Lands) Act 1967*.

continental shelf has the same meaning as in the *Seas and Submerged Lands Act 1973*.

12 Act subject to Radiocommunications Act

(1) This Act has effect subject to the *Radiocommunications Act 1992*.

(2) However, to avoid doubt, the fact that a person is authorised to do something under a licence under the *Radiocommunications Act 1992* does not entitle the person to do that thing if the person is prohibited by or under this Act from doing it, unless a condition of the licence requires the person to do it.

13 Continuity of partnerships

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

14 Controlled carriage services, controlled networks and controlled facilities

Controlled carriage services

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

- (a) a carrier or carriage service provider supplies, or proposes to supply, a carriage service; and
- (b) the carriage service involves, or will involve, the use of a controlled network, or a controlled facility, of the carrier or of the provider, as the case may be;

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

Controlled networks

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

- (a) a carrier or carriage service provider operates a telecommunications network; and
- (b) the network satisfies the geographical test set out in subsection (4);

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

Controlled facilities

(3) For the purposes of this Act, if:

- (a) a carrier or carriage service provider operates a facility; and

(b) the facility satisfies the geographical test set out in subsection (4); the facility is a **controlled facility** of the carrier or provider, as the case may be.

Geographical test

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

Definition

- (5) In this section:

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

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

15 Content service

- (1) For the purposes of this Act, a **content service** is:
- (a) a broadcasting service; or
 - (b) an on-line information service (for example, a dial-up information service); or
 - (c) an on-line entertainment service (for example, a video-on-demand service or an interactive computer game service); or
 - (d) any other on-line service (for example, an education service provided by a State or Territory government); or
 - (e) a service of a kind specified in a determination made by the Minister for the purposes of this paragraph.
- (2) The Minister may make a written determination for the purposes of paragraph (1)(e).
- (3) A determination made for the purposes of paragraph (1)(e) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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.

17 Standard telephone service

- (1) A reference in a particular provision of this Act to a *standard telephone service* is a reference to a carriage service for each of the following purposes:
 - (a) the purpose of voice telephony;
 - (b) if:
 - (i) voice telephony is not practical for a particular end-user with a disability (for example, because the user has a hearing impairment); and
 - (ii) another form of communication that is equivalent to voice telephony (for example, communication by means of a teletypewriter) would be required to be supplied to the end-user in order to comply with the *Disability Discrimination Act 1992*;the purpose of that form of communication;
 - (c) a purpose declared by the regulations to be a designated purpose for the purposes of that provision;where:
 - (d) the service passes the connectivity test set out in subsection (2); and
 - (e) to the extent that the service is for the purpose referred to in paragraph (a)—the service has the characteristics (if any) declared by the regulations to be the designated characteristics in relation to that service for the purposes of that provision; and
 - (f) to the extent that the service is for the purpose referred to in paragraph (b)—the service has the characteristics (if any) declared by the regulations

to be the designated characteristics in relation to that service for the purposes of that provision; and

- (g) to the extent that the service is for a particular purpose referred to in paragraph (c)—the service has the characteristics (if any) declared by the regulations to be the designated characteristics in relation to that service for the purposes of that provision.
- (2) A service passes the connectivity test if an end-user supplied with the service for a purpose mentioned in paragraph (1)(a), (b) or (c) is ordinarily able to communicate, by means of the service, with each other end-user who is supplied with the same service for the same purpose, whether or not the end-users are connected to the same telecommunications network.
 - (3) The following are examples of purposes that could be declared by regulations made for the purposes of paragraph (1)(c):
 - (a) the purpose of the carriage of data;
 - (b) the purpose of tone signalling.
 - (4) In making a recommendation to the Governor-General at a particular time about the making of regulations for the purposes of paragraph (1)(c), the Minister must have regard to the following matters:
 - (a) whether a carriage service for the purpose proposed to be declared by the regulations can be supplied using the same infrastructure as is, at that time, being used by universal service providers to supply a standard telephone service for the purpose referred to in paragraph (1)(a);
 - (b) such other matters (if any) as the Minister considers relevant.
 - (5) This section does not prevent a characteristic declared by regulations made for the purposes of paragraph (1)(e), (f) or (g) from being a performance characteristic.

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 ACA 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*.

20 Customer cabling

- (1) For the purposes of this Act, *customer cabling* means a line that, under the regulations, is treated as customer cabling.

- (2) Regulations made for the purposes of subsection (1) may deal with a matter by reference to the boundary of a telecommunications network.

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

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

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

21 Customer equipment

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

- (2) Regulations made for the purposes of subsection (1) may deal with a matter by reference to the boundary of a telecommunications network.

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

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

but does not include:

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

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

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

- (1) For the purposes of sections 20 and 21, 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 and 21, the boundary of a telecommunications network is:
- (a) in a case where a telecommunications network is used to supply a carriage service to an end-user in a building by means of a line that enters the building—the point agreed between the customer and the carrier or carriage service provider who operates the telecommunications network, or, failing agreement:
 - (i) if there is a main distribution frame in the building and the line is connected to the frame—the side of the frame nearest to the end-user; or
 - (ii) if subparagraph (i) does not apply but the line is connected to a network termination device located in, on or within close proximity to, the building—the side of the device nearest to the end-user; or
 - (iii) if neither subparagraph (i) nor (ii) applies but the line is connected to one or more sockets in the building—the side nearest to the end-user of the first socket after the building entry point; or
 - (b) in a case where a telecommunications network is used to supply a carriage service to an end-user by means of a satellite-based facility that transmits to, or receives transmissions from, the point where the end user is located—the outer surface of the satellite-based facility; or
 - (c) in a case where:
 - (i) a telecommunications network is used to supply a carriage service to an end-user; and
 - (ii) paragraphs (a) and (b) do not apply;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 Law)—that other body corporate and an officer of that other body corporate;
 - (d) if the person is the Commonwealth:
 - (i) an authority or institution of the Commonwealth (other than an authority or institution that carries on a business as a core function) and a constituent member or an employee of such an authority or institution;
 - (ii) an officer or employee of the Commonwealth;
 - (iii) a member of the Australian Defence Force;
 - (iv) a member of the Australian Federal Police;
 - (v) a member of the Parliament and a member of the staff of a member of the Parliament;
 - (vi) a person who holds or performs the duties of an office under the Constitution or a law of the Commonwealth;
 - (e) if the person is a State:
 - (i) an authority or institution of the State (other than an authority or institution that carries on a business as a core function) and a constituent member or an employee of such an authority or institution;
 - (ii) an officer or employee of the State;
 - (iii) a member of the police force of the State;
 - (iv) a member of the Parliament of the State and a member of the staff of a member of the Parliament of the State;
 - (v) a person who holds or performs the duties of an office under a law of the State;
 - (f) if the person is a Territory:
 - (i) an authority or institution of the Territory (other than an authority or institution that carries on a business as a core function) and a constituent member or an employee of such an authority or institution;
 - (ii) an officer or employee of the Territory;
 - (iii) a member of the police force of the Territory;
 - (iv) a member of the Legislative Assembly of the Territory and a member of the staff of a member of the Legislative Assembly of the Territory;

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

and a constituent member or an employee of the other authority or institution;

- (l) if the person is an authority or institution of a Territory, being an authority or institution that carries on a business as a core function—a constituent member or employee of the authority or institution;
 - (m) if the person is a tertiary education institution:
 - (i) a member of the governing body of the tertiary education institution;
 - (ii) an officer or employee of the tertiary education institution;
 - (iii) a student of the tertiary education institution;
 - (n) a person specified in a determination under subsection (2).
- (2) The Minister may make a written determination specifying persons for the purposes of paragraph (1)(n).
 - (3) A determination under subsection (2) may be unconditional or subject to such conditions (if any) as are specified in the determination.
 - (4) Paragraphs (1)(a) to (m) (inclusive) do not, by implication, limit subsections (2) and (3).
 - (5) The Minister may make a written 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 make a written 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.
 - (8) A determination under subsection (2), (5) or (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
 - (9) For the purposes of this section, a person who holds or performs the duties of the office of Administrator of the Northern Territory is taken to be an officer of that Territory.
 - (10) For the purposes of this section, the Australian Federal Police is taken to be the police force of the Australian Capital Territory.
 - (11) In this section:

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

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

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

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

tertiary education institution means:

- (a) a higher education institution (within the meaning of the *Student and Youth 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 Law.

28 Designated radiocommunications facility

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

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

29 Facilities specified in Ministerial determination

- (1) The Minister may, by written instrument, determine that a specified facility is a *network unit* for the purposes of this Act.
- (2) The determination has effect accordingly.
- (3) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (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.
- (5) A facility other than a line does not form part of any line link.

31 Designated radiocommunications facility

- (1) A reference in this Act to a *designated radiocommunications facility* is a reference to:
 - (a) a base station used, or for use, to supply a public mobile telecommunications service; or
 - (b) a base station that is part of a terrestrial radiocommunications customer access network; or
 - (c) a fixed radiocommunications link; or
 - (d) a satellite-based facility; or
 - (e) a radiocommunications transmitter of a kind specified in a determination under subsection (2); or

(f) a radiocommunications receiver of a kind specified in a determination under subsection (3);

but does not include a reference to:

(g) a base station of a kind declared under subsection (5) to be exempt from this section; or

(h) a fixed radiocommunications link of a kind declared under subsection (5) to be exempt from this section; or

(i) a satellite-based facility of a kind declared under subsection (5) to be exempt from this section.

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

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

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

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

(2) The Minister may make a written determination for the purposes of paragraph (1)(e).

(3) The Minister may make a written determination for the purposes of paragraph (1)(f).

(4) A determination under subsection (2) or (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(5) The Minister may make a written declaration for the purposes of paragraph (1)(g), (h) or (i).

(6) A declaration under subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(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
 - (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.
- (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:
- (a) there is a single freehold or leasehold title (as mentioned in paragraph (1)(a)) in relation to an area of land; and
 - (b) some but not all of that area is subject to a lease granted by the holder of that title;
- then, an area of land:
- (c) all of which is within the area referred to in paragraph (a) of this subsection; and
 - (d) none of which is subject to such a lease;
- is a property unless it is only part of another such area.
- (3) An area of land is not a property except as provided in this section.
- (4) The regulations may prescribe the circumstances in which an area of land in relation to which there is a single freehold or leasehold title is not to constitute a property for the purposes of this Division.
- (5) Despite paragraph (1)(c), the regulations may prescribe the circumstances in which an area of land, the title to which is defined otherwise than by reference to geographical coordinates, is a property.
- (6) In this section:
- land* includes premises and a part of premises, but does not include unalienated Crown land.
- lease* includes sublease and *leasehold title* has a corresponding meaning.

38 Combined areas

- (1) 2 contiguous properties form a combined area.
- (2) If:
- (a) a property is contiguous with another property; and
 - (b) the other property forms part of a combined area;
- the first-mentioned property, and the combined area referred to in paragraph (b), together form a combined area.
- (3) Subsection (2) is recursive, that is, the reference in paragraph (2)(b) to a combined area is a reference to something that is a combined area because of any other application or applications of this section.

39 Principal user of a property

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

40 Eligible combined areas

- (1) The Minister may, by writing, determine that specified combined areas are eligible combined areas for the purposes of paragraph 36(3)(b).
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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 ACA.
- 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 ACA 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 intentionally or recklessly contravenes subsection (1), (2), (3) or (4) is guilty of 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 is guilty of a separate offence in respect of each day (including a day of a conviction under this section or any later day) during which the contravention continues.

44 Supply to the public

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

- (iii) the unit is used to supply designated content services (other than point-to-multipoint services) to one or more end-users, where at least one end-user is outside the overlap of the immediate circles of the owners of the unit;

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

(4) If:

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

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

(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 disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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 Department of Defence; 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 Department of Defence 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 Organization.

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.
- (2) Section 42 does not apply to a network unit if the sole use of the unit is use by the Australian National Railways Commission to carry communications necessary or desirable for the workings of train 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.
- (6) Section 42 does not apply to a network unit if:
 - (a) the principal use of the unit is use by the Australian National Railways Commission 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.
- (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:
 - (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.

- (5) In this section:

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

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

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

49 Exemption—electricity supply bodies

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

- (2) If:

- (a) the principal use of a network unit is use by an electricity supply body to carry communications necessary or desirable for:

- (i) managing the generation, transmission, distribution or supply of electricity; or

- (ii) charging for the supply of electricity; and

- (b) the remaining use of the unit is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;

section 42 does not apply to the unit.

- (3) In this section:

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

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

50 Exemption—line links authorised by or under previous laws

- (1) If:
 - (a) a line link consists of facilities in relation to which an authorisation was in force under paragraph 13(1)(a) of the *Telecommunications Act 1975* immediately before the repeal of that Act; and
 - (b) the sole use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation;section 42 of this Act does not apply to the line link.
- (2) If:
 - (a) a line link consists of facilities in relation to which an authorisation was in force under paragraph 13(1)(a) of the *Telecommunications Act 1975* immediately before the repeal of that Act; and
 - (b) the principal use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation; and
 - (c) the remaining use of the line link is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;section 42 of this Act does not apply to the line link.
- (3) If a line link consists of facilities that:
 - (a) were installed before the repeal of section 45 of the *Telecommunications Act 1989*; and
 - (b) immediately before that repeal, were permitted by that section to be maintained and operated;section 42 of this Act does not apply to the line link.
- (4) If:
 - (a) a line link consists of facilities in relation to which an authorisation was in force under section 46 of the *Telecommunications Act 1989* immediately before the repeal of that Act; and
 - (b) the sole use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation;section 42 of this Act does not apply to the line link.
- (5) If:
 - (a) a line link consists of facilities in relation to which an authorisation was in force under section 46 of the *Telecommunications Act 1989* immediately before the repeal of that Act; and
 - (b) the principal use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation; and
 - (c) the remaining use of the line link is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;section 42 of this Act does not apply to the line link.
- (6) If:

- (a) a line link consists of facilities in relation to which an authorisation was in force under section 108 of the *Telecommunications Act 1991* immediately before the repeal of that Act; and
 - (b) the sole use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation;
- section 42 of this Act does not apply to the line link.

(7) If:

- (a) a line link consists of facilities in relation to which an authorisation was in force under section 108 of the *Telecommunications Act 1991* immediately before the repeal of that Act; and
 - (b) the principal use of the line link is use as provided in, and in accordance with any conditions specified in, the authorisation; and
 - (c) the remaining use of the line link is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services;
- section 42 of this Act does not apply to the line link.

51 Exemption—Ministerial determination

- (1) The Minister may, by written 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.
- (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.
- (4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 3—Carrier licences

52 Applications for carrier licence

A person may apply to the ACA 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 ACA.

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 ACA may, within 28 days after an application is made, request the applicant to give the ACA, within the period specified in the request, further information about the application.
- (2) The ACA may refuse to consider the application until the applicant gives the ACA the information.

56 Grant of licence

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

57 Carrier licence has effect subject to this Act

A carrier licence has effect subject to this Act.

58 Refusal of carrier licence—disqualified applicant

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

When body corporate is disqualified

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

When individual is disqualified—failure to pay annual charge

- (3) For the purposes of subsection (2), an individual is *disqualified* at a particular time (the *test time*) if:

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

*When individual is **disqualified**—failure to pay universal service levy*

- (4) 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(2) because of a failure by the body corporate or partnership to pay in full the levy referred to in that subsection; and
 - (b) in the case of a body corporate—at the time when the levy referred to in subsection 72(2) 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 levy referred to in subsection 72(2) was due and payable, the individual:
 - (i) was an employee of the partnership; and
 - (ii) was concerned in, or took part in, the management of the partnership; and
 - (d) the individual:
 - (i) aided, abetted, counselled or procured the failure of the body corporate or partnership; or
 - (ii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the failure of the body corporate or partnership.

When partnership is disqualified

- (5) For the purposes of this section, a partnership is *disqualified* at a particular time (the *test time*) if:
- (a) at any time before the test time, a carrier licence held by the partnership was cancelled under subsection 72(1) or (2); 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 ACA may refuse to grant a carrier licence.

59 Time limit on licence decision

If the ACA neither grants, nor refuses to grant, a carrier licence before the end of whichever of the following periods is applicable:

- (a) if the ACA did not give a request under section 55 in relation to the licence application—the period of 28 days after the day on which the ACA received the application;
- (b) if:
 - (i) the ACA gave a request under section 55 in relation to the licence application; and
 - (ii) the request was complied with;
the period of 14 days after the day on which the request was complied with;
- (c) if:
 - (i) the ACA gave a request under section 55 in relation to the licence application; and
 - (ii) the request was not complied with;
the period of 28 days after the end of the period specified in the request;
the ACA is taken, at the end of that period, to have refused to grant the licence.

60 Notification of refusal of application

If the ACA refuses to grant a carrier licence, the ACA 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 *Trade Practices Act 1974*

A carrier licence is subject to the condition set out in section 152AZ of the *Trade Practices Act 1974*.

Note: Section 152AZ of the *Trade Practices Act 1974* deals with standard access obligations.

63 Conditions of carrier licence declared by Minister

Conditions applying to each carrier licence

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

Revocation of conditions

- (6) The Minister may, by written 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.

Gazettal

- (10) A copy of an instrument under subsection (1), (2), (3), (5) or (6) is to be published in the *Gazette*.

Date of effect—existing licences

- (11) An instrument under subsection (1), (2), (5) or (6) takes effect:
- (a) on the day on which a copy of the instrument is published in the *Gazette*;
or
 - (b) if the instrument specifies a later day—on that later day.

Date of effect—future licences

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

Disallowable instrument

- (13) An instrument under subsection (1), (2), (3), (5) or (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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
 - (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.

66 Conditions about Telstra's ISDN obligations

- (1) The Minister must ensure that Telstra's carrier licence is subject to one or more conditions directed towards achieving:
- (a) the result that, by 1 July 1997, Telstra is in a position to make available, to at least 93.4% of the Australian population, a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service; and

- (b) the result that, by 31 December 1998, Telstra is in a position to make available, to at least 96% of the Australian population, a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service.
- (2) For the purposes of this section, if:
 - (a) immediately before 1 July 1997, Telstra supplied a basic rate Integrated Services Digital Network (ISDN) service; and
 - (b) the service complied with any of the standards for ISDN services made by the European Telecommunications Standards Institute (ETSI);the service is a *designated basic rate ISDN service*.
- (3) For the purposes of this section, the determination of the comparability of the digital data capability of a carriage service is to be based solely on a comparison of the data transmission speed available to an end-user of the service.
- (4) This section does not, by implication, limit the application of section 63 to Telstra.

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).

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 ACA 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;
 - (b) a direction that the carrier implement a system designed to give the carrier's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the licence, in so far as those requirements affect the employees, agents or contractors concerned.
- (4) A carrier must not contravene a direction under subsection (2).
- (5) Subsection (1) does not apply to a condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369.

Note: Section 369 deals with Rules of Conduct under section 367.
- (6) Subsection (1) does not apply to a condition set out in Part 3 or 4 of Schedule 1.

Note: Parts 3 and 4 of Schedule 1 deal with access to supplementary facilities and network information.
- (7) Subsection (1) does not apply to the condition set out in section 152AZ of the *Trade Practices Act 1974*.

Note: Section 152AZ of the *Trade Practices Act 1974* deals with standard access obligations.

70 Formal warnings—breach of condition

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

Note: Section 369 deals with Rules of Conduct under section 367.
- (3) Subsection (1) does not apply to a condition set out in Part 3 or 4 of Schedule 1.

Note: Parts 3 and 4 of Schedule 1 deal with access to supplementary facilities and network information.
- (4) Subsection (1) does not apply to the condition set out in section 152AZ of the *Trade Practices Act 1974*.

Note: Section 152AZ of the *Trade Practices Act 1974* deals with standard access obligations.
- (5) The ACCC may issue a formal warning if a carrier contravenes any of the following conditions of the carrier licence held by the carrier:
 - (a) the condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369;
 - (b) a condition set out in Part 3 or 4 of Schedule 1;
 - (c) the condition set out in section 152AZ of the *Trade Practices Act 1974*.

71 Surrender of carrier licence

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

72 Cancellation of carrier licence

Failure to pay annual charge

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

Failure to pay universal service levy

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

Note: **Levy** is defined by section 7 to mean levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*.

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 ACA 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 ACA 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 ACA must not cancel a carrier licence under subsection (1), (2), (3) or (4) unless the ACA 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 ACA 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 ACA must give written notice of the cancellation to the person.

73 Collection of charges relating to carrier licences

Definitions

- (1) In this section:

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

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

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

When application charge due and payable

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

When annual charge due and payable

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

Late payment penalty

- (4) The ACA 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 ACA 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 ACA on behalf of the Commonwealth.

Recovery of charge and penalty

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

Payment into Consolidated Revenue Fund

- (9) Amounts received by way of annual charge, application charge or late payment penalty must be paid into the Consolidated Revenue Fund.

Disallowable instrument

- (10) A determination under subsection (3) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

74 Collection of charges on behalf of the Commonwealth

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

75 Cancellation of certain exemptions from charge

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

76 Commonwealth not liable to charge

- (1) The Commonwealth is not liable to pay charge imposed by the *Telecommunications (Carrier Licence Charges) Act 1997*.
- (2) A reference in this section to the *Commonwealth* includes a reference to an authority of the Commonwealth that cannot, by law of the Commonwealth, be made liable to taxation by the Commonwealth.

Division 4—Nominated carrier declarations

77 Applications for nominated carrier declarations

A carrier may apply to the ACA 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.

An application must be accompanied by:

- (a) the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997*; 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.

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 ACA.

80 Further information

- (1) The ACA may request the applicant to give the ACA, within the period specified in the request, further information about the application.
- (2) The ACA may refuse to consider the application until the applicant gives the ACA the information.

81 Making a nominated carrier declaration

- (1) After considering the application, the ACA may declare in writing that the applicant is the nominated carrier in relation to the network units if the ACA 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 ACA may only declare one carrier to be the nominated carrier in relation to the network units.
- (3) The ACA 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*.

82 Notification of refusal of application

If the ACA refuses to make a nominated carrier declaration, the ACA 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 ACA may, by writing, revoke a nominated carrier declaration relating to a nominated carrier if the ACA is satisfied that, if it were assumed that the nominated carrier were to apply for the declaration, the ACA would refuse to make the declaration.
- (2) The ACA 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 ACA a written notice stating that the owner does not consent to the continued operation of the declaration; or
 - (b) the nominated carrier gives the ACA a written notice stating that it does not accept responsibility for the units for the purposes of this Act.

- (3) The ACA must give a copy of the revocation to:
 - (a) the former nominated carrier; and
 - (b) the owner, or each of the owners, of the network units concerned.
- (4) A copy of the revocation must be published in the *Gazette*.
- (5) A revocation under subsection (1) or (2) takes effect on the date specified in the revocation.
- (6) The ACA must not revoke a nominated carrier declaration under subsection (1) unless the ACA 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 ACA 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.

Division 5—Register of nominated carrier declarations and carrier licences

84 Register of nominated carrier declarations and carrier licences

- (1) The ACA is to maintain a Register in which the ACA 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 53 of the *Australian Communications Authority Act 1997*:
 - (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 ACA 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 ACA 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 written 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 46(2) of the *Acts Interpretation Act 1901*.

Intermediaries

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

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

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

Disallowable instrument

- (9) An instrument under subsection (4) or (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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 disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

89 Exemption from definition—customers located on the same premises

- (1) If:
 - (a) the supplier of a carriage service manages a business or other activity carried on at particular premises; and
 - (b) that business or activity is the sole or principal use of the premises; and
 - (c) all of the customers of the service are physically present on the premises;

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

(2) In this section:

premises includes:

- (a) land; and
- (b) a group of buildings that is located in the same vicinity.

90 Exemption from definition—defence

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

(2) In this section:

defence organisation means:

- (a) the Department of Defence; 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 Department of Defence 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 Organization.

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.

(2) 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 the Australian National Railways Commission to carry communications necessary or desirable for the workings of train 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.

(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 written instrument, determine that a specified eligible definition provision does not apply in relation to:
 - (a) a specified carriage service; or
 - (b) a specified person.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (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.
- (4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (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 written 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 46(2) of the *Acts Interpretation Act 1901*.

- (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.
- (4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (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 *Trade Practices Act 1974* is a service provider rule for the purposes of this Act.

Note: Subsection 152BA(2) of the *Trade Practices Act 1974* provides that a carriage service provider must comply with any standard access obligations that are applicable to the provider.

99 Service provider determinations

- (1) The ACA may make a written determination setting out rules that apply to service providers in relation to the supply of either or both of the following:
 - (a) specified carriage services;
 - (b) specified content services.The determination is called a *service provider determination*.
- (2) A service provider determination has effect only to the extent that:
 - (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
 - (b) both:
 - (i) it is authorised by section 122 of the Constitution; and
 - (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.
- (3) The ACA 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 ACA must consult the ACCC.
- (5) A service provider determination may make provision for or in relation to a particular matter by empowering the ACA to make decisions of an administrative character.

- (6) A service provider determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

100 Exemptions from service provider rules

- (1) The Minister may, by written instrument, determine that a specified service provider is exempt from the service provider rules.
- (2) The Minister may, by written 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.
- (5) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

101 Service providers must comply with service provider rules

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

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

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

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

102 Remedial directions—breach of service provider rules

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

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

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

- (6) Subsection (1) does not apply to the rule set out in subsection 152BA(2) of the *Trade Practices Act 1974*.

Note: Subsection 152BA(2) of the *Trade Practices Act 1974* provides that a carriage service provider must comply with any standard access obligations that are applicable to the provider.

103 Formal warnings—breach of service provider rules

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

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

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

- (3) Subsection (1) does not apply to the rule set out in subsection 152BA(2) of the *Trade Practices Act 1974*.

Note: Subsection 152BA(2) of the *Trade Practices Act 1974* provides that a carriage service provider must comply with any standard access obligations that are applicable to the provider.

- (4) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152BA(2) of the *Trade Practices Act 1974*.

- (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 ACA is to monitor, and report each year to the Minister on, significant matters relating to the performance of carriers and carriage service providers.

105 Monitoring of performance

- (1) The ACA must monitor, and report each financial year to the Minister on, all significant matters relating to the performance of:
- (a) carriers; and
 - (b) carriage service providers;
- with particular reference to:
- (c) consumer satisfaction; and
 - (d) consumer benefits; and
 - (e) quality of service.

- (2) In performing its functions under subsection (1), the ACA must have regard to such world best practice performance indicators as the ACA considers appropriate. This subsection does not, by implication, limit subsection (1).
- (3) A report under subsection (1) must set out details of the following matters:
- (a) the efficiency with which carriers and carriage service providers supply:
 - (i) carriage services; or
 - (ii) ancillary goods; or
 - (iii) ancillary services;
 - (b) the adequacy and quality of the:
 - (i) carriage services; or
 - (ii) billing services; or
 - (iii) billing information services; or
 - (iv) ancillary goods; or
 - (v) ancillary services;supplied by carriers or carriage service providers;
 - (c) the adequacy of each carrier's and each carriage service provider's compliance with its obligations under Part 6;
 - (d) the adequacy of each carrier's and each carriage service provider's compliance with:
 - (i) codes registered under Part 6; and
 - (ii) standards determined under Part 6;
 - (e) the adequacy of each universal service provider's compliance with its obligations under Part 7;
 - (f) such other matters relating to the performance of carriers or carriage service providers as the ACA thinks appropriate.
- (4) The ACA must monitor, and report each financial year to the Minister on, the appropriateness and adequacy of the approaches taken by the carriage service providers in carrying out their obligations, and discharging their liabilities, under Part 9.
- (5) The ACA must monitor, and report each financial year to the Minister on, the progress made by carriers and carriage service providers towards making a carriage service that provides digital data capability comparable to an ISDN channel available to all people in Australia.
- (6) The ACA must give a report under subsection (1), (4) or (5) to the Minister as soon as practicable after the end of the financial year concerned.
- (7) The Minister must cause a copy of a report under subsection (1), (4) or (5) to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.
- (8) In this section:

ancillary goods means goods for use in connection with a carriage service.

ancillary service means a service for use in connection with a carriage service.

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 may develop industry codes.
- Industry codes may be registered by the ACA.
- Compliance with an industry code is voluntary unless the ACA directs a particular participant in the telecommunications industry to comply with the code.
- The ACA 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.

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.

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;
 - (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.
- (3) The ACA 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 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*.

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.

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 ACA 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.

- (2) The Parliament intends that the ACA, in exercising its powers under sections 117, 118, 119, 123, 124 and 125, will act in a manner that, in the opinion of the ACA, 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.
- (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, the ACA 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.
- (4) Subsection (3) does 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 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.

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.
- (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).

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*.

Division 4—Industry codes

117 Registration of industry codes

- (1) This section applies if:
- (a) the ACA is satisfied that a body or association represents a particular section of the telecommunications 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 of those participants; and
 - (c) the body or association gives a copy of the code to the ACA; and
 - (d) the ACA 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 ACA is satisfied that, before giving the copy of the code to the ACA:
 - (i) the body or association published a draft of the code 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
 - (f) the ACA is satisfied that, before giving the copy of the code to the ACA:

- (i) the body or association published a draft of the code 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
 - (g) the ACA is satisfied that the ACCC has been consulted about the development of the code; and
 - (h) the ACA is satisfied that the Telecommunications Industry Ombudsman has been consulted about the development of the code; and
 - (i) the ACA 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 ACA is satisfied that the Privacy Commissioner has been consulted about the development of the code.
- (2) The ACA 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.

118 ACA may request codes

- (1) If the ACA is satisfied that a body or association represents a particular section of the telecommunications industry, the ACA 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 of those participants; and
 - (b) give the ACA a copy of the code within the period specified in the notice.
- (2) The period specified in a notice under subsection (1) must run for at least 120 days.
- (3) The ACA must not make a request under subsection (1) in relation to a particular section of the telecommunications industry unless the ACA 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 ACA 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.

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

- (5) The ACA 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

- (1) If the ACA is satisfied that a particular section of the telecommunications industry is not represented by a body or association, the ACA 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 ACA 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 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.

120 Replacement of industry codes

- (1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.
- (2) If the replacement code differs only in minor respects from the original code, section 117 has effect, in relation to the registration of the code, as if paragraphs 117(1)(e) and (f) had not been enacted.

Note: Paragraphs 117(1)(e) and (f) deal with submissions about draft codes.

121 Directions about compliance with industry codes

- (1) If:
 - (a) a person is a participant in a particular section of the telecommunications industry; and
 - (b) the ACA 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 ACA may, by written notice given to the person, direct the person to comply with the industry 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.

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.
- (2) The ACA may issue a formal warning if the person contravenes an industry code registered under this Part.

Division 5—Industry standards

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

- (1) This section applies if:
 - (a) the ACA 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; and
 - (ii) deal with one or more matters relating to the telecommunications activities 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 ACA subsequently refuses to register the code; and
 - (c) the ACA is satisfied that it is necessary or convenient for the ACA 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 ACA may, by written 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 ACA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.
- (4) A standard under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

124 ACA may determine industry standard where no industry body or association formed

- (1) This section applies if:
 - (a) the ACA is satisfied that a particular section of the telecommunications industry is not represented by a body or association; and
 - (b) the ACA 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 ACA 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 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 ACA is satisfied that it is necessary or convenient for the ACA 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 ACA may, by written 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) A standard under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

125 ACA 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; and
 - (ii) deals with one or more matters relating to the telecommunications activities of those participants;
has been registered under this Part for at least 180 days; and
 - (b) the ACA is satisfied that the code is deficient (as defined by subsection (7)); and

- (c) the ACA 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 ACA is satisfied that it is necessary or convenient for the ACA 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 ACA may, by written 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 ACA is satisfied that a body or association represents that section of the industry, the ACA must consult the body or association before determining an industry standard under subsection (3).
 - (5) A standard under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
 - (6) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.
 - (7) For the purposes of this section, an industry code that applies to participants in a particular section of the telecommunications industry and deals with one or more matters relating to the telecommunications activities 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.

126 Industry standards not to be determined for certain privacy matters

The ACA 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 ACA is satisfied that the benefits to the community from the operation of the standard would outweigh the costs of compliance with the standard.

127 Industry standards not to be determined during the first 180 days after commencement

The ACA must not determine an industry standard during the first 180 days after the commencement of this section.

128 Compliance with industry standards

- (1) If an industry standard that applies to participants in a particular section of the telecommunications 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.
- (2) The ACA may issue a formal warning if the person contravenes an industry standard registered under this Part.

130 Variation of industry standards

- (1) The ACA may, by written instrument, vary an industry standard that applies to participants in a particular section of the telecommunications 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 of those participants; and
 - (b) otherwise regulate adequately those participants in relation to one or more matters relating to the telecommunications activities of those participants.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

131 Revocation of industry standards

- (1) The ACA may, by written 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.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

132 Public consultation on industry standards

- (1) Before determining or varying an industry standard, the ACA must:
 - (a) cause to be published in a newspaper circulating in each State a notice:

- (i) stating that the ACA 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 ACA within the period specified under subparagraph (ii); and
- (b) make copies of the draft available in accordance with the notice.
- (2) The period specified under subparagraph (1)(a)(ii) must run for at least 30 days after the publication of the notice.
- (3) Subsection (1) does not apply to a variation if the variation is of a minor nature.
- (4) If interested persons have given comments in accordance with a notice under subsection (1), the ACA 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 ACA must consult the ACCC and the Telecommunications Industry Ombudsman.
- (2) Before revoking an industry standard under subsection 131(1), the ACA must consult the ACCC and the Telecommunications Industry Ombudsman.

134 Consultation with Privacy Commissioner

- (1) This section applies to an industry standard that deals with a matter set out in paragraph 113(3)(f).
- (2) Before determining or varying the industry standard, the ACA must consult the Privacy Commissioner.
- (3) Before revoking the industry standard under subsection 131(1), the ACA must consult the Privacy Commissioner.

135 Consultation with consumer body

- (1) Before determining or varying an industry standard, the ACA 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 ACA must consult at least one body or association that represents the interests of consumers.

Division 6—Register of industry codes and industry standards

136 ACA to maintain Register of industry codes and industry standards

- (1) The ACA is to maintain a Register in which the ACA includes:

- (a) all industry codes required to be registered under this Part; 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.
- (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 53 of the *Australian Communications Authority Act 1997*:
- (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 ACA 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 ACA may provide the relevant information:
- (a) on a data processing device; or
 - (b) by way of electronic transmission.

Part 7—Universal service regime

Division 1—Introduction

137 Simplified outline

The following is a simplified outline of this Part:

- This Part establishes a universal service regime.
- The main object of the universal service regime is to ensure that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:
 - (a) standard telephone services; and
 - (b) payphones; and
 - (c) prescribed carriage services.
- The key elements of the universal service regime are as follows:
 - (a) the specification of the universal service obligation;
 - (b) the declaration of universal service providers;
 - (c) the carrying out of universal service plans;
 - (d) the regulation of universal service charges;

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| <p>(e) the assessment, collection, recovery and distribution of the levy imposed by the <i>Telecommunications (Universal Service Levy) Act 1997</i>.</p> |
|--|

138 Objects

The objects of this Part are to give effect to the following policy principles:

- (a) all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:
 - (i) standard telephone services; and
 - (ii) payphones; and
 - (iii) prescribed carriage services;
- (b) the universal service obligation described in section 149 should be fulfilled as efficiently and economically as practicable;
- (c) the losses that result from supplying loss-making services in the course of fulfilling the universal service obligation should be shared among carriers;
- (d) information on the basis of which, and the methods by which, those losses and those carriers' respective shares in those losses are to be determined should be open to scrutiny by:
 - (i) those carriers; and
 - (ii) the public;to the greatest extent possible without undue damage to a carrier's interests being caused by the disclosure of confidential commercial information.

139 Special meaning of *Australia*

- (1) A reference in this Part to *Australia* includes a reference to:
 - (a) the Territory of Christmas Island; and
 - (b) the Territory of Cocos (Keeling) Islands; and
 - (c) an external Territory specified in the regulations.
- (2) The definition of *Australia* in section 7 does not apply to this Part.

140 Payphones

For the purposes of this Part, a *payphone* is a fixed telephone that:

- (a) is a means by which a standard telephone service is supplied; and
- (b) when in normal working order, cannot be used to make a telephone call (other than a free call or a call made with operator assistance) unless, as payment for the call, or to enable payment for the call to be collected:
 - (i) money, or a token, card or other object, has been put into a device that forms part of, is attached to, or is located near, the telephone; or
 - (ii) an identification number, or a code or other information (in numerical or any other form) has been input into a device that forms part of, is attached to, or is located near, the telephone; or
 - (iii) a prescribed act has been done.

141 Prescribed carriage services

- (1) For the purposes of this Part, a prescribed carriage service is a carriage service specified in the regulations.

- (2) Before 30 September 1998, the Minister must cause to be conducted a review to determine whether a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service should be specified, on and after 31 December 1998, in regulations made for the purposes of subsection (1).
- (3) The review is to deal with the question whether the benefits to the community resulting from so specifying that carriage service would outweigh the costs to the community from so specifying that carriage service.
- (4) If:
 - (a) a carrier makes a submission to the review; and
 - (b) the submission includes a claim that the costs to the community resulting from so specifying that carriage service would outweigh the benefits to the community from so specifying that carriage service;
 the review is to include an examination of whether there is sufficient evidence to substantiate the claim.
- (5) For the purposes of this section, the determination of the comparability of the digital data capability of a carriage service is to be based solely on a comparison of the data transmission speed available to an end-user of the service.
- (6) The Minister must cause to be prepared a report of the review.
- (7) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.
- (8) In this section:

designated basic rate ISDN service has the same meaning as in section 66.

142 Supply of standard telephone services

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

- (a) customer equipment of a kind specified in the regulations; and
- (b) other goods of a kind specified in the regulations; and
- (c) services of a kind specified in the regulations;

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

- (3) In this section:

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

143 Supply of services similar to the National Relay Service to be treated as the supply of standard telephone services

- (1) A reference in this Part to the *supply* of a standard telephone service includes a reference to the supply of a service that is:
- (a) specified in the regulations; and
 - (b) similar in scope and purpose to the National Relay Service; and
 - (c) intended to facilitate personal communication by persons with hearing and/or speech impairments; and
 - (d) for use in connection with the standard telephone service.
- (2) The Minister must take all reasonable steps to ensure that, at all times on and after 30 June 1998, regulations are in force for the purposes of paragraph (1)(a).

144 Supply of prescribed carriage services

A reference in this Part to the *supply* of a prescribed carriage service includes a reference to the supply of:

- (a) customer equipment of a kind specified in the regulations; and
- (b) other goods of a kind specified in the regulations; and
- (c) services of a kind specified in the regulations;

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

145 Service area

For the purposes of this Part, a *service area* is:

- (a) a geographical area within Australia; or
- (b) any area of land; or
- (c) any premises or part of premises;

regardless of size.

146 Participating carriers

- (1) For the purposes of this Part, a person is a *participating carrier* in relation to a financial year if the person was a carrier at any time during the financial year.
- (2) This section does not apply to a person if the person is of a kind declared by the regulations to be exempt from this section.

147 Eligible revenue

For the purposes of this Part, the *eligible revenue* of a participating carrier for a financial year is the amount that, under the regulations, is taken to be the eligible revenue of the carrier for the financial year.

148 Approved auditor

- (1) A reference in this Part to an *approved auditor* is a reference to a person included in a class of persons specified in a written determination made by the ACA for the purposes of this section.
- (2) A copy of a determination under subsection (1) is to be published in the *Gazette*.

Division 2—Universal service obligation

149 Universal service obligation

- (1) For the purposes of this Act, the *universal service obligation* is the obligation:
 - (a) to ensure that standard telephone services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
 - (b) to ensure that payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
 - (c) to ensure that prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.
- (2) To the extent necessary to achieve the obligation mentioned in subsection (1), it is part of the universal service obligation:
 - (a) to supply standard telephone services to people in Australia on request; and
 - (b) to supply, install and maintain payphones in Australia; and
 - (c) to supply prescribed carriage services to people in Australia on request.
- (3) The Minister may make a written determination that it is part of the universal service obligation to supply, install and maintain payphones at specified locations in Australia. The determination has effect accordingly.
- (4) A copy of a determination under subsection (3) must be published in the *Gazette*.
- (5) The regulations may prescribe, for the purpose of paragraph (1)(b), what is, or is not, necessary to ensure that payphones are reasonably accessible as mentioned in that paragraph, including:
 - (a) criteria for determining the locations of payphones; and
 - (b) the process for public consultation on the location of payphones; and
 - (c) the process for resolution of any complaints about the location of payphones.
- (6) Subsection (3) does not limit the generality of subsection (5).
- (7) Subsection (5) does not limit the generality of subsection (3).
- (8) An obligation does not arise under paragraph (2)(a) in relation to particular equipment, goods or services the supply of which is treated under section 142 as

the supply of a standard telephone service if the customer concerned requests not to be supplied with the equipment, goods or services.

- (9) An obligation does not arise under paragraph (2)(c) in relation to particular equipment, goods or services the supply of which is treated under section 144 as the supply of a prescribed carriage service if the customer concerned requests not to be supplied with the equipment, goods or services.
- (10) To avoid doubt, an obligation arising under paragraph (2)(a) in relation to customer equipment requires the customer concerned to be given the option of hiring the equipment.

Division 3—Universal service providers

150 Universal service providers

- (1) The Minister may make a written declaration stating that a specified carrier is the *national universal service provider*.

Note: If a selection system has been determined under section 152, a declaration under this subsection must be consistent with the system.

- (2) The Minister may make a written declaration stating that a specified carrier is the *regional universal service provider* for a specified service area.

Note: If a selection system has been determined under section 153, a declaration under this subsection must be consistent with the system.

- (3) A declaration under subsection (1) or (2) has effect accordingly.
- (4) The Minister must exercise his or her powers under this section in such a way that:
 - (a) at any particular time, there is not more than one declaration in force under subsection (1); and
 - (b) no service area in relation to which a declaration is in force under subsection (2) overlaps (either wholly or in part) with another service area.
- (5) A declaration under this section:
 - (a) takes effect at the start of the next financial year after the one in which it is made; and
 - (b) if it specifies a financial year at whose end it ceases to have effect—ceases to have effect at the end of that financial year, unless sooner revoked.

This subsection has effect subject to subsections (7), (8) and (9).

- (6) A revocation of a declaration under this section takes effect:
 - (a) if it specifies a financial year at whose end it is to take effect—at the end of that financial year; or
 - (b) otherwise—at the end of the financial year in which it is made.

This subsection has effect subject to subsections (7) and (8).

- (7) If:
 - (a) a declaration (the *original declaration*) is in force under subsection (1) in relation to a particular carrier; and
 - (b) a fresh declaration is made under subsection (1); and
 - (c) the fresh declaration is expressed to replace the original declaration with effect from a specified time; and
 - (d) the fresh declaration specifies another carrier;

then:

- (e) the fresh declaration takes effect at that time; and
- (f) the original declaration ceases to have effect at that time.

(8) If:

- (a) a declaration (the *original declaration*) is in force under subsection (2) in relation to a particular carrier and in relation to a particular service area; and
- (b) a fresh declaration is made under subsection (2); and
- (c) the fresh declaration is expressed to replace the original declaration with effect from a specified time; and
- (d) the fresh declaration specifies another carrier; and
- (e) the service area specified in the fresh declaration is the same as the service area specified in the original declaration;

then:

- (f) the fresh declaration takes effect at that time; and
- (g) the original declaration ceases to have effect at that time.

(9) If:

- (a) a declaration is in force under subsection (2) in relation to a particular carrier; and
 - (b) at a particular time, the carrier ceases to hold a carrier licence;
- the declaration ceases to be in force at that time.

(10) A declaration under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(11) A reference in this section to a *carrier* does not include a reference to a person of a kind declared by the regulations to be exempt from section 146.

151 Effect of universal service provider declaration

- (1) The national universal service provider is the universal service provider:
 - (a) for Australia, except each service area in relation to which a declaration is in force under subsection 150(2); and
 - (b) for so much of any service area as is not within such an area.
- (2) A regional universal service provider in relation to a particular service area is the universal service provider:
 - (a) for that area; and
 - (b) for each service area that is within that area.

Note: If, at a particular time during a financial year, a carrier ceases to be the regional universal service provider for a particular service area and is not replaced as the regional universal service provider for that area by another carrier, the national universal service provider automatically becomes the universal service provider for that area.

- (3) For the purposes of this Part, a person in relation to whom a declaration is in force under subsection 150(1) or (2) at any time during a financial year is a universal service provider in relation to the financial year.
- (4) For the purposes of this Part, the areas for which a person is a universal service provider are taken to be a single area.

- (5) The universal service provider for an area must take all reasonable steps to fulfil the universal service obligation, so far as the obligation relates to that area.

152 Selection system for national universal service provider

- (1) The Minister may, by written instrument, determine a selection system for the purpose of selecting a carrier to be the national universal service provider in relation to specified financial years.
- (2) A system so determined must require the selected carrier to have elected that:
 - (a) an amount specified in the election will be the carrier's net universal service cost for the financial year concerned; or
 - (b) a method of ascertaining an amount, being a method specified in the election, will apply for the purposes of determining the carrier's net universal service cost for the financial year concerned.
- (3) A system so determined may require an applicant for selection to give the Minister a copy of the document that the applicant would be required to give to the Minister under section 157 in the event that the applicant is successful. This subsection does not, by implication, limit subsection (1).
- (4) If a system has been determined under this section, the Minister must not exercise the powers conferred by subsection 150(1) in a way that is inconsistent with the system.
- (5) This Part does not prevent a method mentioned in paragraph (2)(b) from being the same as a method that would have applied if the system concerned had not been determined.
- (6) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

153 Selection system for regional universal service providers

- (1) The Minister may, by written instrument, determine a selection system for the purpose of selecting carriers to be regional universal service providers for specified service areas in relation to specified financial years.
- (2) A system so determined must require the selected carrier to have elected that:
 - (a) an amount specified in the election will be the carrier's net universal service cost for the financial year concerned; or
 - (b) a method of ascertaining an amount, being a method specified in the election, will apply for the purposes of determining the carrier's net universal service cost for the financial year concerned.
- (3) A system so determined may require an applicant for selection to give the Minister a copy of the document that the applicant would be required to give to the Minister under section 157 in the event that the applicant is successful. This subsection does not, by implication, limit subsection (1).
- (4) If a system has been determined under this section, the Minister must not exercise the powers conferred by subsection 150(2) in a way that is inconsistent with the system.
- (5) This Part does not prevent a method mentioned in paragraph (2)(b) from being the same as a method that would have applied if the system concerned had not been determined.

- (6) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

154 Selection systems—information-gathering powers

- (1) If the Minister has reason to believe that a carrier or carriage service provider has information that is relevant to:
 - (a) the exercise of the powers conferred on the Minister by subsection 152(1) or 153(1); or
 - (b) the administration of a system determined under subsection 152(1) or 153(1);the Minister may, by written notice given to the carrier or provider, require the carrier or provider to give to the Minister, within the period and in the manner and form specified in the notice, any such information.
- (2) A carrier or carriage service provider must comply with a requirement under subsection (1).

155 Multiple national universal service providers

- (1) The regulations may authorise the Minister to declare that 2 or more carriers are to be national universal service providers.
- (2) The regulations may also authorise the Minister to declare that this Act has effect, in relation to any such declared provider, as if the universal service obligation applicable to the provider were limited as set out in the declaration. However, declarations may only be made in accordance with this subsection for the purpose of dividing the universal service obligation between 2 or more declared providers.
- (3) A declaration made in accordance with this section has effect accordingly.
- (4) The regulations may provide that this Part applies in relation to any such declared providers subject to such modifications as are specified in the regulations.
- (5) In this section:
modifications includes additions, omissions and substitutions.

156 Multiple regional universal service providers

- (1) The regulations may authorise the Minister to declare that 2 or more carriers are to be regional universal service providers for the same service area.
- (2) The regulations may also authorise the Minister to declare that this Act has effect, in relation to any such declared provider, as if the universal service obligation applicable to the provider were limited as set out in the declaration. However, declarations may only be made in accordance with this subsection for the purpose of dividing the universal service obligation between 2 or more declared providers.
- (3) A declaration made in accordance with this section has effect accordingly.
- (4) The regulations may provide that this Part applies in relation to any such declared providers subject to such modifications as are specified in the regulations.

(5) In this section:

modifications includes additions, omissions and substitutions.

Division 4—Universal service plans

157 Universal service provider must submit universal service plan

- (1) A universal service provider for a particular area must give the Minister a draft universal service plan for that area.
- (2) The provider must give the Minister the plan within 90 days after the provider became the universal service provider for that area.

158 Universal service plans

A draft or approved universal service plan for an area is a plan that sets out how the universal service provider for that area will progressively fulfil the universal service obligation (in so far as the obligation relates to that area).

Note: An *approved universal service plan* is a draft universal service plan that has been approved by the Minister.

159 Replacement of approved universal service plan

If an approved universal service plan (the *original plan*) for an area is in force, a draft universal service plan for the area may be expressed to replace the original plan. When the draft plan becomes an approved universal service plan, the original plan ceases to be in force.

160 Approval of draft universal service plan by Minister

- (1) If a universal service provider gives the Minister a draft universal service plan, the Minister must:
 - (a) approve the draft plan; or
 - (b) refuse to approve the draft plan.
- (2) If the Minister approves the draft plan, the draft plan becomes an approved universal service plan.
- (3) If the Minister refuses to approve the draft plan, the Minister may, by written notice given to the provider, direct the provider to give the Minister, within the period and in the terms specified in the direction, a fresh draft universal service plan for the area concerned. The provider must comply with the direction.

161 Public comment—draft plan

- (1) Before giving the Minister a draft universal service plan under section 160, a universal service provider must:
 - (a) publish a preliminary version of the draft plan and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
 - (b) give consideration to any submissions received from members of the public within that period.
- (2) The period specified in the invitation must run for at least 30 days.

- (3) This section does not apply to a draft plan given to the Minister in accordance with a direction under subsection 160(3).
- (4) This section does not apply to a draft plan given to the Minister in accordance with a notice under section 168.

162 Minister to have regard to certain matters

- (1) In deciding whether to approve a draft universal service plan for an area, the Minister must have regard to whether:
 - (a) the plan provides for the universal service obligation (in so far as it relates to that area) to be fulfilled:
 - (i) as efficiently and economically as practicable; and
 - (ii) at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community; and
 - (iii) progressively throughout that area within such period as the Minister considers reasonable; and
 - (b) the draft plan complies with any requirements in force under section 163.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.

163 Minister may formulate requirements for draft plans

- (1) The Minister may, by writing, formulate requirements to be complied with by draft universal service plans.
- (2) The following are examples of requirements:
 - (a) timetables for the supply of services;
 - (b) performance standards relating to the fulfilment of the universal service obligation;
 - (c) the form of a draft universal service plan.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

164 Notification of decision

- (1) After deciding whether to approve a draft universal service plan for an area, the Minister must give a written notice setting out the decision to:
 - (a) the universal service provider for the area; and
 - (b) the ACA.
- (2) A copy of a notice under subsection (1) must be published in the *Gazette*.
- (3) If the Minister refuses to approve a draft universal service plan for an area, the Minister must give a written notice setting out the reasons for the refusal to the universal service provider for the area.

165 Variation of approved universal service plan

- (1) This section applies if:
 - (a) an approved universal service plan for an area (the *current plan*) is in force; and

- (b) the universal service provider for the area gives the Minister a draft variation of the plan.
- (2) The Minister must:
 - (a) approve the variation; or
 - (b) refuse to approve the variation.
- (3) The Minister must not approve the variation unless the Minister is satisfied that, if it were assumed that the universal service provider were to give the Minister a draft universal service plan in the same terms as the current plan (as proposed to be varied), the Minister would approve that draft plan.
- (4) After deciding whether to approve the variation, the Minister must give a written notice setting out the decision to:
 - (a) the universal service provider; and
 - (b) the ACA.
- (5) A copy of a notice under subsection (4) must be published in the *Gazette*.
- (6) If the Minister refuses to approve the variation, the Minister must give a written notice setting out the reasons for the refusal to the universal service provider.
- (7) If the Minister approves the variation, the current plan is varied accordingly.

166 Public comment—variation of plan

- (1) Before giving the Minister a draft variation of a plan under section 165, a universal service provider must:
 - (a) publish a preliminary version of the draft variation and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
 - (b) give consideration to any submissions that were received from members of the public within that period.
- (2) The period specified in the invitation must run for at least 30 days.
- (3) This section does not apply to a draft variation given to the Minister in accordance with a notice under section 168.

167 Minister may direct the ACA to give reports and/or advice

- (1) Before deciding whether to approve a draft universal service plan or a draft variation of an approved universal service plan, the Minister may direct the ACA to give the Minister such reports and/or advice as the Minister requires to assist in making the decision.
- (2) The ACA must comply with the direction.
- (3) This section does not, by implication, limit the Minister's powers under section 486 (which deals with public inquiries).

168 Minister may direct variation or replacement of plan

- (1) This section applies if an approved universal service plan (the *current plan*) for an area is in force.

- (2) The Minister may give the universal service provider for the area a written notice requiring the provider:
 - (a) within the period and in the terms set out in the notice, to give the Minister a draft variation of the current plan; or
 - (b) within the period and in the terms set out in the notice, to give the Minister a fresh draft universal service plan for the area that is expressed to replace the current plan.
- (3) The provider must comply with the notice.

169 Compliance with approved universal service plan

If an approved universal service plan for an area is in force, the universal service provider for the area must take all reasonable steps to ensure that the plan is complied with.

170 Register of universal service plans

- (1) The ACA is to maintain a Register in which the ACA includes all approved universal service plans currently in force.
- (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 53 of the *Australian Communications Authority Act 1997*:
 - (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 ACA 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 ACA may provide the relevant information:
 - (a) on a data processing device; or
 - (b) by way of electronic transmission.

Division 5—Regulation of universal service charges

171 Universal service charges

- (1) This section applies if a person is the universal service provider for a particular area.
- (2) For the purposes of this Division, a ***universal service charge*** is a charge imposed, or proposed to be imposed, by the person for:
 - (a) the supply of standard telephone services to persons in the area; or
 - (b) calls made from payphones in the area; or
 - (c) the supply of prescribed carriage services to persons in the area.

172 Declaration subjecting universal service charges to price control arrangements

- (1) The Minister may, by notice published in the *Gazette*, declare that specified universal service charges are subject to price control arrangements under this Division.
- (2) A declaration under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

173 Price control determinations

- (1) This section applies if a declaration is in force under section 172 in relation to a particular universal service charge.
- (2) The Minister may make a written determination setting out:
 - (a) price-cap arrangements and other price control arrangements that are to apply in relation to the charge; or
 - (b) principles or rules in accordance with which the universal service provider may impose or alter the charge;or both.
- (3) A determination has effect accordingly.
- (4) A determination under this section takes effect at the start of the next financial year after the one in which it is made.
- (5) A determination under this section may make different provision with respect to different customers. This section does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

174 Content of price control determinations

- (1) A determination under section 173 relating to a universal service charge may:
 - (a) prohibit the charge from being imposed or altered without the Minister's consent; or
 - (b) prohibit the charge from being imposed or altered without the ACCC's consent; or
 - (c) prohibit the charge from being imposed or altered without prior notice being given to the Minister; or
 - (d) prohibit the charge from being imposed or altered without prior notice being given to the ACCC; or
 - (e) empower the Minister to direct the ACCC to give the Minister such reports and advice as the Minister requires for the purposes of assisting the Minister in deciding whether to give a consent in accordance with the determination.
- (2) Subsection (1) does not, by implication, limit section 173.

175 Price control determinations subject to determinations under Telstra Corporation Act

- (1) This section applies if a determination under subsection 20(1) or 23(1) of the *Telstra Corporation Act 1991* is in force in relation to a charge imposed, or proposed to be imposed, by Telstra.
- (2) A determination under this Division is of no effect in so far as it relates to that charge.

176 Compliance with price control determinations

A universal service provider must comply with a determination in force under this Division.

Division 6—Assessment, collection, recovery and distribution of universal service levy

Subdivision A—Simplified outline

177 Simplified outline

The following is a simplified outline of this Division:

- This Division sets out a scheme under which losses that result from supplying services in the course of fulfilling the universal service obligation are shared among carriers.
- If a universal service provider incurs a loss (called a *net universal service cost*) from supplying services to certain areas (*net cost areas*) in the course of fulfilling the universal service obligation, the provider may be entitled to a payment (a *levy credit*) to recoup those losses.
- A levy credit is funded out of the proceeds of the levy imposed on carriers by the *Telecommunications (Universal Service Levy) Act 1997*.
- Certain information about the operation of the scheme is available to the public.
- The ACA is required to make an annual assessment of levies and levy credits.
- The ACA may make advances on account of levy credits.
- Certain carriers are required to obtain guarantees given by third persons in relation to the discharge of the carriers' liability for levy.

Subdivision B—Net cost areas

178 Universal service provider must propose service areas for declaration as net cost areas—ordinary declaration

- (1) This section applies if a person is a universal service provider on the first day of a financial year.
- (2) Within 60 days after the beginning of the financial year, the person must give the ACA a written notice that:
 - (a) specifies service areas for which the person is the universal service provider and that, in the person's opinion, the ACA should declare under section 179 as net cost areas for the financial year; and
 - (b) sets out why, in the person's opinion, the ACA should so declare the specified areas.
- (3) A notice under subsection (2) must be in a form approved in writing by the ACA.
- (4) In addition to the matters set out in paragraphs (2)(a) and (b), a notice under subsection (2) must contain such other information (if any) as the approved form of notice requires.

179 Net cost areas—ordinary declarations

- (1) The ACA must comply with this section within 60 days after receiving a notice under section 178 from a person.
- (2) For each service area specified in the notice, the ACA must decide:
 - (a) to declare the area as a net cost area for the financial year; or
 - (b) to declare as a net cost area for the financial year a service area if:
 - (i) the person is the universal service provider for the area; and
 - (ii) the area includes the whole or a part of the service area specified in the notice; or
 - (c) not to declare as mentioned in paragraph (a) or (b).
- (3) If the ACA makes a decision under paragraph (2)(a) or (b), the ACA must make a written declaration stating that the area concerned is a net cost area for the financial year. The declaration has effect accordingly.
- (4) Before making a decision under subsection (2), the ACA may make whatever inquiries it thinks necessary or desirable in order to determine what decision it should make under that subsection.
- (5) In making a decision under subsection (2), the ACA must:
 - (a) have regard to the reasons specified in accordance with paragraph 178(2)(b); and
 - (b) comply with any directions in force under section 182.

180 Universal service provider may propose service areas for declaration as net cost areas—special declaration

- (1) This section applies if a person is a universal service provider on the first day of a financial year.

- (2) During the financial year, or within 45 days after the end of the financial year, the person may give the ACA written notice that:
 - (a) specifies service areas for which the person is the universal service provider and that, in the person's opinion, the ACA should declare under section 181 as net cost areas for the financial year; and
 - (b) sets out why, in the person's opinion, the ACA should so declare the specified areas.
- (3) A notice under subsection (2) must be in a form approved in writing by the ACA.
- (4) In addition to the matters set out in paragraphs (2)(a) and (b), a notice under subsection (2) must contain such other information (if any) as the approved form of notice requires.

181 Net cost areas—special declarations

- (1) The ACA must comply with this section within 30 days after receiving a notice under section 180 from a person.
- (2) For each service area specified in the notice, the ACA must decide:
 - (a) to declare the area as a net cost area for the financial year; or
 - (b) not to declare as mentioned in paragraph (a).
- (3) If the ACA makes a decision under paragraph (2)(a), the ACA must make a written declaration stating that the area concerned is a net cost area for the financial year. The declaration has effect accordingly.
- (4) Before making a decision under subsection (2), the ACA may make whatever inquiries it thinks necessary or desirable in order to determine what decision it should make under that subsection.
- (5) In making a decision under subsection (2), the ACA must:
 - (a) have regard to the reasons specified in accordance with paragraph 180(2)(b); and
 - (b) comply with any directions in force under section 182.
- (6) The ACA must not make a declaration under this section stating that an area is a net cost area for the financial year unless the ACA is satisfied that:
 - (a) the person has incurred, or is likely to incur, a substantial loss attributable to the supply by the person of services to the area during the financial year; and
 - (b) the loss is wholly the result of circumstances beyond the person's control; and
 - (c) when the person became aware of those circumstances, the person took all reasonable steps to minimise the loss.
- (7) A reference in subsection (6) to a person supplying services to an area during a financial year is a reference to the person:
 - (a) supplying standard telephone services to persons in the area; or
 - (b) supplying, installing or maintaining payphones in the area; or
 - (c) supplying prescribed carriage services in the area;during that financial year.

182 Minister may give directions about declaring net cost areas

The Minister may give the ACA written directions about:

- (a) the criteria it should apply; or
- (b) the matters to which it should have regard;

in deciding whether or not to declare an area as a net cost area for a financial year.

Subdivision C—Assessment of liability for levy and of entitlement to levy distributions

183 Claims for levy credit

- (1) This section applies to a financial year if a person is a universal service provider in relation to the financial year.
- (2) Within the period of 90 days after the end of the financial year, the person may give the ACA a written claim for a levy credit for that financial year.
- (3) The claim must be in a form approved in writing by the ACA.
- (4) The claim must set out:
 - (a) the person's net universal service cost for the financial year (worked out under section 186); and
 - (b) details of how that net universal service cost has been worked out; and
 - (c) such other information (if any) as the approved form of claim requires.
- (5) The claim must be accompanied by a report of an approved auditor that:
 - (a) is in a form approved in writing by the ACA; and
 - (b) states that the auditor has been given sufficient access to the person's records in order to audit the claim; and
 - (c) states that the auditor has audited the claim; and
 - (d) contains a declaration of the opinion of the auditor, being a declaration in the terms specified in the form.
- (6) A form approved by the ACA for the purposes of subsection (3) may provide for verification by a statutory declaration of statements in claims for levy credits.

184 No levy payable unless at least one claim for a levy credit is made

- (1) This section applies to a financial year if, at the end of the period of 90 days after the end of the financial year, no claim for a levy credit for that financial year has been lodged under section 183.
- (2) No person is liable to pay an amount of levy in respect of the financial year.

185 ACA to give copies of claims to other participating carriers

- (1) This section applies if a claim for a levy credit for a financial year is lodged under section 183.
- (2) As soon as practicable, and in any case within 14 days, after the lodgment, the ACA must give a copy of the claim to each person (other than the person who lodged the claim) who is a participating carrier for that financial year.

186 Net universal service cost of a universal service provider for a financial year

(1) A person's net universal service cost for a financial year depends on which of the following paragraphs is applicable for that financial year:

(a) if:

- (i) the person is a universal service provider in relation to that financial year because of the operation of a selection system determined under section 152 or 153; and
- (ii) the person has elected that a specified amount will be the person's net universal service cost for the financial year;

the person's net universal service cost for the financial year is equal to that amount;

(b) if:

- (i) the person is a universal service provider in relation to that financial year because of the operation of a selection system determined under section 152 or 153; and
- (ii) the person has elected that a specified method of ascertaining an amount will apply for the purposes of determining the person's net universal service cost for the financial year;

the person's net universal service cost for the financial year is worked out using that method;

(c) if:

- (i) the person is a universal service provider in relation to that financial year; and
- (ii) the person is not a universal service provider in relation to that financial year because of the operation of a selection system determined under section 152 or 153; and
- (iii) a determination is in force under subsection (6) in relation to that financial year;

the person's net universal service cost for the financial year is worked out in accordance with the determination;

(d) if:

- (i) the person is a universal service provider in relation to that financial year; and
- (ii) the person is not a universal service provider in relation to that financial year because of the operation of a selection system determined under section 152 or 153; and
- (iii) no determination is in force under subsection (6) in relation to that financial year;

then:

- (iv) if the amount worked out using the formula in subsection (2) is greater than zero dollars—the person's net universal service cost for the financial year is equal to that amount; or
- (v) if the amount worked out using the formula in subsection (2) is not greater than zero dollars—the person's net universal service cost for the financial year is zero dollars.

(2) The formula is:

Avoidable costs – Revenue forgone

where:

avoidable costs means:

- (a) if a determination is in force under subsection (9)—the amount ascertained in accordance with the determination; or
- (b) if no determination is in force under subsection (9)—the total of:
 - (i) the amount (if any) by which the total costs (in this definition called the **operating costs**) incurred by the person during that financial year (other than the allowances, costs and amounts referred to in subparagraphs (ii), (iii) and (iv)) exceed what it is reasonable to expect that the operating costs would have been if the person had not supplied services to net cost areas during the financial year; and
 - (ii) the amount (if any) by which the total allowances made by the person for depreciation during that financial year of capital items exceed what it is reasonable to expect that the total allowances so made would have been if the person had not supplied services to net cost areas during the financial year; and
 - (iii) the amount (if any) by which the person's total opportunity costs of capital for that financial year exceed what it is reasonable to expect that those costs would have been if the person had not supplied services to net cost areas during the financial year; and
 - (iv) the amounts (if any) specified, for the purposes of this paragraph, in such provisions of determinations under section 189 as apply in relation to the person, in relation to the financial year, because of section 190.

revenue forgone means an amount equal to so much of the revenue earned by the person during that financial year as it is reasonable to expect that the person would not have earned during that financial year if the person had not supplied services to net cost areas during that financial year.

- (3) A reference in subsection (2) to a person supplying services to net cost areas during a financial year is a reference to the person:
 - (a) supplying standard telephone services to persons in the net cost areas for that financial year for which the person was the universal service provider; or
 - (b) supplying, installing or maintaining payphones in those areas; or
 - (c) supplying prescribed carriage services in those areas;during that financial year.
- (4) If the person was a carrier for part only of the financial year, a reference in subsection (2) or (3) to the financial year is a reference to that part of the financial year.
- (5) An amount applicable to a person under subsection (2) for a financial year must be determined in accordance with such provisions of determinations under section 189 as apply in relation to the person, in relation to the financial year, because of section 190.
- (6) The Minister may make a written determination specifying a method of ascertaining an amount for the purposes of paragraph (1)(c). The determination has no effect unless each person who was a participating carrier immediately before the determination was made gave a written consent to the making of the determination.
- (7) The amount worked out under a determination under subsection (6) may be zero dollars.

- (8) A copy of a determination under subsection (6) must be published in the *Gazette*.
- (9) The ACA may make a written determination specifying a method of ascertaining an amount for the purposes of paragraph (a) of the definition of **avoidable costs** in subsection (2).
- (10) A determination under subsection (9) must provide for an amount to be ascertained wholly or partly by reference to an indexation factor.
- (11) A determination under subsection (9):
 - (a) may only be made with the Minister's consent; and
 - (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (12) Before making a determination under subsection (9), the ACA must consult each person who was a participating carrier immediately before the determination was made.

187 Reduction of excessive costs etc.

- (1) The Minister may, by written instrument, formulate principles that are to be applied in determining the extent (if any) to which costs, allowances or opportunity costs of a kind mentioned in subparagraph (b)(i), (ii) or (iii) of the definition of **avoidable costs** in subsection 186(2) are to be treated as excessive for the purposes of subsection (2) of this section.
- (2) For the purposes of the calculation of the formula in subsection 186(2) in relation to a particular financial year, if:
 - (a) any of the following conditions are satisfied:
 - (i) a person has incurred costs of a kind mentioned in subparagraph (b)(i) of the definition of **avoidable costs** in subsection 186(2);
 - (ii) a person has made allowances of a kind mentioned in subparagraph (b)(ii) of that definition;
 - (iii) a person has opportunity costs of a kind mentioned in subparagraph (b)(iii) of that definition; and
 - (b) the costs, allowances or opportunity costs are treated, under the principles in force under subsection (1), as excessive to any extent;the amount of the costs, allowances or opportunity costs, as the case may be, is to be reduced by the amount of the excess.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

188 Shortfalls in revenue earned

- (1) The Minister may, by written instrument, formulate principles that are to be applied in determining the extent (if any) to which there is taken, for the purposes of subsection (2), to be a shortfall in relation to revenue earned as mentioned in the definition of **revenue forgone** in subsection 186(2).
- (2) For the purposes of the calculation of the formula in subsection 186(2) in relation to a particular financial year, if:
 - (a) a person has earned revenue as mentioned in the definition of **revenue forgone** in subsection 186(2); and

- (b) under the principles in force under subsection (1), there is taken to be a shortfall in relation to that revenue;
the amount of the revenue is to be increased by the amount of the shortfall.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

189 ACA determinations about working out a universal service provider's net universal service cost

- (1) The ACA may make written determinations:
 - (a) for or in relation to specifying methods of calculating an amount referred to in:
 - (i) subparagraph (b)(i), (ii) or (iii) of the definition of *avoidable costs* in subsection 186(2); or
 - (ii) the definition of *revenue forgone* in subsection 186(2);
as applying in relation to a universal service provider in relation to a financial year; or
 - (b) specifying amounts for the purposes of subparagraph (b)(iv) of the definition of *avoidable costs* in subsection 186(2) as so applying.
- (2) An instrument under this section:
 - (a) may only be made with the Minister's consent; and
 - (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) Before making a determination in relation to a financial year under this section, the ACA must consult each person who was a participating carrier immediately before the determination was made.

190 Application of determinations under section 189

- (1) Except so far as the contrary intention appears in a determination under section 189, a provision of such a determination applies in relation to:
 - (a) the first financial year that ends after the commencement of the last-mentioned provision; and
 - (b) each later financial year.
- (2) Despite anything in an instrument under section 189, but subject to subsection (4) of this section, a provision of a determination under that section does not apply in relation to a financial year ending before the commencement of that provision.
- (3) A person may elect in writing that a provision that, apart from subsection (4), does not apply in relation to the person in relation to a particular financial year is to apply in relation to the person in relation to that financial year.
- (4) An election under subsection (3) has effect accordingly.
- (5) In this section:
commencement, in relation to a provision of a determination under section 189, means:
 - (a) in the case of such a provision as originally in effect—the time when the provision took effect; or

- (b) in the case of a provision as varied by another provision of an instrument under section 189—the time when the last-mentioned provision took effect.

191 Participating carriers must lodge returns of eligible revenue

- (1) Within 90 days after the end of a financial year, each participating carrier in relation to that financial year must give the ACA a written return of the carrier's eligible revenue for that financial year.
- (2) The return must be in a form approved in writing by the ACA.
- (3) The return must set out:
 - (a) the carrier's eligible revenue for that financial year; and
 - (b) details of how that eligible revenue was worked out; and
 - (c) such other information (if any) as the approved form of return requires.
- (4) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

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

- (5) A form approved by the ACA for the purposes of subsection (2) may provide for verification by a statutory declaration of statements in returns under this section.
- (6) The return must be accompanied by a report of an approved auditor that:
 - (a) is in a form approved in writing by the ACA; and
 - (b) states that the auditor has been given sufficient access to the person's records in order to audit the return; and
 - (c) states that the auditor has audited the return; and
 - (d) contains a declaration of the opinion of the auditor, being a declaration in the terms specified in the form.

192 ACA may inquire into the correctness of a claim or return

The ACA may make whatever inquiries it thinks necessary or desirable in order to determine:

- (a) whether or not a claim by a universal service provider for a levy credit for a financial year correctly states the universal service provider's net universal service cost for that financial year; or
- (b) whether or not a return by a participating carrier of the carrier's eligible revenue for a financial year correctly states the carrier's eligible revenue for that financial year.

193 ACA to assess liabilities and entitlement

- (1) For each financial year, the ACA must make a written assessment for the purposes of this Part.
- (2) The assessment must set out, for each participating carrier in relation to that financial year:
 - (a) the carrier's eligible revenue for the financial year; and
 - (b) the carrier's levy debit under section 196 for the financial year; and
 - (c) the carrier's levy debit balance (if any) under section 197 for the financial year; and

- (d) if the assessment sets out a levy debit balance of the carrier for the financial year—the levy payable by the carrier on that levy debit balance.
- (3) The assessment must set out, for each universal service provider in relation to that financial year:
 - (a) the universal service provider's net universal service cost for the financial year; and
 - (b) the universal service provider's levy credit balance (if any) under section 198 for the financial year; and
 - (c) if the assessment sets out a levy credit balance of the universal service provider for the financial year—the amount payable to the universal service provider under section 214 for the financial year.
 - (4) The assessment must be made on the basis of:
 - (a) the respective claims for levy credits lodged by universal service providers in relation to the financial year; and
 - (b) the respective returns under section 191 lodged by the participating carriers in relation to the financial year; and
 - (c) the information and documents obtained by the ACA because of its inquiries under section 192; and
 - (d) any other information or documents that the ACA has and that it thinks relevant to making the assessment.
 - (5) Despite anything in this Part, the ACA may, for the purposes of making its assessment, accept, either in whole or in part, a statement in a claim or return.

194 Explanation to the Minister if assessment not made within 270 days

- (1) This section applies if the ACA has not made its assessment under section 193 in relation to a financial year within 270 days after the end of the financial year.
- (2) The ACA must give the Minister a written statement explaining why the ACA has not made its assessment within that 270-day period.
- (3) In this section:
assessment does not include an amended assessment.

195 Amendment of assessments

- (1) The ACA may amend its assessment by making such alterations and additions as it thinks necessary, even if levy credits or levy has been paid in respect of the assessment.
- (2) Unless the contrary intention appears, an amended assessment is taken, for the purposes of this Part, to be an assessment under section 193.

196 Levy debit of a participating carrier for a financial year

- (1) A participating carrier's *levy debit* for a financial year is the amount worked out using the formula:
Contribution factor × Total net universal service cost

where:

contribution factor has the meaning given by subsection (2).

total net universal service cost means the total net universal service costs for the financial year of all the universal service providers in relation to the financial year.

- (2) The ***contribution factor*** for the financial year depends on whether a determination is in force under subsection (3) in relation to the financial year:
- (a) if a determination is in force under subsection (3) in relation to the financial year—the contribution factor is ascertained in accordance with the determination;
 - (b) if no determination is in force under subsection (3) in relation to the financial year—the contribution factor is worked out using the following formula:

$$\frac{\text{Carrier's eligible revenue}}{\text{Total eligible revenue}}$$

where:

carrier's eligible revenue means the participating carrier's eligible revenue for the financial year.

total eligible revenue means the total eligible revenue for the financial year of all the participating carriers in relation to the financial year.

- (3) The Minister may make a written determination specifying a method of ascertaining the contribution factor for the purposes of paragraph (2)(a). The determination has no effect unless each person who was a participating carrier immediately before the determination was made gave a written consent to the making of the determination.
- (4) A copy of a determination under subsection (3) must be published in the *Gazette*.

197 Levy debit balance of a participating carrier for a financial year

If a person's levy debit under subsection 196(1) for a financial year exceeds the person's net universal service cost for that financial year:

- (a) the person has a levy debit balance for that financial year; and
- (b) the amount of that balance is the amount of the excess.

198 Levy credit balance of a universal service provider for a financial year

If a person's net universal service cost for a financial year exceeds the person's levy debit under subsection 196(1) for that financial year:

- (a) the person has a levy credit balance for that financial year; and
- (b) the amount of that balance is the amount of the excess.

199 Publication of assessment

As soon as practicable after making an assessment under section 193 for a financial year, the ACA must:

- (a) cause a copy of the assessment to be published in the *Gazette*; and
- (b) give a copy of the assessment to each participating carrier in relation to that financial year.

Subdivision D—Disclosure by the ACA of information about decisions relating to net cost areas and assessments

200 Public may request information

- (1) A person may request the ACA to make available to the person:
 - (a) specified information or documents on the basis of which the ACA has made its assessment under section 193 for a financial year; or
 - (b) specified information about how the ACA has worked out the matters that such an assessment sets out because of subsection 193(2) or (3); or
 - (c) specified information or documents relating to a decision by the ACA under section 179 or 181 to declare an area as a net cost area for a financial year.
- (2) The ACA must comply with a request as provided in section 202. This subsection has effect subject to subsection (3).
- (3) The ACA must not make available under this section:
 - (a) information (other than information prescribed for the purposes of this paragraph):
 - (i) that was obtained from, or relates to, a person who is a universal service provider in relation to a financial year; and
 - (ii) the making available of which under this section can reasonably be expected to cause substantial damage to the person referred to in subparagraph (i); or
 - (b) information prescribed for the purposes of this paragraph; or
 - (c) so much of a document as sets out information of a kind referred to in paragraph (a) or (b).

201 Request for information that is unavailable under section 200

- (1) For the purposes of this section, each of the following persons is an *eligible person*:
 - (a) a person who is a universal service provider in relation to a financial year;
 - (b) a person who is a participating carrier in relation to a financial year.
- (2) An eligible person may request the ACA to make available to it specified information or documents of a kind referred to in subsection 200(1) that subsection 200(3) prevents the ACA from making available to the eligible person under section 200.
- (3) The ACA must comply with a request as provided for in section 202. This section has effect subject to subsection (4).
- (4) The ACA must not, under this section, make available to an eligible person (in this section called the *first eligible person*) information, or so much of a document as sets out information:
 - (a) that was obtained from, or relates to, another eligible person; and
 - (b) the making available of which to the first eligible person can reasonably be expected to cause substantial damage to the other eligible person's commercial or other interests;unless the ACA is satisfied:

- (c) that the information could be obtained by the first eligible person lawfully, and without the other eligible person's consent, from a source other than the ACA; or
 - (d) in the case of a request under paragraph 200(1)(a) or (b)—that:
 - (i) the first eligible person has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, the ACA made the assessment concerned; and
 - (ii) having regard to the policy principles in section 138, the first eligible person's interest in being able to examine that basis and those methods in order to see how its liability to pay levy, or its entitlement to a payment under section 214, as the case requires, has been assessed outweighs the other eligible person's interest in avoiding the damage referred to in paragraph (b); or
 - (e) in the case of a request under paragraph 200(1)(c)—that:
 - (i) the first eligible person has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, the ACA made the decision to make the declaration concerned; and
 - (ii) having regard to the policy principles in section 138, the first eligible person's interest in being able to examine that decision outweighs the other eligible person's interest in avoiding the damage referred to in paragraph (b).
- (5) In determining the question referred to in paragraph (4)(b), the ACA must have regard to:
- (a) whether any undertakings have been given under subsection (6) and, if so, the nature of those undertakings; and
 - (b) such other matters (if any) as the ACA considers relevant.
- (6) For the purposes of this section, a person may give the ACA a written undertaking that, in the event that specified information, or the whole or a part of a specified document, is made available to the person under this section, the person will not disclose the information, or the contents of the document, except to one or more specified persons.
- Note: Information, documents or persons may be specified by name, by inclusion in a class or in any other way.
- (7) If a person gives an undertaking under subsection (6), the person must comply with the undertaking.

202 How the ACA is to comply with a request

- (1) The ACA may comply with a request by a person under section 200 or 201 by:
 - (a) communicating information to the person in writing or in some other form; or
 - (b) making documents available for inspection by the person or by an employee, agent or professional adviser of the person; or
 - (c) giving to the person copies of, extracts from, or summaries of, documents.
- (2) In this section:

document includes a part of a document.

Subdivision E—Collection and recovery of levy

203 When levy payable

Levy assessed under section 193 becomes due and payable on the 28th day after the ACA gives a copy of the assessment to the participating carrier in respect of which the levy has been assessed.

204 Levy a debt due to the Commonwealth

Levy may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

205 Validity of assessment

The validity of an assessment under section 193 is not affected by a contravention of this Act.

206 Evidence of assessment

- (1) This section applies if there is produced:
 - (a) a copy of the *Gazette* that sets out what purports to be a copy of an assessment made under section 193; or
 - (b) a document that purports to be such a copy.
- (2) Except so far as the contrary is established, it must be presumed:
 - (a) that the copy of the *Gazette* sets out, or that the document is, as the case may be, a copy of such an assessment; and
 - (b) that the ACA has duly made the assessment; and
 - (c) that the amounts and other particulars set out in the assessment are correct.

207 Onus of establishing incorrectness of assessment

In any proceeding, the onus of establishing that an assessment under section 193 is incorrect is on the party making that assertion.

208 Refund of overpayment of levy

If there is an overpayment of levy, the overpayment is to be refunded.

209 Cancellation of certain exemptions from levy

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

210 Commonwealth not liable to levy

- (1) The Commonwealth is not liable to pay levy.

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

Subdivision F—Distribution of levy

211 Universal Service Reserve

This section establishes an account called the Universal Service Reserve, which is a trust account for the purposes of section 62A of the *Audit Act 1901* and is to be administered by the Department.

212 Payments into Universal Service Reserve

There must be paid into the Universal Service Reserve:

- (a) amounts equal to amounts of levy paid under this Part; and
- (b) money appropriated by law for the Universal Service Reserve's purposes; and
- (c) amounts equal to interest from the investment of money in the Universal Service Reserve; and
- (d) amounts equal to amounts that were overpaid under section 214 and have been recovered; and
- (e) amounts equal to amounts paid under section 218.

213 Purposes of Universal Service Reserve

- (1) The purposes of the Universal Service Reserve are:
 - (a) making payments under section 214 or 217; and
 - (b) refunding any overpaid amounts of levy; and
 - (c) refunding any other amounts paid into the Universal Service Reserve in error; and
 - (d) reimbursing the Commonwealth for:
 - (i) the costs or expenses incurred by the Commonwealth or the ACA in administering the *Telecommunications (Universal Service Levy) Act 1997* and this Division during any period; and
 - (ii) without limiting subparagraph (i), costs or expenses incurred in connection with recovering levy; and
 - (iii) costs incurred by the Commonwealth during the period in collecting, compiling, analysing and publishing information about the operation of that Act and this Division.
- (2) For the purposes of paragraph (1)(d), the Minister for Finance may, from time to time, determine the amount of a reimbursement to be made to the Commonwealth in relation to a period on such basis as he or she thinks appropriate.
- (3) Despite subsection (2), the total of the amounts reimbursed under paragraph (1)(d) must not exceed the total of the amounts paid into the Universal Service Reserve under paragraphs 212(b) and (c).

214 Levy distribution to a universal service provider

If a person has a levy credit balance for a financial year because of section 198, an amount equal to the amount of that balance is payable to the person out of the Universal Service Reserve.

215 Levy not to be distributed until paid

No amount is payable under section 214 in relation to a financial year unless and until:

- (a) the ACA has made an assessment under section 193 for that financial year; and
- (b) each participating carrier in respect of which levy was assessed has paid the levy.

216 Recovery of overpayments

- (1) For the purposes of this section, an *overpaid amount* is so much of an amount paid under section 214 as represents an overpayment.
- (2) An overpaid amount is a debt due to the Commonwealth.
- (3) An overpaid amount may be recovered by the Commonwealth by action in a court of competent jurisdiction.
- (4) If a person is liable to pay an overpaid amount, the overpaid amount may be deducted from one or more other amounts that are payable to the person under this Part, and if it is so deducted, the other amounts are taken to have been paid in full to the person.

Subdivision G—Advance on account of distribution of levy

217 Advance on account of distribution of levy

If the ACA is satisfied that, because of special circumstances, it is appropriate to do so, the ACA may, on behalf of the Commonwealth, make an advance on account of payments that may become payable to a person under section 214 in relation to a financial year.

218 Repayment of excess advances

- (1) If:
 - (a) a person has received a total amount, by way of advances on account of payments that may become payable to the person under section 214 in relation to a particular financial year; and
 - (b) that total amount is greater than the amount that became payable to the person under section 214 in relation to that financial year;the person is liable to pay to the Commonwealth the amount of the excess.
- (2) If a person is liable to pay an amount to the Commonwealth under subsection (1):
 - (a) the amount may be recovered, as a debt due to the Commonwealth, by action in a court of competent jurisdiction; or

- (b) the amount may be deducted from any other amount that is payable to the person under this Part, and if the amount is so deducted, the other amount is taken to have been paid in full to the person.

Subdivision H—Levy guarantee

219 Levy guarantee

- (1) This section applies to a person (the *first person*) at a particular time if:
 - (a) the first person is a carrier at that time; or
 - (b) the first person ceased to be a carrier during the 2-year period that ended at that time.
- (2) The first person must ensure that, at that time, there is in force a guarantee given by a third person in respect of the discharge of the first person's liability (if any) for levy.
- (3) The third person must be:
 - (a) a bank (within the meaning of the *Banking Act 1959*); or
 - (b) a body corporate formed under the law of a State or Territory to carry on the business of banking within Australia; or
 - (c) a body corporate whose sole or principal business is the provision of financial accommodation to other persons, where the body corporate is a registered corporation within the meaning of the *Financial Corporations Act 1974*; or
 - (d) a body corporate accredited in writing by the ACA for the purposes of this paragraph.
- (4) A reference in this section to a *carrier* does not include a reference to a person who, under subsection 146(2), is exempt from section 146.

220 Exemptions from levy guarantee

- (1) A person is exempt from section 219 if the person held a general telecommunications licence, or a public mobile licence, that was in force under the *Telecommunications Act 1991* on 30 June 1997.
- (2) The ACA may make a written determination exempting a specified person from section 219 if:
 - (a) in the ACA's opinion, there is no reasonable likelihood that the person will incur a liability for levy; or
 - (b) both:
 - (i) the person has held a carrier licence for at least 2 years; and
 - (ii) in the ACA's opinion, there is no significant risk that the person will fail to discharge fully the person's liability for levy.
- (3) A determination under subsection (2) has effect accordingly.

221 Compliance with levy guarantee obligations

- (1) A person must not contravene section 219.
- (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.

Part 8—Continued access to untimed local calls

222 Simplified outline

The following is a simplified outline of this Part:

- Certain local calls are to be charged for on an untimed basis.

223 Requirement to provide an untimed local call option

If a carriage service provider charges an eligible customer for eligible local calls made using a standard telephone service supplied to the customer, the provider must give the customer an untimed local call option.

Note 1: *Eligible customer* is defined by section 229.

Note 2: *Eligible local call* is defined by section 225.

Note 3: *Untimed local call option* is defined by section 224.

224 Untimed local call option

- (1) For the purposes of this Part, if a carriage service provider charges an eligible customer for eligible local calls made using a standard telephone service supplied to the customer, the provider gives the customer an untimed local call option if, and only if, the service is supplied to the customer on terms and conditions under which:
- (a) the customer may choose, on connection of the service, to have the charges for eligible local calls that are made using the service worked out on an untimed basis; and
 - (b) if the customer chooses as mentioned in paragraph (a)—the carriage service provider must not work out the charges for such calls in any other way except with the customer’s written consent; and
 - (c) if the customer:
 - (i) does not choose as mentioned in paragraph (a); or
 - (ii) consents to having the charges for such calls worked out otherwise than on an untimed basis;the customer may later give the carriage service provider a written notice to the effect that the customer wishes the charges for such calls to be worked out on an untimed basis; and
 - (d) if the customer gives the carriage service provider such a notice—the carriage service provider:
 - (i) must, in respect of the earliest practicable period beginning after it receives the notice, work out the charges for such calls on an untimed basis; and

- (ii) must not, in respect of a period after the period referred to in subparagraph (i), work out the charges for such calls in any other way except with the customer's written consent.

Note 1: *Eligible customer* is defined by section 229.

Note 2: *Untimed basis* is defined by subsection (2).

- (2) For the purposes of this section, charges for eligible local calls are worked out on an untimed basis if, and only if, the charges for those calls are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.

225 Eligible local calls

- (1) For the purposes of the application of this Part to a carriage service provider who charges for a call made using a standard telephone service supplied to an eligible customer in a particular standard zone, being an eligible customer who is a residential/charity customer, if the call:
 - (a) is made between points in the applicable zone in relation to the provider and in relation to the customer; and
 - (b) is either:
 - (i) of a kind that, immediately before 20 September 1996, a general carrier offered to supply, or supplied, on an untimed basis between points in that standard zone; or
 - (ii) made using a standard telephone service supplied to the customer in fulfilment of the universal service obligation;

the call is an *eligible local call* unless the call involves the use, by at least one party to the call, of a public mobile telecommunications service, or a satellite service, that is not supplied to that party in fulfilment of the universal service obligation.

Note 1: *Eligible customer* is defined by section 229.

Note 2: *Standard zone* is defined by section 227.

Note 3: *Applicable zone* is defined by section 228.

Note 4: *Untimed basis* is defined by subsection (3).

- (2) For the purposes of the application of this Part to a carriage service provider who charges for a call made using a standard telephone service supplied to an eligible customer in a particular standard zone, being an eligible customer who is not a residential/charity customer, if the call:
 - (a) is a voice call or, if a voice call is not practical for a particular end-user with a disability, a call that is equivalent to a voice call; and
 - (b) is made between points in the applicable zone in relation to the provider and in relation to the customer; and
 - (c) is either:
 - (i) of a kind that, immediately before 20 September 1996, a general carrier offered to supply, or supplied, on an untimed basis between points in that standard zone; or
 - (ii) made using a standard telephone service supplied to the customer in fulfilment of the universal service obligation;

the call is an *eligible local call* unless the call involves the use, by at least one party to the call, of a public mobile telecommunications service, or a satellite service, that is not supplied to that party in fulfilment of the universal service obligation.

Note 1: *Eligible customer* is defined by section 229.

Note 2: *Standard zone* is defined by section 227.

Note 3: *Applicable zone* is defined by section 228.

Note 4: *Untimed basis* is defined by subsection (3).

(3) For the purposes of this section, calls of a particular kind are supplied on an untimed basis if, and only if, the charges for the calls of that kind are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.

(4) In this section:

general carrier means a person who held a general telecommunications licence under the *Telecommunications Act 1991* immediately before 20 September 1996.

residential/charity customer means:

- (a) a residential customer; or
- (b) a customer that is:
 - (i) a charitable body or organisation; or
 - (ii) a welfare body or organisation.

satellite service means a carriage service, where customer equipment used in connection with the supply of the service communicates directly with a satellite-based facility.

226 Benefits for customers outside standard zones

(1) For the purposes of this section, if a customer of a carriage service provider is in Australia, but is not in a standard zone, the customer is a *designated customer*.

(2) The regulations may formulate a scheme to give benefits to designated customers, where the benefits:

- (a) relate to charges for calls made using a standard telephone service supplied to the customer; and
- (b) are comparable to the benefits given to eligible customers under section 223 (which deals with the requirement to provide an untimed local call option).

(3) For the purposes of subsection (2), a comparison of benefits is to have regard to (among other things), the ability to make calls to essential business and community services on an untimed basis.

(4) Regulations made for the purposes of subsection (2) may impose requirements on carriage service providers.

(5) A carriage service provider must comply with any applicable requirements imposed by regulations made for the purposes of subsection (2).

(6) The Minister must take all reasonable steps to ensure that, at all times on and after 1 January 1998, regulations are in force for the purposes of subsection (2).

(7) For the purposes of this section, charges for particular calls are worked out on an untimed basis if, and only if, the charges for those calls are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.

227 Standard zones

- (1) For the purposes of this Part, if:
 - (a) immediately before 1 July 1991, Telecom supplied, or offered to supply, to persons within a particular area within Australia, a carriage service that was, immediately before that date, a standard telephone service (within the meaning of the *Telecommunications Act 1991*); and
 - (b) under the terms and conditions on which Telecom supplied, or would supply, that service to persons in that area, the charges for calls of a particular kind between points within that area made using the service were, or would be, worked out on an untimed basis;

that area is a *standard zone*.

Note: *Untimed basis* is defined by subsection (2).

- (2) For the purposes of this section, charges for calls of a particular kind are worked out on an untimed basis if, and only if, the charges for the calls of that kind are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.
- (3) In this section:

Telecom means the Australian Telecommunications Corporation, as it existed immediately before 1 July 1991.

228 Applicable zones

- (1) A reference in this Part to the *applicable zone* in relation to a carriage service provider and in relation to an eligible customer, being a customer in a particular standard zone, is a reference to whichever of the following is applicable:
 - (a) if:
 - (i) the provider is the universal service provider for the customer; and
 - (ii) there is in force a written notice given to the ACA by the provider nominating a specified area as a nominated area; and
 - (iii) the customer is in the nominated area and chooses to adopt that nominated area as the applicable zone in relation to the provider and in relation to the customer;the nominated area;
 - (b) if:
 - (i) the provider is the universal service provider for the customer; and
 - (ii) paragraph (a) does not apply;the standard zone;
 - (c) if:
 - (i) the provider is not the universal service provider for the customer; and
 - (ii) there is in force a written notice given to the ACA by the provider nominating a specified area as a nominated area; and
 - (iii) the customer is in the nominated area;the nominated area;
 - (d) if:
 - (i) the provider is not the universal service provider for the customer; and
 - (ii) paragraph (c) does not apply;the standard zone.

- (2) To avoid doubt, an area nominated under subsection (1) may overlap a standard zone.
- (3) For the purposes of this section, if:
 - (a) a customer of a carriage service provider is in a particular area; and
 - (b) the provider is the universal service provider for that area; the provider is the universal service provider for the customer.

229 Eligible customer

For the purposes of this Part, if a customer of a carriage service provider is in a standard zone, the customer is an *eligible customer*.

230 Points

For the purposes of the application of this Part to a mobile-type carriage service, a *point* includes a mobile or potentially mobile point.

231 Application of this Part

This Part does not apply in relation to a contract for the supply of a standard telephone service if:

- (a) the contract was entered into before the commencement of this section; and
- (b) the contract would not have complied with this Part if it had been entered into immediately after the commencement of this section.

Part 9—Customer service guarantee

232 Simplified outline

The following is a simplified outline of this Part:

- The ACA may make performance standards to be complied with by carriage service providers in relation to customer service.
- If a carriage service provider contravenes a performance standard, the carriage service provider is liable to pay damages to the customer for the contravention.
- The amount of damages payable for a particular contravention is equal to the relevant amount specified in the scale of damages determined by the ACA.
- The Telecommunications Industry Ombudsman may issue an evidentiary certificate in relation to a contravention of a performance standard.

233 Interpretation

- (1) In this Part:

customer includes prospective customer.

damages includes punitive damages.

- (2) In determining the meaning that an expression has when used in a provision of this Act other than this Part, subsection (1) is to be disregarded.

234 Performance standards

- (1) The ACA may, by written instrument, make standards to be complied with by carriage service providers in relation to:
- (a) the making of arrangements with customers about the period taken to comply with requests to connect customers to specified kinds of carriage services; and
 - (b) the periods that carriage service providers may offer to customers when making those arrangements; and
 - (c) the compliance by carriage service providers with the terms of those arrangements; and
 - (d) the period taken to comply with requests to rectify faults or service difficulties relating to specified kinds of carriage services, where the rectification follows the making of a customer report about a fault or service difficulty; and
 - (e) the keeping of appointments to meet customers, or representatives of customers, where the appointment relates to:
 - (i) a connection of a kind covered by paragraph (a); or
 - (ii) a rectification of a kind covered by paragraph (d); and
 - (f) any other matter concerning the supply, or proposed supply, of a carriage service to a customer.
- (2) A standard under this section that relates to a particular kind of carriage service does not apply to a particular carriage service provider in connection with the supply of that kind of service at a particular location unless the carriage service provider:
- (a) supplies that kind of service at that location; or
 - (b) offers to supply that kind of service at that location.
- (3) The ACA must not make a standard under this section unless it is directed to do so by the Minister under section 242.
- (4) A standard under this section may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (5) A standard under this section takes effect:
- (a) if the instrument making the standard specifies a day for the purpose—on that day; or
 - (b) otherwise—on the day on which the standard was notified in the *Gazette*.
- (6) A standard under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

235 Damages for breach of performance standards

- (1) If:
- (a) a carriage service provider contravenes a standard in force under section 234; and
 - (b) the contravention relates to a particular customer;

the carriage service provider is liable to pay damages to the customer for the contravention.

- (2) The amount of damages payable for a particular contravention is equal to the relevant amount specified in the scale in force under section 236.
- (3) However, if:
 - (a) the carriage service provider:
 - (i) credits an amount to an account that the customer has with the provider; or
 - (ii) pays an amount to the customer; and
 - (b) the credit or payment was made as a result of a right or remedy that:
 - (i) was available to the customer otherwise than under this Division; and
 - (ii) arose out of the same event or transaction as the contravention;the amount of damages payable for the contravention is to be reduced (but not below zero) by the amount of the credit or payment.
- (4) The customer may recover the amount of the damages by action against the carriage service provider in a court of competent jurisdiction.
- (5) The liability of the carriage service provider under this section may be discharged:
 - (a) by giving the customer a credit in an account the customer has with the carriage service provider; or
 - (b) in any other manner agreed between the carriage service provider and the customer.
- (6) An action under this section must be instituted within 2 years after:
 - (a) in the case of a contravention that continued throughout a period—the time when the contravention began; or
 - (b) in any other case—the time when the contravention occurred.
- (7) If the customer dies, a reference in this section to the *customer* includes a reference to the legal personal representative of the customer.

236 Scale of damages for breach of performance standards

- (1) The ACA may, by written instrument, specify a scale of damages for contraventions of standards under section 234.
- (2) The scale must:
 - (a) specify categories of contraventions; and
 - (b) specify a dollar amount as the amount of damages payable for contraventions covered by each of those categories.
- (3) A dollar amount specified in accordance with paragraph (2)(b) must not exceed \$25,000.
- (4) A category may be specified by reference to contraventions that continue over a specified number of days.
- (5) Subsection (4) does not, by implication, limit the ways in which a category may be specified.
- (6) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

237 Evidentiary certificate issued by the Telecommunications Industry Ombudsman

- (1) The Telecommunications Industry Ombudsman may issue a written certificate:
 - (a) stating that a specified carriage service provider has contravened a standard in force under section 234; and
 - (b) setting out particulars of that contravention.
- (2) In any proceedings under this Part, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be a certificate and to have been properly given.
- (4) Subsection (1) does not apply to the Telecommunications Industry Ombudsman unless the Telecommunications Industry Ombudsman gives the Minister a written notice consenting to the conferral of the powers conferred by that subsection.
- (5) If no notice is in force under subsection (4), subsection (1) has effect as if the reference in that subsection to the Telecommunications Industry Ombudsman were a reference to the ACA.
- (6) The Minister must cause a copy of a notice under subsection (4) to be published in the *Gazette*.
- (7) The continuity of a notice under subsection (4) 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.

238 Waiver of customer service guarantee

- (1) The ACA may, by written instrument, make provision for customers of carriage service providers to waive, in whole or in part, their protection and rights under this Part in relation to a particular carriage service supplied, or proposed to be supplied, by the carriage service provider concerned.
- (2) If such a waiver is made, then, to the extent of the waiver, the carriage service provider is not bound by, and need not comply with, any standards in force under section 234 in relation to the supply of that service to that customer.
- (3) A waiver must be made in accordance with the rules set out in the instrument.
- (4) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

239 Savings of other laws and remedies

- (1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- (2) This Part does not limit, restrict or otherwise affect any right or remedy a person would have if this Part had not been enacted.

- (3) This Part does not limit, restrict or otherwise affect the operation of the Telecommunications Industry Ombudsman scheme. In particular, this Part does not affect a customer's right to complain to the Telecommunications Industry Ombudsman.
- (4) Subsection (3) does not, by implication, limit subsection (2).

240 Breach of performance standard is not an offence

A contravention of a standard in force under section 234 is not an offence.

241 Clause 1 of Schedule 2 does not apply to a breach of a performance standard

Clause 1 of Schedule 2 does not apply to a contravention of a standard in force under section 234.

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

242 Minister may direct the ACA about the use of its powers under this Part

- (1) The Minister may give the ACA written directions about how the ACA is to exercise its powers under this Part.
- (2) The ACA must comply with a direction under this section.
- (3) This section does not affect the Minister's power to give the ACA directions under other provisions about other matters.
- (4) A direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The Minister must not give the ACA a direction under section 12 of the *Australian Communications Authority Act 1997* about how the ACA is to exercise its powers under this Part.

243 Review of performance standards following Ministerial direction

- (1) This section applies to a direction under section 242 that requires the ACA to make a standard under section 234.
- (2) If the Minister revokes a direction, the ACA must revoke the section 234 standard that is in force because of the direction.
- (3) If the Minister varies a direction, the ACA must either:
 - (a) vary the section 234 standard that is in force because of the direction so that the standard complies with the varied direction; or
 - (b) revoke the section 234 standard and determine a new section 234 standard that so complies.
- (4) If a section 234 standard is in force because of a direction:
 - (a) the ACA may vary the standard on its own initiative, but only in such a way that the varied standard still complies with the direction; and
 - (b) the ACA may, on its own initiative, revoke the standard and determine a new section 234 standard that so complies.

Part 10—The Telecommunications Industry Ombudsman

244 Simplified outline

The following is a simplified outline of this Part:

- Certain carriers and carriage service providers must enter into the Telecommunications Industry Ombudsman scheme.
- The membership of the scheme must be open to all carriers and carriage service providers.
- Carriers and carriage service providers must comply with the scheme.

245 Eligible carriage service providers

For the purposes of this Part, an *eligible carriage service provider* is:

- (a) a carriage service provider who supplies:
 - (i) a standard telephone service, where any of the customers are residential customers or small business customers; or
 - (ii) a public mobile telecommunications service; or
 - (iii) a carriage service that enables end-users to access the Internet; or
- (b) a carriage service intermediary who arranges for the supply of a service referred to in subparagraph (a)(i) or (ii).

246 Telecommunications Industry Ombudsman scheme

- (1) Each carrier and each eligible carriage service provider must, in association with other carriers and other eligible carriage service providers, enter into a scheme providing for a Telecommunications Industry Ombudsman.

Note: Section 247 provides for exemptions from subsection (1) of this section.

- (2) The scheme is to be known as the *Telecommunications Industry Ombudsman scheme*.
- (3) The scheme must provide for the Telecommunications Industry Ombudsman to:
 - (a) investigate; and
 - (b) make determinations relating to; and
 - (c) give directions relating to;complaints about carriage services by end-users of those services.
- (4) The following is an example of such a complaint: a complaint about billing, or the manner of charging, for the supply of carriage services.
- (5) The scheme must not provide for the Telecommunications Industry Ombudsman to investigate complaints about:
 - (a) the levels at which tariffs are set; or
 - (b) the content of a content service.
- (6) The membership of the scheme must be open to all:
 - (a) carriers; and
 - (b) carriage service providers.

247 Exemptions from requirement to join scheme

- (1) The ACA may, by notice in the *Gazette*, declare that a specified carrier or eligible carriage service provider is exempt from the requirement set out in subsection 246(1). The declaration has effect accordingly.

Note: Carriers or providers may be specified by name, by inclusion in a particular class or in any other way.

- (2) In deciding whether a carrier or provider should be exempt from the requirement set out in subsection 246(1), the ACA must have regard to the following matters:
 - (a) the extent to which the carrier or provider deals with residential customers in relation to the supply of carriage services;
 - (b) the extent to which the carrier or provider deals with proprietors of small businesses in relation to the supply of carriage services;
 - (c) the potential for complaints under the Telecommunications Industry Ombudsman scheme about services supplied by the carrier or provider.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACA may have regard.
- (4) Before making a declaration under this section, the ACA must consult the Telecommunications Industry Ombudsman.

248 Direction to join scheme

- (1) The ACA may give a carriage service provider a written notice directing the provider to enter into the Telecommunications Industry Ombudsman scheme.
- (2) The provider must comply with the direction.
- (3) In deciding whether to give a direction to a provider under this section, the ACA must have regard to the following matters:
 - (a) the extent to which the provider deals with residential customers in relation to the supply of carriage services;
 - (b) the extent to which the provider deals with proprietors of small businesses in relation to the supply of carriage services;
 - (c) the potential for complaints under the Telecommunications Industry Ombudsman scheme about the services supplied by the provider.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACA may have regard.
- (5) Before giving a direction under this section, the ACA must consult the Telecommunications Industry Ombudsman.

249 Determination that a class of carriage service providers must join scheme

- (1) The ACA may make a written determination that the members of a specified class of carriage service providers must enter into the Telecommunications Industry Ombudsman scheme.
- (2) A copy of the determination must be published in the *Gazette*.
- (3) In deciding whether to make a determination under this section in relation to a class of carriage service providers, the ACA must have regard to the following matters:

- (a) the extent to which members of that class deal with residential customers in relation to the supply of carriage services;
 - (b) the extent to which members of that class deal with proprietors of small businesses in relation to the supply of carriage services;
 - (c) the potential for complaints under the Telecommunications Industry Ombudsman scheme about services supplied by members of that class.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACA may have regard.
- (5) Before making a determination under this section, the ACA must consult the Telecommunications Industry Ombudsman.

250 Members of scheme must comply with scheme

A carrier or carriage service provider who is a member of the Telecommunications Industry Ombudsman scheme must comply with the scheme.

251 Register of members of scheme

- (1) The Telecommunications Industry Ombudsman is to maintain a Register of the names of the members of the Telecommunications Industry Ombudsman scheme.
- (2) The Register may be maintained by electronic means.
- (3) The Telecommunications Industry Ombudsman must ensure that the Register is open for inspection, at all reasonable times, by members of the public.

Part 11—Protection for residential customers against failure by carriage service providers to provide standard carriage services

252 Simplified outline

The following is a simplified outline of this Part:

- The ACA may determine that certain payments received by a carriage service provider from residential customers are protected payments.
- The ACA may formulate schemes aimed at ensuring that if:
 - (a) a residential customer of a carriage service provider makes a protected payment to the provider; and
 - (b) the provider fails to supply a standard telephone service to the customer;the customer is protected.
- A protection scheme may be enforced by the Federal Court on the application of the ACA or a residential customer.

253 Scope of Part

- (1) This Part applies to a carriage service provider if the provider supplies, or proposes to supply, a standard telephone service to residential customers.
- (2) A carriage service provider is exempt from this Part if the provider was a carrier (within the meaning of the *Telecommunications Act 1991*) immediately before 1 July 1997.
- (3) The ACA may, by notice in the *Gazette*, declare that a specified provider is exempt from this Part. The declaration has effect accordingly.

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

- (4) In deciding whether a person should be exempt from this Part, the ACA must have regard to the following matters:
 - (a) the duration of the prior period (if any) during which the person carried on business in Australia as a carriage service provider;
 - (b) the scale of the person's prior operations in Australia as a carriage service provider;
 - (c) the person's business record;
 - (d) if the person is a partnership—the business record of each of the partners;
 - (e) if the person is an incorporated company—the business record of each individual, by whatever name called and whether or not a director of the company, who is concerned, or takes part, in the management of the company.
- (5) Subsection (4) does not, by implication, limit the matters to which the ACA may have regard.

254 Standard residential customer

- (1) For the purposes of this Part, if a residential customer, or a proposed residential customer, of a carriage service provider is supplied, or proposed to be supplied, with a standard telephone service by the provider, then:
 - (a) the customer is a ***standard residential customer*** of the provider; and
 - (b) the service is a ***standard carriage service***.
- (2) Subsection (1) does not apply to a standard telephone service if:
 - (a) the service is a public mobile telecommunications service; and
 - (b) the service is neither supplied, nor proposed to be supplied, to the customer in fulfilment of the universal service obligation.

255 Protected payments

- (1) The ACA may make a written determination that a specified payment made, or liable to be made, to a carriage service provider by a standard residential customer of that provider is a ***protected payment*** for the purposes of this Part. The determination has effect accordingly.

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

- (2) The payment must be received, or proposed to be received, by the provider directly or indirectly in connection with its business as a carriage service provider.

- (3) The following are examples of payments that may be specified in the determination:
 - (a) payments for line rental;
 - (b) payments for equipment rental;
 - (c) payments by way of connection fees;
 - (d) a pre-payment for a standard carriage service.
- (4) For each protected payment, the determination must specify, or specify a means of ascertaining, a period for the purposes of this subsection. That period is called the *minimum service period* for the payment.
- (5) The minimum service period for a protected payment:
 - (a) must begin when the payment is made; and
 - (b) must not run for longer than 2 years.
- (6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

256 Compliance with protection schemes for protected payments

- (1) Before demanding or receiving a protected payment, a carriage service provider must give the ACA a written election to be bound by a specified scheme formulated under this Part.
- (2) If a carriage service provider gives the ACA such an election, the provider is bound by, and must comply with, the scheme specified in the election.
- (3) If an election under this section is in force in relation to a particular scheme (the *original scheme*), the provider may give the ACA a written notice varying the election by omitting the original scheme and substituting another scheme formulated under this Part. The variation takes effect at the time specified in the notice.
- (4) Despite the variation, the original scheme continues to apply, in relation to protected payments made before the variation took effect, as if the variation had not been made.

257 Protection schemes for protected payments—alternative supply of standard carriage services

- (1) The ACA may, by written instrument, formulate a scheme that requires a carriage service provider bound by the scheme to enter into and maintain a legally enforceable arrangement aimed at ensuring that, if:
 - (a) a residential customer of the provider makes a protected payment to the provider; and
 - (b) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer;
the customer:
 - (c) is supplied, during the remainder of the period, with standard carriage services that are equivalent to the standard carriage services that the provider has not supplied; and
 - (d) is not required to pay more for the supply of those equivalent services than the customer would have had to pay had the provider supplied them.

- (2) A scheme formulated under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

258 Protection schemes for protected payments—third party guarantee

- (1) The ACA may, by written instrument, formulate a scheme that:
- (a) makes a carriage service provider that is bound by the scheme liable, in the event that:
 - (i) a residential customer of the provider makes a protected payment to the provider; and
 - (ii) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer; to reimburse the payment on a pro-rata basis in proportion to that part or parts of the period during which the provider fails to supply the services to the customer; and
 - (b) requires the provider to obtain a guarantee from a third person in respect of the provider's discharge of that liability.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

259 Protection schemes for protected payments—insurance cover

- (1) The ACA may, by written instrument, formulate a scheme that:
- (a) makes a carriage service provider that is bound by the scheme liable, in the event that:
 - (i) a residential customer of the provider makes a protected payment to the provider; and
 - (ii) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer; to reimburse the payment on a pro-rata basis in proportion to that part or parts of the period during which the provider fails to supply the services to the customer; and
 - (b) requires the provider to take out and maintain an insurance policy to indemnify residential customers against a total or partial failure to discharge that liability.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

260 Protection schemes for protected payments—holding of payments in trust accounts

- (1) The ACA may, by written instrument, formulate a scheme that:
- (a) makes a carriage service provider that is bound by the scheme liable, in the event that:
 - (i) a residential customer of the provider makes a protected payment to the provider; and
 - (ii) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer; to reimburse the payment on a pro-rata basis in proportion to that part or parts of the period during which the provider fails to supply the services to the customer; and

- (b) requires the provider to hold protected payments it receives in trust accounts; and
 - (c) prohibits the provider from transferring any or all of the money in such an account to its beneficial ownership except in accordance with the draw-down rules set out in the scheme.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

261 Waiver of protection by customers

- (1) A scheme formulated under this Part may provide for standard residential customers of a carriage service provider to waive their protection and rights under the scheme in relation to a particular protected payment made to the provider.
- (2) If such a waiver is made, the provider is not bound by, and need not comply with, the scheme in relation to that payment.
- (3) A waiver must be made in accordance with the rules set out in the scheme concerned.
- (4) Rules mentioned in subsection (3) may require a carriage service provider to inform a customer about the consequences of a waiver.
- (5) Subsection (4) does not, by implication, limit the matters that may be dealt with by:
 - (a) a code registered under Part 6; or
 - (b) a standard under Part 6.

262 Incidental rules

- (1) A scheme formulated under this Part may require carriage service providers to comply with such ancillary or incidental rules (if any) as are set out in the scheme.
- (2) Those rules include (but are not limited to) requiring carriage service providers to inform their standard residential customers about matters relating to the implementation of the scheme.

263 Enforcement of protection schemes

- (1) This section applies if a carriage service provider is bound by a scheme formulated under this Part.
- (2) If:
 - (a) the ACA; or
 - (b) a standard residential customer of the provider;thinks that the provider has:
 - (c) failed to discharge a liability of the provider under the scheme; or
 - (d) otherwise breached the scheme;the ACA or the customer may apply to the Federal Court for an order under subsection (3).
- (3) If the Federal Court is satisfied that the provider has:

- (a) failed to discharge a liability of the provider under the scheme; or
- (b) otherwise breached the scheme;

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

- (c) an order directing the provider to discharge a liability under the scheme;
- (d) an order directing the provider to comply with the scheme;
- (e) an order directing the provider to compensate any person who has suffered loss or damage as a result of the breach;
- (f) any other order that the Court thinks appropriate.

(4) The Federal Court may discharge or vary an order granted under this section.

(5) This section does not, by implication, limit other remedies.

(6) A reference in this section to a *carriage service provider* includes a reference to:

- (a) in a case where the provider is an individual or a partnership—the provider’s trustee in bankruptcy; or
- (b) in a case where the provider is a body corporate or a partnership—each of the following:
 - (i) a receiver, receiver and manager, or other controller, of property of the body or partnership;
 - (ii) an administrator of the body or partnership;
 - (iii) an administrator of a deed of arrangement entered into by the body or partnership;
 - (iv) a liquidator or provisional liquidator of the body or partnership;
 - (v) a trustee or other person administering a compromise or arrangement made between the body or partnership and any other person or persons.

Part 12—Provision of emergency call services

264 Simplified outline

The following is a simplified outline of this Part:

- The ACA may impose requirements on any or all of the following:
 - (a) carriers;
 - (b) carriage service providers;
 - (c) emergency call persons;in relation to emergency call services.

265 Provision of emergency call services

- (1) The ACA must make a written determination imposing requirements on any or all of the following:
- (a) carriers;
 - (b) carriage service providers;
 - (c) emergency call persons;
- in relation to emergency call services.

- (2) In making a determination under this section, the ACA must have regard to the following:
- (a) the objective that a carriage service provider who supplies a standard telephone service should provide each end-user of that standard telephone service with access, free of charge, to an emergency call service, unless the ACA considers that it would be unreasonable for such access to be provided;
 - (b) the objective that, if a carriage service provider who supplies a standard telephone service is required to provide each end-user of that standard telephone service with access to an emergency call service operated by a recognised person, the recognised person should:
 - (i) receive and handle calls made by those end-users to the relevant emergency service number; and
 - (ii) if appropriate—transfer such calls to an appropriate emergency service organisation; and
 - (iii) if appropriate—give information in relation to such calls to an appropriate emergency service organisation;
 - (c) the objective that emergency service organisations should not be charged for services provided by a recognised person who operates an emergency call service, being services by way of:
 - (i) receiving and handling calls to an emergency service number; or
 - (ii) transferring such calls to an emergency service organisation; or
 - (iii) giving information in relation to such calls to an emergency service organisation;
 - (d) the objective that emergency service organisations should not be charged for the following carriage services:
 - (i) carriage services used to connect calls made to an emergency service number;
 - (ii) carriage services used to transfer such calls to an emergency service organisation;
 - (iii) carriage services used to give information in relation to such calls to an emergency service organisation;
 - (e) the objective that, as far as practicable, a common system is used to:
 - (i) transfer calls made to an emergency service number to an emergency service organisation; and
 - (ii) give information in relation to such calls to an emergency service organisation;
 - (f) the objective that calls made to an emergency service number are transferred to an appropriate emergency service organisation with the minimum of delay;
 - (g) the objective that, from the perspective of an ordinary end-user of a standard telephone service, there appears to be a single national emergency call system;
 - (h) the objective that reasonable community expectations for the handling of calls to emergency service numbers are met;
 - (i) the objective that carriage services used to make calls to an emergency service number should, as far as practicable, provide the emergency call person concerned with automatic information about:
 - (i) the location of the caller; and
 - (ii) the identity of the customer of the service being used by the caller;

- (j) the objective that carriers should provide carriage service providers with access to:
 - (i) controlled carriage services of the carriers; and
 - (ii) controlled networks of the carriers; and
 - (iii) controlled facilities of the carriers;in order that the providers can comply with their obligations under the determination;
 - (k) the objective that carriage service providers should provide other carriage service providers with access to:
 - (i) controlled carriage services of the first-mentioned providers; and
 - (ii) controlled networks of the first-mentioned providers; and
 - (iii) controlled facilities of the first-mentioned providers;in order that the other providers can comply with their obligations under the determination;
 - (l) the objective that a determination should be consistent with the following:
 - (i) Principle 11 of the Information Privacy Principles set out in section 14 of the *Privacy Act 1988*;
 - (ii) codes registered under Part 6;
 - (iii) standards determined under Part 6.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACA may have regard.
- (4) A determination under this section may deal with ancillary or incidental matters, including the protection of the privacy of information transmitted in connection with a call to an emergency service number.
- (5) A determination under this section may deal with performance standards, including (but not limited to) performance standards relating to:
 - (a) the answering of calls to emergency service numbers; and
 - (b) delays in transferring calls made to an emergency service number to the appropriate emergency service organisation; and
 - (c) the handling of complaints about emergency call services.
- (6) Subsections (4) and (5) do not, by implication, limit subsection (1).
- (7) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (8) In making a determination under this section, the ACA may apply, adopt or incorporate (with or without modification) any matter contained in a code or standard proposed or approved by a body or association, either:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.This subsection does not, by implication, limit section 589.
- (9) Before making a determination under this section, the ACA must consult representatives of each of the following groups:
 - (a) carriers;
 - (b) carriage service providers;
 - (c) recognised persons who operate an emergency call service;
 - (d) emergency service organisations;
 - (e) consumers of standard telephone services.

- (10) A carriage service provider may provide the access referred to in paragraph (2)(a) itself or by arranging with another person for the access to be provided.
- (11) In this section:

emergency service organisation means:

- (a) a police force or service; or
- (b) a fire service; or
- (c) an ambulance service; or
- (d) a service specified in the numbering plan for the purposes of this paragraph; or
- (e) a service for despatching a force or service referred to in paragraph (a), (b), (c) or (d).

266 Compliance with determination

- (1) A person on whom a requirement is imposed by a determination in force under section 265 must comply with the determination.
- (2) Subsection (1) has effect subject to sections 267 and 269.
- (3) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (1); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
 - (d) conspire with others to effect a contravention of subsection (1).
- (4) Subsections (1) and (3) are ***civil penalty provisions***.

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

267 Access to emergency call services

- (1) This section applies if:
 - (a) an emergency call service is operated by a recognised person; and
 - (b) a determination under section 265 requires a carriage service provider who supplies a standard telephone service to provide each end-user of that standard telephone service with access to that emergency call service; and
 - (c) a determination under section 265 requires the recognised person to:
 - (i) receive and handle calls made by those end-users to the relevant emergency service number; and
 - (ii) if appropriate—transfer such calls to an appropriate emergency service organisation; and
 - (iii) if appropriate—give information in relation to such calls to an appropriate emergency service organisation.
- (2) The recognised person must comply with the requirement mentioned in paragraph (1)(c) on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the carriage service provider;
 - (ii) the recognised person; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subsection (4) does not, by implication, limit subsection (3).
- (6) A determination made in an arbitration under this section must not be inconsistent with a Ministerial pricing determination in force under section 268.

268 Ministerial pricing determinations

- (1) The Minister may make a written determination setting out principles dealing with price-related terms and conditions relating to requirements of a kind referred to in subsection 267(1). The determination is to be known as a *Ministerial pricing determination*.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) In this section:

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

269 Access to be provided

- (1) This section applies if a determination under section 265 requires a person to provide access as mentioned in paragraph 265(2)(j) or (k).
- (2) The person must provide that access in accordance with the requirements set out in the determination and on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the person;
 - (ii) the carriage service provider to whom access is required to be provided; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subsection (4) does not, by implication, limit subsection (3).

Part 13—Protection of communications

Division 1—Introduction

270 Simplified outline

The following is a simplified outline of this Part:

- Carriers, carriage service providers, number-database operators, emergency call persons and their respective associates must protect the confidentiality of information that relates to:
 - (a) the contents of communications that have been, or are being, carried by carriers or carriage service providers; and
 - (b) carriage services supplied by carriers and carriage service providers; and
 - (c) the affairs or personal particulars of other persons.
- The disclosure or use of protected information is authorised in limited circumstances (for example, disclosure or use for purposes relating to the enforcement of the criminal law).
- An authorised recipient of protected information may only disclose or use the information for an authorised purpose.
- Certain record-keeping requirements are imposed in relation to authorised disclosures or uses of information.

271 Eligible person

For the purposes of this Part, an *eligible person* is a person who is:

- (a) a carrier; or
- (b) a carriage service provider; or
- (c) an employee of a carrier; or
- (d) an employee of a carriage service provider; or
- (e) a telecommunications contractor; or
- (f) an employee of a telecommunications contractor.

272 Number-database operator and eligible number-database person

- (1) For the purposes of this Part, a *number-database operator* is a person in respect of which a determination is in force under subsection 472(1).
- (2) For the purposes of this Part, an *eligible number-database person* is a person who is:
 - (a) a number-database operator; or
 - (b) an employee of a number-database operator; or
 - (c) a number-database contractor; or
 - (d) an employee of a number-database contractor.

273 Information

A reference in this Part to *information* includes a reference to opinion.

274 Telecommunications contractor

A reference in this Part to a *telecommunications contractor* is a reference to a person who performs services for or on behalf of:

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

but does not include a reference to a person who performs such services in the capacity of an employee of the carrier or provider.

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.

Division 2—Primary disclosure/use offences

276 Primary disclosure/use offence—eligible persons

Current eligible persons

- (1) An eligible person must not disclose or use any information or document that:
 - (a) relates to:
 - (i) the contents or substance of a communication that has been carried by a carrier or carriage service provider; or
 - (ii) the contents or substance of a communication that is being carried by a carrier or carriage service provider (including a communication that has been collected or received by such a carrier or provider for carriage by it but has not been delivered by it); or
 - (iii) carriage services supplied, or intended to be supplied, to another person by a carrier or carriage service provider; or
 - (iv) the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
 - (b) comes to the person's knowledge, or into the person's possession:
 - (i) if the person is a carrier or carriage service provider—in connection with the person's business as such a carrier or provider; or
 - (ii) if the person is an employee of a carrier or carriage service provider—because the person is employed by the carrier or provider in connection with its business as such a carrier or provider; or
 - (iii) if the person is a telecommunications contractor—in connection with the person's business as such a contractor; or
 - (iv) if the person is an employee of a telecommunications contractor—because the person is employed by the contractor in connection with its business as such a contractor.

Former eligible persons

- (2) A person who has been an eligible person must not disclose or use any information or document that:
- (a) relates to a matter mentioned in paragraph (1)(a); and
 - (b) came to the person's knowledge, or into the person's possession:
 - (i) if the person was a carrier or carriage service provider—in connection with the person's business as such a carrier or provider; or
 - (ii) if the person was an employee of a carrier or carriage service provider—because the person was employed by the carrier or provider in connection with its business as such a carrier or provider; or
 - (iii) if the person was a telecommunications contractor—in connection with the person's business as such a contractor; or
 - (iv) if the person was an employee of a telecommunications contractor—because the person was employed by the contractor in connection with its business as such a contractor.

Offence

- (3) A person who intentionally or recklessly contravenes this section is guilty of 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.

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 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 intentionally or recklessly contravenes this section is guilty of 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.

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 intentionally or recklessly contravenes this section is guilty of 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.

Note 2: See also sections 4AA and 4B of the *Crimes Act 1914*.

Scope of subsection (1)—carriage by means of electromagnetic energy

- (4) Subparagraphs (1)(a)(i) and (ii) do not apply to a communication that is or has been carried by a carrier or carriage service provider unless the carriage was by means of, is by means of, or is proposed to be delivered by means of, guided and/or unguided electromagnetic energy.

Division 3—Exceptions to primary disclosure/use offences

Subdivision A—Exceptions

279 Performance of person's duties

- (1) Section 276 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the person is an employee of:
 - (i) a carrier; or
 - (ii) a carriage service provider; or
 - (iii) a telecommunications contractor; and
 - (b) the disclosure or use is made in the performance of the person's duties as such an employee.
- (2) Section 276 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the person is a telecommunications contractor; and
 - (b) the disclosure or use is made in the performance of the person's duties as such a contractor.
- (3) Section 277 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the person is an employee of:
 - (i) a number-database operator; or
 - (ii) a number-database contractor; and
 - (b) the disclosure or use is made in the performance of the person's duties as such an employee.
- (4) Section 277 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the person is a number-database contractor; and
 - (b) the disclosure or use is made in the performance of the person's duties as such a contractor.
- (5) Section 278 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the person is an employee of:

- (i) a recognised person who operates an emergency call service; or
 - (ii) an emergency call contractor; and
 - (b) the disclosure or use is made in the performance of the person's duties as such an employee.
- (6) Section 278 does not prohibit a disclosure or use by a person of information or a document if:
- (a) the person is an emergency call contractor; and
 - (b) the disclosure or use is made in the performance of the person's duties as such a contractor.

280 Authorisation by or under law

- (1) Division 2 does not prohibit a disclosure or use of information or a document if:
- (a) in a case where the disclosure or use is in connection with the operation of an enforcement agency—the disclosure or use is required or authorised under a warrant; or
 - (b) in any other case—the disclosure or use is required or authorised by or under law.
- (2) In this section:

enforcement agency has the same meaning as in section 282.

281 Witnesses

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.

282 Law enforcement and protection of public revenue

- (1) Division 2 does not prohibit a disclosure or use by a person of information or a document if the disclosure or use is reasonably necessary for the enforcement of the criminal law.
- (2) Sections 276 and 277 do not prohibit a disclosure or use by a person of information or a document if the disclosure or use is reasonably necessary for:
- (a) the enforcement of a law imposing a pecuniary penalty; or
 - (b) the protection of the public revenue.
- (3) Division 2 does not prohibit a disclosure by a person of information or a document if an authorised officer of a criminal law-enforcement agency has certified that the disclosure is reasonably necessary for the enforcement of the criminal law.
- (4) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if an authorised officer of:
- (a) a criminal law-enforcement agency; or
 - (b) a civil penalty-enforcement agency;
- has certified that the disclosure is reasonably necessary for the enforcement of a law imposing a pecuniary penalty.
- (5) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if an authorised officer of:

- (a) a criminal law-enforcement agency; or
- (b) a public revenue agency;

has certified that the disclosure is reasonably necessary for the protection of the public revenue.

- (6) Subsections (3), (4) and (5) do not apply to the disclosure by a person of information or a document that relates to:
 - (a) the contents or substance of a communication that has been carried by a carrier or carriage service provider; or
 - (b) 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).
- (7) A certificate under subsection (3), (4) or (5) must comply with such requirements as are determined in writing by the ACA.
- (8) Before making a determination under subsection (7), the ACA must consult the Privacy Commissioner.
- (9) A certificate under subsection (3), (4) or (5) may be:
 - (a) in written form; or
 - (b) in electronic form (for example, electronic mail).
- (10) In this section:

agency includes a Department of the Commonwealth, a State or a Territory.

authorised officer, in relation to an enforcement agency, means a senior officer of the agency authorised in writing by the head of the agency to give certificates for the purposes of this section.

civil penalty-enforcement agency means an agency responsible for administering a law imposing a pecuniary penalty.

criminal law-enforcement agency means:

- (a) the Australian Federal Police; or
- (b) a police force or service of a State or a Territory; or
- (c) the National Crime Authority; or
- (d) the New South Wales Crime Commission; or
- (e) the Independent Commission Against Corruption of New South Wales; or
- (f) the Criminal Justice Commission of Queensland; or
- (g) a prescribed authority established by or under a law of the Commonwealth, a State or a Territory; or
- (h) a body or organisation responsible to the Australasian Police Ministers' Council for the facilitation of national law enforcement support;

and includes the National Exchange of Police Information.

enforcement agency means:

- (a) a criminal law-enforcement agency; or
- (b) a civil penalty-enforcement agency; or
- (c) a public revenue agency.

officer, in relation to an enforcement agency, means:

- (a) a member of the agency; or

- (b) an officer, employee or member of staff of the agency.

public revenue agency means an agency responsible for the administration of a law relating to the protection of the public revenue, and includes the Australian Taxation Office.

senior officer, in relation to an enforcement agency, means:

- (a) if the agency is a police force or service—a commissioned officer of that force or service; or
- (b) if the agency has a senior executive service (however described)—an officer of that service; or
- (c) if the agency does not have a senior executive service (however described)—an officer of the agency (by whatever name called) who is concerned in, or takes part in, the management of the agency; or
- (d) if a group of officers of the agency perform their duties at premises that are:
 - (i) occupied by the agency; and
 - (ii) located at a place outside the boundaries of a capital city of a State or internal Territory;

the most senior of that group of officers.

For the purposes of paragraph (d), the boundaries of a capital city are to be ascertained in accordance with the regulations. However, if no regulations are in force, the boundary of a capital city is a circle with a 50 kilometre radius from the general post office of the capital city.

283 ASIO

- (1) Division 2 does not prohibit a disclosure of information or a document if the disclosure is made:
 - (a) to an officer or employee of the Australian Security Intelligence Organization authorised in writing by the Director-General of Security to receive the disclosure; and
 - (b) in connection with the performance by the Organization of its functions.
- (2) Division 2 does not prohibit a disclosure of information or a document if:
 - (a) the disclosure is made to an officer or employee of the Australian Security Intelligence Organization authorised in writing by the Director-General of Security to receive the disclosure; and
 - (b) an officer or employee of the Organization authorised in writing by the Director-General for the purposes of this paragraph has certified that the disclosure would be connected with the performance by the Organization of its functions.

284 Assisting the ACA, 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 ACA; and
 - (b) the information or document may assist the ACA to carry out its functions or powers.

- (2) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:
 - (a) the disclosure is made to, or to a member of the staff of, the ACCC; and
 - (b) the information or document may assist the ACCC to carry out its telecommunications functions and powers.
- (3) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:
 - (a) the disclosure is made to the Telecommunications Industry Ombudsman, or to an employee of the Telecommunications Industry Ombudsman; and
 - (b) the information or document may assist the Telecommunications Industry Ombudsman in the consideration of a complaint made to the Telecommunications Industry Ombudsman.

285 Integrated public number database

- (1) Sections 276 and 277 do not prohibit a disclosure or 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 disclosure or 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 or maintenance of a directory of public numbers, where the directory does not enable a person who only knows a customer's number to readily identify the customer's name and/or address; or
 - (iii) dealing with the matter or matters raised by a call to an emergency service number.

- (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.

public number means a number specified in the numbering plan as mentioned in subsection 455(3), but does not include an unlisted number.

286 Calls to emergency service number

Division 2 does not prohibit a disclosure by a person of information or a document if:

- (a) the information or document came to the person's knowledge, or into the person's possession, because of a call to an emergency service number; and

- (b) the information, or the contents of the document, consists of any or all of the following:
 - (i) a name;
 - (ii) a telephone number;
 - (iii) an address;
 - (iv) a location;
 - (v) the matter or matters raised by the call; and
- (c) the disclosure is made to:
 - (i) a member of a police force or service; or
 - (ii) a member of a fire service; or
 - (iii) a member of an ambulance service; or
 - (iv) an emergency call person; or
 - (v) a member of a service specified in the numbering plan for the purposes of this subparagraph; or
 - (vi) a service for despatching a force or service referred to in subparagraph (i), (ii), (iii) or (v);for purposes connected with dealing with the matter or matters raised by the call.

287 Threat to person's life or health

Division 2 does not prohibit a disclosure or use by a person (the *first person*) of information or a document if:

- (a) the information or document relates to the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
- (b) the first person believes on reasonable grounds that the disclosure or use is reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person.

288 Communications for maritime purposes

Division 2 does not prohibit a disclosure or use of information or a document if:

- (a) the disclosure or use is reasonably necessary for the purpose of the preservation of human life at sea; or
- (b) the disclosure or use:
 - (i) relates to the location of a vessel at sea; and
 - (ii) is made for maritime communications purposes.

289 Knowledge or consent of person concerned

Division 2 does not prohibit a disclosure or use by a person of information or a document if:

- (a) the information or document relates to the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
- (b) the other person:
 - (i) is reasonably likely to have been aware or made aware that information or a document of that kind is usually disclosed, or used, as the case requires, in the circumstances concerned; or

- (ii) has consented to the disclosure, or use, as the case requires, in the circumstances concerned.

290 Implicit consent of sender and recipient of communication

Section 276 does not prohibit a disclosure or use by a person if:

- (a) the information or document relates to the contents or substance of a communication made by another person; and
- (b) having regard to all the relevant circumstances, it might reasonably be expected that the sender and the recipient of the communication would have consented to the disclosure or use, if they had been aware of the disclosure or use.

291 Business needs of other carriers or service providers

- (1) Section 276 does not prohibit a disclosure or use by a person of information or a document if:

- (a) the disclosure or use is made by or on behalf of:
 - (i) a carrier (the *first carrier*); or
 - (ii) a carriage service provider (the *first provider*); and
- (b) the disclosure or use is made for a purpose of, or is connected with, any other carrier or service provider carrying on its business as such a carrier or provider; and
- (c) the information or document relates to a person (the *third person*) who is a customer or former customer of:
 - (i) the first carrier or the first provider; or
 - (ii) the other carrier or the other provider; and
- (d) the disclosure or use is made for a purpose of, or is connected with:
 - (i) the supply, or proposed supply, by the other carrier or other provider to the third person of a carriage service or a content service; or
 - (ii) the supply, or proposed supply, by the other carrier or other provider to the third person of goods or services for use in connection with the supply of a carriage service or a content service; or
 - (iii) the installation, maintenance, operation or provision of access to a telecommunications network or a facility, where the network or facility is used, or for use, by the other carrier or the other provider to supply a carriage service or a content service to the third person.

- (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.
- (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.

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 Generality of Subdivision not limited

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

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 are taken to be part of the description of the offence.
- (2) In proceedings for an offence against Division 2, the defendant bears the evidential burden in relation to an exception set out in this Division.
- (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 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.

298 Law enforcement and protection of public revenue

- (1) If information or a document is disclosed to a person as permitted by subsection 282(1) or (3) or this subsection, the person must not disclose or use the information or document unless the disclosure or use is reasonably necessary for the enforcement of the criminal law.
- (2) If information or a document is disclosed to a person as permitted by paragraph 282(2)(a), subsection 282(4) or this subsection, the person must not disclose or use the information or document unless the disclosure or use is reasonably necessary for the enforcement of a law imposing a pecuniary penalty.
- (3) If information or a document is disclosed to a person as permitted by paragraph 282(2)(b), subsection 282(5) or this subsection, the person must not disclose or

use the information or document unless the disclosure or use is reasonably necessary for the protection of the public revenue.

Note: Section 282 deals with the disclosure or use of information or documents reasonably necessary for law enforcement purposes or the protection of the public revenue.

299 Assisting the ACA, 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 ACA's functions and powers.
- (2) If information or a document is disclosed to a person as permitted by subsection 284(2) or this subsection, the person must not disclose or use the information or document except for the purpose of, or in connection with, the carrying out of the ACCC's telecommunications functions and powers.
- (3) If information or a document is disclosed to a person as permitted by subsection 284(3) or this subsection, the person must not disclose or use the information or document except for the purpose of, or in connection with, assisting the Telecommunications Industry Ombudsman in the consideration of a complaint made to the Telecommunications Industry Ombudsman.

Note: Section 284 deals with the disclosure or use of information or documents to assist the ACA, the ACCC or the Telecommunications Industry Ombudsman.

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.

303 Secondary offence—contravening this Division

A person who intentionally or recklessly contravenes this Division is guilty of 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*.

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 Certificates issued by authorised officers of enforcement agencies

- (1) This section applies if a person issues a certificate under subsection 282(3), (4) or (5).
- (2) If the certificate authorises the disclosure of information or a document by a carrier, carriage service provider or number-database operator, the person must give a copy of the certificate to the carrier, provider or operator as soon as practicable after the issue of the certificate and, in any event, within 5 days after the issue of the certificate.

- (3) If the certificate authorises the disclosure of information or a document by an associate of a carrier, carriage service provider or number-database operator, the person must give a copy of the certificate to the carrier, provider or operator as soon as practicable after the issue of the certificate and, in any event, within 5 days after the issue of the certificate.
- (4) A copy may be given under subsection (2) or (3):
 - (a) in written form; or
 - (b) in electronic form (for example, by electronic mail).
- (5) If a carrier, carriage service provider or number-database operator is given a copy under subsection (2) or (3), the carrier, provider or operator must retain the copy for 3 years.
- (6) A copy may be retained under subsection (5):
 - (a) in written form; or
 - (b) in electronic form.

306 Record of disclosures

- (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 a provision of Division 3 (other than section 279, 283, 285, 290 or 291).
- (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 a certificate under subsection 282(3), (4) or (5):
 - (i) the name of the person who issued the certificate; and
 - (ii) the date of the issue of the certificate; and
 - (e) if paragraph (d) does not apply and the disclosure was at the request of another agency or person:

- (i) the name of the agency or person; and
 - (ii) the date of the request; and
 - (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 intentionally or recklessly contravenes this section is guilty of 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, make a record of any matter or thing in such a way that it does not correctly record the matter or thing.
- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of 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 ACA 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, a carrier, carriage service provider or number-database operator makes a record of the disclosure; or
 - (ii) under section 306, 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 ACA a written report relating to the disclosure.
- (2) The report must set out such information about the disclosure as the ACA requires.

309 Monitoring by the Privacy Commissioner

- (1) In addition to the functions conferred on the Privacy Commissioner by the *Privacy Act 1988*, the Privacy Commissioner has the function of monitoring compliance with this Division.
- (2) In particular, the function conferred on the Privacy Commissioner by subsection (1) includes monitoring:
 - (a) whether a record made under section 306 sets out a statement of the grounds for a disclosure; and

- (b) whether that statement is covered by Division 3 (which deals with exceptions).
- (3) A carrier, carriage service provider or number-database operator must give the Privacy Commissioner such access to the records of the carrier, provider or operator as the Privacy Commissioner reasonably requires for the purposes of the performance of the function conferred by subsection (1).
- (4) The Privacy Commissioner may give the Minister a written report about any matters arising out of the performance of the function conferred by subsection (1).
- (5) Section 99 of the *Privacy Act 1988* applies to this section as if this section were a provision of the *Privacy Act 1988*.

Note: Section 99 of the *Privacy Act 1988* deals with delegation.

Division 6—Instrument-making powers not limited

310 Instrument-making powers not limited

- (1) This Part does not, by implication, limit a power conferred by or under this Act to make an instrument.
- (2) This Part does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.
- (3) This section does not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.

Part 14—National interest matters

311 Simplified outline

The following is a simplified outline of this Part:

- The ACA, carriers and carriage service providers must do their best to prevent telecommunications networks and facilities from being used to commit offences.
- The ACA, carriers and carriage service providers must give the authorities such help as is reasonably necessary for the purposes of:
 - (a) enforcing the criminal law and laws imposing pecuniary penalties; and
 - (b) protecting the public revenue; and
 - (c) safeguarding national security.
- A carriage service provider may suspend the supply of a carriage service in an emergency if requested to do so by a senior police officer.

312 ACA's obligations

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

313 Obligations of carriers and carriage service providers

- (1) A carrier or carriage service provider must, in connection with:
 - (a) the operation by the carrier or provider of telecommunications networks or facilities; or
 - (b) the supply by the carrier or provider of carriage services;do the carrier's best or the provider's best to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories.
- (2) A carriage service intermediary must do the intermediary's best to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories.
- (3) A carrier or carriage service provider must, in connection with:
 - (a) the operation by the carrier or provider of telecommunications networks or facilities; or
 - (b) the supply by the carrier or provider of carriage services;give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:
 - (c) enforcing the criminal law and laws imposing pecuniary penalties;
 - (d) protecting the public revenue;
 - (e) safeguarding national security.

Note: Section 314 deals with the terms and conditions on which such help is to be provided.
- (4) A carriage service intermediary who arranges for the supply by a carriage service provider of carriage services must, in connection with:

- (a) the operation by the provider of telecommunications networks or facilities;
or
 - (b) the supply by the provider of carriage services;
- give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:
- (c) enforcing the criminal law and laws imposing pecuniary penalties;
 - (d) protecting the public revenue;
 - (e) safeguarding national security.

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

- (5) A carrier or carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith:
 - (a) in performance of the duty imposed by subsection (1), (2), (3) or (4); or
 - (b) in compliance with a direction that the ACA gives in good faith in performance of its duties under section 312.
- (6) An officer, employee or agent of a carrier or of a carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the carrier or provider as mentioned in subsection (5).
- (7) A reference in this section to *giving help* includes a reference to giving help by way of the provision of interception services.

314 Terms and conditions on which help is to be given

- (1) This section applies if a person is required to give help to an officer or authority of the Commonwealth, a State or a Territory as mentioned in subsection 313(3) or (4).
- (2) The person must comply with the requirement on the basis that the person neither profits from, nor bears the costs of, giving that help.
- (3) The person must comply with the requirement on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the person;
 - (ii) the Commonwealth, the State or the Territory, as the case may be; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACA is to appoint the arbitrator.
- (4) An arbitrator appointed by the ACA under subsection (3) must be a person specified in a written determination made by the Minister.

Note: A person may be specified by name, by inclusion in a specified class or in any other way.
- (5) Before making a determination under subsection (4), the Minister must consult the Attorney-General.
- (6) If an arbitration under this section is conducted by an arbitrator appointed by the ACA, the cost of the arbitration must be apportioned equally between the parties.
- (7) The regulations may make provision for and in relation to the conduct of an arbitration under this section.

315 Suspension of supply of carriage service in an emergency

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

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

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

316 Generality of Part not limited

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

Part 15—Co-operation with law enforcement agencies

Division 1—Simplified outline

317 Simplified outline

The following is a simplified outline of this Part:

- Carriers and carriage service providers must ensure that it is possible to execute a warrant issued under the *Telecommunications (Interception) Act 1979*.
- A carrier or carriage service provider may be required to have an interception capability.

- Carriers and carriage service providers must comply with consultation requirements relating to the effect of new technology on the operation of certain law enforcement agencies.

Division 2—Execution of warrants under the Telecommunications (Interception) Act 1979

318 Scope of Division

- (1) This Division applies to a person if the person is:
 - (a) a carrier; or
 - (b) a member of a class of carriage service providers specified in a written determination made by the Minister.
- (2) Before making a determination under paragraph (1)(b), the Minister must consult the Attorney-General.
- (3) A determination under paragraph (1)(b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

319 Execution of warrants

- (1) A person must ensure that it is possible to execute a warrant issued under the *Telecommunications (Interception) Act 1979* in relation to a carriage service supplied by means of:
 - (a) a controlled network of the person; or
 - (b) a controlled facility of the person.
- (2) A person must ensure that it is possible to execute a warrant issued under the *Telecommunications (Interception) Act 1979* in relation to a controlled carriage service of the person.

320 Exemptions

- (1) The Minister may make a written determination exempting a specified person from the requirements of section 319 in so far as those requirements relate to a specified carriage service.
- (2) The exemption may be:
 - (a) unconditional; or
 - (b) subject to such conditions as are specified in the determination.
- (3) Before making a determination under subsection (1), the Minister must consult the Attorney-General.

Division 3—Interception capability

321 Scope of Division

This Division applies to a carrier or carriage service provider who, under section 320, is exempt from the requirements of section 319.

322 Requirement to provide interception capability

The Minister may give a carrier or carriage service provider a written notice requiring that:

- (a) a controlled network of the carrier or provider have a specified kind of interception capability; or
- (b) a controlled facility of the carrier or provider have a specified kind of interception capability; or
- (c) a controlled carriage service of the carrier or provider have a specified kind of interception capability.

Note: *Interception capability* is defined by section 326.

323 Interception capability to be provided

- (1) If a requirement is in force under section 322 in relation to a carrier or carriage service provider, the carrier or provider must provide the interception capability in accordance with the requirement and on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the carrier or provider;
 - (ii) the agency or agencies specified by the Minister in the notice; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.If the parties fail to agree on the appointment of an arbitrator, the ACA is to appoint the arbitrator.

- (2) An arbitrator appointed by the ACA under subsection (1) must be a person specified in a written determination made by the Minister.

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

- (3) Before making a determination under subsection (2), the Minister must consult the Attorney-General.
- (4) If an arbitration under this section is conducted by an arbitrator appointed by the ACA, the cost of the arbitration must be apportioned equally between the parties.
- (5) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (6) A reference in subsection (1) to an *agency* includes a reference to:
 - (a) in the case of an agency of a State—the State on behalf of the agency; and
 - (b) in the case of an agency of the Commonwealth—the Commonwealth on behalf of the agency.

324 Terms and conditions—compliance with principles

The terms and conditions on which a carrier or carriage service provider is to provide an interception capability are to comply with the following principles:

- (a) the principle that the carrier or provider is to incur the costs (whether of a capital nature or otherwise) relating to the creation or development of the interception capability;
- (b) the principle that the carrier or provider may recover those costs, over time, from the other party or parties.

This section does not, by implication, limit section 323.

325 Terms and conditions—timing of implementation of requirement

A term or condition agreed or determined under section 323 may relate to the period within which the requirement is to be implemented. This section does not, by implication, limit section 323.

326 Meaning of *interception capability*

For the purposes of this Division, a telecommunications network, a facility, or a carriage service has an *interception capability* if, and only if:

- (a) assuming that a warrant were issued to an agency; and
- (b) assuming that the warrant authorised the interception of a communication passing over the network, facility or service, as the case may be;

the network, facility or service, as the case requires, will be capable of enabling that communication to be intercepted.

327 Expressions to have the same meaning as in the *Telecommunications (Interception) Act 1979*

Unless the contrary intention appears, an expression used in this Division and in the *Telecommunications (Interception) Act 1979* has the same meaning in this Division as it has in that Act.

328 Meaning of *agency*

In this Division:

agency means:

- (a) an agency within the meaning of Part VI of the *Telecommunications (Interception) Act 1979*; or
- (b) the Australian Security Intelligence Organization.

Division 4—Consultation about new technology

329 Designated agency

For the purposes of this Division, each of the following is a *designated agency*:

- (a) the Australian Federal Police;
- (b) a police force or service of a State or a Territory;
- (c) the National Crime Authority;
- (d) the New South Wales Crime Commission;
- (e) the Independent Commission Against Corruption of New South Wales;
- (f) the Criminal Justice Commission of Queensland;
- (g) the Australian Security Intelligence Organization;
- (h) a prescribed authority established by or under a law of the Commonwealth, a State or a Territory.

330 Consultation about new technology—advisory committee established

- (1) This section applies if the ACA has established an advisory committee for the purposes of facilitating consultation with designated agencies about new technology.

- (2) A carrier or carriage service provider must, in accordance with directions given to it by the ACA, consult with the advisory committee about the carrier's proposals or the provider's proposals to:
 - (a) use new technology in relation to its controlled networks, controlled facilities or controlled carriage services; and
 - (b) develop new technology in order to use the technology in relation to its controlled networks, controlled facilities or controlled carriage services.

331 Consultation about new technology—no advisory committee established

- (1) This section applies if no advisory committee is established by the ACA for the purposes of facilitating consultation with designated agencies about new technology.
- (2) A carrier or carriage service provider must, in accordance with directions given to it by the ACA, consult with designated agencies about proposals to:
 - (a) use new technology in relation to its controlled networks, controlled facilities or controlled carriage services; and
 - (b) develop new technology in order to use the technology in relation to its controlled networks, controlled facilities or controlled carriage services.

332 Exemptions

- (1) The Minister may make a written determination exempting the members of a specified class of persons from the requirements of this Division.
- (2) The exemption may be:
 - (a) unconditional; or
 - (b) subject to such conditions as are specified in the determination.
- (3) Before making a determination under subsection (1), the Minister must consult the Attorney-General.

Part 16—Defence requirements and disaster plans

Division 1—Introduction

333 Simplified outline

The following is a simplified outline of this Part:

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

- A carrier licence condition or a service provider rule may deal with compliance with a disaster plan.

334 Defence authority

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

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

Division 2—Supply of carriage services

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

- (1) A defence authority may give a carriage service provider a written notice requiring the provider to supply a specified carriage service for the use of:
 - (a) the Department of Defence; or
 - (b) the Defence Force.
- (2) A defence authority must not issue a notice about a carriage service unless the service is required for:
 - (a) defence purposes; or
 - (b) for the purposes of the management of natural disasters;or both.
- (3) A notice issued by a defence authority requiring a carriage service provider to supply a carriage service in particular circumstances is of no effect if there is in force a written certificate issued by the ACA stating that, in the ACA's opinion, it would be unreasonable for the provider to be required to supply the service in those circumstances.
- (4) If a requirement is in force, the provider must supply the carriage service in accordance with the requirement and on such terms and conditions as are:
 - (a) agreed between the provider and the defence authority; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.If the parties cannot agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (5) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (6) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (7) Subsection (6) does not, by implication, limit subsection (5).

Division 3—Defence planning

336 Definitions

In this Division:

certified agreement has the meaning given by section 338.

crisis means:

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

draft agreement means a draft agreement prepared under section 337.

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

337 Preparation of draft agreement

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

338 ACA's certification of draft agreement

- (1) The ACA may certify a draft agreement if the ACA is of the opinion that the draft agreement is reasonable.
- (2) On being certified, the draft agreement becomes a *certified agreement*.
- (3) In deciding whether to certify a draft agreement, the ACA must have regard to whether the draft agreement deals with the following matters in a reasonable way:
 - (a) consultation with a defence authority about maintenance, installation, modification and removal of telecommunications networks or facilities;
 - (b) consultation with a defence authority about operational arrangements in times of crisis;
 - (c) the protection of confidential information, including restrictions on the uses to which such information may be put;
 - (d) grants of financial assistance (including conditional grants) by the Commonwealth for purposes relating to:
 - (i) network survivability; or

(ii) operational requirements in times of crisis;
or both.

- (4) For the purposes of this section, in determining whether a particular matter is reasonable, the ACA must have regard to:
- (a) the needs of the Department of Defence and of the Defence Force; and
 - (b) the interests of the carrier or carriage service provider concerned.
- This subsection does not, by implication, limit the meaning of the expression “reasonable”.
- (5) In deciding whether to certify a draft agreement, the ACA must consult the parties to the agreement.
- (6) As soon as practicable after deciding whether to certify a draft agreement, the ACA must give each of the parties to the agreement a written notice setting out its decision.

339 Requirement to enter into certified agreement

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

340 Compliance with agreement

If:

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

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

341 Withdrawal of certification of agreement

- (1) This section applies if:
- (a) a certified agreement is in force at a particular time; and
 - (b) the ACA is of the opinion that, if the agreement were a draft agreement at that time, the ACA would have refused to certify it.
- (2) The ACA must withdraw its certification of the agreement.
- (3) As soon as practicable after withdrawing its certification of the agreement, the ACA must give each of the parties to the agreement a written notice stating that it has withdrawn its certification of the agreement.

342 Duration of agreement

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

343 Variation of agreement

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

Division 4—Disaster plans

344 Designated disaster plans

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

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

345 Carrier licence conditions about designated disaster plans

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

346 Service provider determinations about designated disaster plans

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

Division 5—Delegation

347 Delegation

- (1) The Secretary to the Department of Defence may, by writing, delegate to a person holding or performing the duties of a Senior Executive Service office in that Department any or all of the Secretary's powers under this Part.
- (2) The Chief of the Defence Force may, by writing, delegate to a member of the Defence Force holding a senior rank any or all of the powers conferred on the Chief of the Defence Force by this Part.
- (3) In this section:

Senior Executive Service office has the same meaning as in the *Public Service Act 1922*.

senior rank means a rank not lower than:

- (a) in the case of the Royal Australian Navy—the rank of Commodore; or
- (b) in the case of the Australian Army—the rank of Brigadier; or
- (c) in the case of the Royal Australian Air Force—the rank of Air Commodore.

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

348 Simplified outline

The following is a simplified outline of this Part:

- The ACA may require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers.
- Pre-selection must include over-ride dial codes for selecting alternative carriage service providers on a call-by-call basis.

349 Requirement to provide pre-selection

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

- (2) The ACA may make a written determination requiring each carrier or carriage service provider who supplies a specified carriage service to:
 - (a) provide pre-selection in favour of a specified carriage service provider, in relation to calls made using the carriage service, in the manner specified in the determination; and
 - (b) comply with such ancillary or incidental rules (if any) as are set out in the determination.
- (3) In making a determination under subsection (1) or (2), the ACA must have regard to:
 - (a) the technical feasibility of complying with the requirement concerned; and
 - (b) the costs and benefits of complying with the requirement concerned.
- (4) Subsection (3) does not, by implication, limit the matters to which regard may be had.
- (5) A reference in this section to a *standard telephone service* does not include a reference to a service that is supplied by means of a public mobile telecommunications service.
- (6) Before making a determination under this section, the ACA must consult the ACCC.
- (7) In making a determination under this section, the ACA may apply, adopt or incorporate (with or without modification) any matter contained in a code or standard proposed or approved by a body or association, either:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
 This subsection does not, by implication, limit section 589.
- (8) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

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

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

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

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

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

351 Pre-selection to be provided

- (1) This section applies to a person if a determination under section 349 is in force and that determination requires the person to provide pre-selection.
- (2) A person must provide pre-selection in accordance with the requirements set out in the determination and on such terms and conditions as are:
- (a) agreed between the following parties:
 - (i) the person;
 - (ii) the carriage service provider in whose favour pre-selection is required to be provided; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.
- If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subsection (4) does not, by implication, limit subsection (3).

- (6) A person must comply with any rules set out in the determination as mentioned in paragraph 349(1)(b) or (2)(b).

352 Exemptions from requirement to provide pre-selection

- (1) The ACA may, by notice in the *Gazette*, declare that a specified carrier or carriage service provider is exempt from a requirement imposed under section 349. The declaration has effect accordingly.

Note: Carriers or providers may be specified by name, by inclusion in a particular class or in any other way.

- (2) In deciding whether a carrier or carriage service provider should be exempt from a requirement imposed under section 349, the ACA must have regard to the following matters:
 - (a) whether it would be technically feasible for the carrier or provider to comply with the requirement concerned;
 - (b) whether compliance with the requirement concerned would impose unreasonable financial hardship on the carrier or provider.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACA may have regard.

353 Use of over-ride dial codes

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

Part 18—Calling line identification

354 Simplified outline

The following is a simplified outline of this Part:

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

355 Calling line identification

- (1) This section applies to a person if:
 - (a) the person is a carrier or a carriage service provider; and
 - (b) a controlled facility of the person consists of:
 - (i) a switching system used in connection with the supply of a standard telephone service; or
 - (ii) a switching system of a kind specified in a determination under subsection (3); and
 - (c) either:
 - (i) the completion of the installation of the system occurred on or after 1 July 1997; or
 - (ii) immediately before 1 July 1997, the system was capable of providing calling line identification.
- (2) The person must take all reasonable steps to ensure that the system is capable of providing calling line identification.
- (3) The ACA may make a written determination for the purposes of subparagraph (1)(b)(ii).
- (4) A determination under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

356 Exemptions from calling line identification requirement

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

Note: A person may be identified by name, by inclusion in a particular class or in any other way.
- (2) In deciding whether a person should be exempt from the requirement set out in section 355, the ACA must have regard to the following matters:
 - (a) whether it would be unreasonable to impose the requirement;
 - (b) whether it is in the public interest to impose the requirement.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACA may have regard.

Part 19—Advanced Mobile Phone System (AMPS)

357 Simplified outline

The following is a simplified outline of this Part:

- The Advanced Mobile Phone System is to be phased out by 1 January 2000.

358 Meaning of AMPS

In this Part:

AMPS means the Advanced Mobile Phone System.

Note: The Advanced Mobile Phone System does not incorporate digital modulation techniques.

359 Scope of Part

This Part applies to a person who is:

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

360 No new AMPS

Before 1 January 2000, a person other than Telstra must not install or operate an AMPS network.

361 AMPS to be phased out

- (1) On or after 1 January 2000, a person must not install or operate an AMPS network.
- (2) Before 1 January 2000, a person must comply with any written plan determined by the Minister in relation to:
 - (a) ceasing installation or operation of an AMPS network; or
 - (b) ceasing the supply of AMPS services; or
 - (c) ceasing to use, for AMPS purposes, the radiocommunications spectrum used in relation to AMPS services.
- (3) Subsections (1) and (2) have effect subject to section 362.
- (4) A plan under subsection (2) may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any frequency band plan (within the meaning of the *Radiocommunications Act 1992*), either:
 - (a) as in force at a particular time; or
 - (b) as in force from time to time.
- (5) Subsection (4) does not, by implication, limit section 589.

362 Limited exemption from phase-out of AMPS

- (1) A person may install or operate an AMPS network in a particular area:
 - (a) on or after 1 January 2000; or
 - (b) contrary to the requirements of a plan of a kind to which subsection 361(2) applies;if:
 - (c) the Minister and each eligible mobile carrier agree in writing; or
 - (d) the Minister agrees in writing after:
 - (i) the Minister has consulted each eligible mobile carrier; and
 - (ii) the Minister has determined that the installation or operation of the AMPS network will not erode unduly the practical value to an eligible mobile carrier of the regime embodied in sections 360 and 361.
- (2) Subsection (1) does not authorise a person to do anything that would contravene a provision of this Act (other than section 360 or 361).
- (3) In this section:

eligible mobile carrier means a person who was a mobile carrier (within the meaning of the *Telecommunications Act 1991*) immediately before 1 July 1997.

363 Competition not to be reduced

- (1) This section applies if a person installs or operates an AMPS network.
- (2) The person must not use the installation of the AMPS network, or operate the AMPS network, in a way that could unfairly reduce the scope for competition between carriage service providers who supply public mobile telecommunications services.

Part 20—International aspects of activities of the telecommunications industry

Division 1—Simplified outline

364 Simplified outline

The following is a simplified outline of this Part:

- The Minister may give directions to the Signatories to the INTELSAT Agreement and the Inmarsat Convention.
- Carriers and carriage service providers may be required to comply with certain international conventions.
- The Minister may make Rules of Conduct about dealings with international telecommunications operators.

Division 2—Compliance with international agreements

365 INTELSAT and Inmarsat—directions to Signatories

- (1) This section applies to a person if:
 - (a) the person is:
 - (i) a carrier; or
 - (ii) a carriage service provider; and
 - (b) either:
 - (i) the person is a Signatory within the meaning of the INTELSAT Agreement because the person has been designated, by or on behalf of the Commonwealth and in accordance with Article II(b) of that Agreement, to sign the INTELSAT Operating Agreement; or
 - (ii) the person is a Signatory within the meaning of the Convention on the International Maritime Satellite Organisation (Inmarsat) because the person has been designated, by or on behalf of the Commonwealth and in accordance with Article 2(3) of that Convention, to sign the Operating Agreement on the International Maritime Satellite Organisation (Inmarsat).

- (2) The Minister may give the person such written directions as the Minister thinks necessary in relation to the person's performance of the person's functions as a Signatory within the meaning of that Agreement or Convention.
- (3) The Minister must not give a direction under subsection (2) that relates to the manner in which the person is to deal with a particular customer.
- (4) A person must comply with a direction under subsection (2).

366 Compliance with conventions

- (1) This section applies to a person who is:
 - (a) a carrier; or
 - (b) a carriage service provider.
- (2) The Minister may, by notice published in the *Gazette*, declare that, for the purposes of this section, a specified convention is binding in relation to the members of a specified class of persons.
- (3) A person who is a member of that class must, in connection with:
 - (a) the operation by the person of telecommunications networks or of facilities; or
 - (b) the supply by the person of carriage services;act in a way consistent with Australia's obligations under that convention.
- (4) The Minister may, by notice published in the *Gazette*, declare that, for the purposes of this section, a specified part of a specified convention is binding in relation to the members of a specified class of persons.
- (5) A person who is a member of that class must, in connection with:
 - (a) the operation by the person of telecommunications networks or of facilities; or
 - (b) the supply by the person of carriage services;act in a way consistent with Australia's obligations under that part of the convention.
- (6) In this section:

convention means:

 - (a) a convention to which Australia is a party; or
 - (b) an agreement or arrangement between Australia and a foreign country;and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

Division 3—Rules of Conduct about dealings with international telecommunications operators

367 Rules of Conduct about dealings with international telecommunications operators

- (1) For the purposes of this section, an international telecommunications operator **engages in unacceptable conduct** if, and only if:
 - (a) the operator uses, in a manner that is, or is likely to be, contrary to the national interest, the operator's power in a market for:

- (i) carriage services; or
 - (ii) goods or services for use in connection with the supply of carriage services; or;
 - (iii) the installation of, maintenance of, operation of, or provision of access to, telecommunications networks or facilities; or
 - (b) the operator uses, in a manner that is, or is likely to be, contrary to the national interest, any legal rights or legal status that the operator has because of foreign laws that relate to:
 - (i) carriage services; or
 - (ii) goods or services for use in connection with the supply of carriage services; or
 - (iii) the installation of, maintenance of, operation of, or provision of access to, telecommunications networks or facilities; or
 - (c) the operator engages in any other conduct that is, or is likely to be, contrary to the national interest.
- (2) With a view to preventing, mitigating or remedying unacceptable conduct engaged in by international telecommunications operators, the Minister may, by written instrument, make Rules of Conduct:
- (a) prohibiting or regulating dealings by either or both of the following:
 - (i) carriers;
 - (ii) carriage service providers;
 with such operators and with other persons; or
 - (b) authorising the ACCC to make written determinations of a legislative character, where the determination imposes requirements, prohibitions or restrictions on either or both of the following:
 - (i) carriers;
 - (ii) carriage service providers; or
 - (c) authorising the ACCC to give either or both of the following:
 - (i) carriers;
 - (ii) carriage service providers;
 written directions of an administrative character, where the direction imposes a requirement, prohibition or restriction on the carrier or provider, as the case requires; or
 - (d) requiring:
 - (i) carriers; and
 - (ii) carriage service providers;
 to comply with:
 - (iii) a determination mentioned in paragraph (b); or
 - (iv) a direction mentioned in paragraph (c); or
 - (e) authorising the ACCC to make information available to:
 - (i) the public; or
 - (ii) a specified class of persons; or
 - (iii) a specified person;
 if, in the opinion of the ACCC, the disclosure of the information:
 - (iv) would promote the fair and efficient operation of a market; or
 - (v) would otherwise be in the national interest.
- (3) Before the ACCC makes a determination, or gives a direction, under the Rules of Conduct, the ACCC must consult the ACA.

- (4) Rules of Conduct are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) A determination mentioned in paragraph (2)(b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) For the purposes of this section, if a person carries on activities outside Australia that involve:
 - (a) the supply of a carriage service specified in paragraph 16(1)(b) or (c); or
 - (b) the supply of goods or services for use in connection with the supply of a carriage service specified in paragraph 16(1)(b) or (c); or
 - (c) the installation of, maintenance of, operation of or provision of access to:
 - (i) a telecommunications network; or
 - (ii) a facility;where the network or facility is used to supply a carriage service specified in paragraph 16(1)(b) or (c);
the person is an *international telecommunications operator*.
- (7) In this section:

engaging in conduct has the same meaning as in the *Trade Practices Act 1974*.

foreign law means a law of a place outside Australia.

international telecommunications operator has the meaning given by subsection (6).

368 ACCC to administer Rules of Conduct

The ACCC has the general administration of the Rules of Conduct in force under section 367.

369 Rules of Conduct to bind carriers and carriage service providers

- (1) This section applies to a person who is:
 - (a) a carrier; or
 - (b) a carriage service provider.
- (2) The person must comply with Rules of Conduct in force under section 367.
- (3) If a provision of an agreement made by the person is inconsistent with Rules of Conduct in force under section 367, the provision is unenforceable (see section 370).

370 Unenforceability of agreements

- (1) This section applies if an agreement, or a provision of an agreement, is unenforceable because of section 369.
- (2) A party to the agreement is not entitled, as against any other party:
 - (a) to enforce the agreement or provision, as the case may be, whether directly or indirectly; or
 - (b) to rely on the agreement or provision, as the case may be, whether directly or indirectly and whether by way of defence or otherwise.

- (3) A party (the *first party*) to the agreement is not entitled to recover by any means (including, for example, set-off, a quasi-contractual claim or a claim for a restitutionary remedy) any amount that another party would have been liable to pay to the first party under or in connection with the agreement or provision, as the case may be, if this section had not been enacted.

371 Investigations by the ACCC

- (1) This Act does not prevent the ACCC from carrying out an investigation of a contravention of Rules of Conduct in force under section 367.
- (2) If the ACCC begins an investigation of a contravention of the Rules of Conduct, the ACCC must:
 - (a) notify the ACA accordingly; and
 - (b) consult the ACA about any significant developments that occur in the course of that investigation.

372 Reviews of the operation of this Division

- (1) The ACCC must review, and report each financial year to the Minister on, the operation of this Division.
- (2) The ACCC must give a report under subsection (1) to the Minister as soon as practicable after the end of the financial year concerned.
- (3) The ACCC must, if directed in writing to do so by the Minister, review, and report to the Minister on, specified matters relating to the operation of this Division.
- (4) The ACCC must give a report under subsection (3) to the Minister before the end of the period specified in the direction.
- (5) The Minister must cause a copy of a report under this section to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

Part 21—Technical regulation

Division 1—Simplified outline

373 Simplified outline

The following is a simplified outline of this Part:

- The ACA may make the following types of standards:
 - (a) technical standards about customer equipment and customer cabling;
 - (b) standards relating to the features of customer equipment that are designed to cater for the special needs of persons with disabilities;
 - (c) technical standards about the interconnection of facilities.

- The ACA may require customer equipment and customer cabling to be labelled so as to indicate compliance with standards.
- The ACA may issue connection permits, and make connection rules, authorising the connection of customer equipment and customer cabling that does not comply with the labelling requirements.
- A label may include a compliance symbol. The unauthorised use of compliance symbols is prohibited.
- The ACA may grant cabling licences, and make cabling provider rules, authorising the performance of cabling work.
- Civil actions may be instituted for unlawful or dangerous connections of customer equipment or customer cabling.
- Dangerous equipment and cabling may be disconnected from networks.
- The ACA may prohibit the supply or possession of dangerous equipment or cabling.

Division 2—Interpretative provisions

374 Part applies to networks or facilities in Australia operated by carriers or carriage service providers

- (1) A reference in this Part to a *telecommunications network* is a reference to a telecommunications network in Australia that is operated by a carrier or carriage service provider.
- (2) A reference in this Part to a *facility* is a reference to a facility in Australia that is operated by a carrier or carriage service provider.

375 Manager of network or facility

For the purposes of this Part, the *manager* of:

- (a) a telecommunications network; or
- (b) a facility of a telecommunications network;

is the carrier, or carriage service provider, who operates the network or facility, as the case may be.

Division 3—Technical standards about customer equipment and customer cabling

376 ACA's power to make technical standards

- (1) The ACA may, by written instrument, make a technical standard relating to specified customer equipment or specified customer cabling.
- (2) Standards under this section are to consist only of such requirements as are necessary or convenient for:

- (a) protecting the integrity of a telecommunications network or a facility; or
 - (b) protecting the health or safety of persons who:
 - (i) operate; or
 - (ii) work on; or
 - (iii) use services supplied by means of; or
 - (iv) are otherwise reasonably likely to be affected by the operation of; a telecommunications network or a facility; or
 - (c) ensuring that customer equipment can be used to give access to an emergency call service; or
 - (d) ensuring, for the purpose of the supply of a standard telephone service, the interoperability of customer equipment with a telecommunications network to which the equipment is, or is proposed to be, connected; or
 - (e) achieving an objective specified in the regulations.
- (3) Regulations made for the purposes of paragraph (2)(e) must not specify an objective if the achievement of the objective is likely to have the effect (whether direct or indirect) of requiring a telecommunications network or a facility to:
- (a) have particular design features; or
 - (b) meet particular performance requirements.
- (4) A standard under this section may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (5) A standard under this section takes effect:
- (a) if the instrument making the standard specifies a day for the purpose—on that day; or
 - (b) otherwise—on the day on which the standard was notified in the *Gazette*.
- (6) A standard under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

377 Adoption of voluntary standards

- (1) In making a technical standard under section 376, the ACA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
- (a) the Standards Association of Australia; or
 - (b) any other body or association;
- either:
- (c) as in force or existing at a particular time; or
 - (d) as in force or existing from time to time.
- (2) Subsection (1) does not, by implication, limit section 589.

378 Procedures for making technical standards

- (1) Before making a technical standard under section 376, the ACA must, so far as is practicable, try to ensure that:
- (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
 - (b) due consideration has been given to any representation so made.

Note: This subsection has effect subject to section 379 (which deals with the ACA's power to make standards in cases of urgency).

- (2) The ACA may make an arrangement with any of the following bodies or associations:
 - (a) the Standards Association of Australia;
 - (b) a body or association approved in writing by the Standards Association of Australia for the purposes of this subsection;
 - (c) a body or association specified in a written determination made by the ACA for the purposes of this subsection;under which the body or association:
 - (d) prepares a draft of a standard; and
 - (e) publishes the draft standard; and
 - (f) undertakes a process of public consultation on the draft standard; and
 - (g) reports to the ACA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

379 Making technical standards in cases of urgency

- (1) The ACA is not required to comply with subsection 378(1) in relation to the making of a particular technical standard if the ACA is satisfied that it is necessary to make the standard as a matter of urgency in order to:
 - (a) protect the integrity of a telecommunications network or of a facility; or
 - (b) protect the health or safety of persons who:
 - (i) operate; or
 - (ii) work on; or
 - (iii) use services supplied by means of; or
 - (iv) are otherwise reasonably likely to be affected by the operation of; a telecommunications network or a facility.
- (2) If subsection (1) applies to a standard (the *urgent standard*), the urgent standard ceases to have effect 12 months after it came into operation. However, this rule does not prevent the ACA from revoking the urgent standard and making another standard under section 376 that:
 - (a) is not a standard to which subsection (1) applies; and
 - (b) deals with the same subject matter as the urgent standard.

Division 4—Disability standards

380 Disability standards

- (1) The ACA may, by written instrument, make a standard relating to specified customer equipment if:
 - (a) the customer equipment is for use in connection with the standard telephone service; and

- (b) the customer equipment is for use primarily by persons who do not have a disability; and
 - (c) the standard relates to the features of the equipment that are designed to cater for any or all of the special needs of persons with disabilities.
- (2) The following are examples of features mentioned in paragraph (1)(c):
 - (a) an induction loop that is designed to assist in the operation of a hearing aid;
 - (b) a raised dot on the button labelled “5” on a telephone.
- (3) A standard under this section may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (4) A standard under this section takes effect:
 - (a) if the instrument making the standard specifies a day for the purpose—on that day; or
 - (b) otherwise—on the day on which the standard was notified in the *Gazette*.
- (5) A standard under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) In this section:

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

381 Adoption of voluntary standards

- (1) In making a standard under section 380, the ACA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
 - (a) the Standards Association of Australia; or
 - (b) any other body or association;either:
 - (c) as in force or existing at a particular time; or
 - (d) as in force or existing from time to time.
- (2) Subsection (1) does not, by implication, limit section 589.

382 Procedures for making disability standards

- (1) Before making a standard under section 380, the ACA must, so far as is practicable, try to ensure that:
 - (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
 - (b) due consideration has been given to any representation so made.
- (2) The ACA may make an arrangement with any of the following bodies or associations:
 - (a) the Standards Association of Australia;
 - (b) a body or association approved in writing by the Standards Association of Australia for the purposes of this subsection;
 - (c) a body or association specified in a written determination made by the ACA for the purposes of this subsection;

under which the body or association:

- (d) prepares a draft of a standard; and
- (e) publishes the draft standard; and
- (f) undertakes a process of public consultation on the draft standard; and
- (g) reports to the ACA on the results of that process of public consultation.

- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

383 Effect of compliance with disability standards

- (1) In determining whether a person has infringed section 24 of the *Disability Discrimination Act 1992* in relation to the supply or provision of customer equipment, regard must be had to whether the customer equipment complies with a standard in force under section 380.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.

Division 5—Technical standards about the interconnection of facilities

384 ACA's power to make technical standards

- (1) The ACA may, by written instrument, make a technical standard relating to the interconnection of facilities.
Note: For enforcement of the standards, see section 152AR of the *Trade Practices Act 1974*.
- (2) The ACA must not make a standard under subsection (1) unless the ACA is directed to do so by the ACCC under subsection (3).
- (3) The ACCC may give written directions to the ACA in relation to the exercise of the power to make standards under subsection (1).
- (4) The ACA must exercise its powers under subsection (1) in a manner consistent with any directions given by the ACCC under subsection (3).
- (5) The ACCC must not give a direction under subsection (3) unless, in the ACCC's opinion, it is necessary to do so in order to:
 - (a) promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services; or
 - (b) reduce or eliminate the likelihood of hindrance to the provision of access to declared services.
- (6) A standard under subsection (1) may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (7) A standard under subsection (1) takes effect:

- (a) if the instrument making the standard specifies a day for the purpose—on that day; or
 - (b) otherwise—on the day on which the standard was notified in the *Gazette*.
- (8) A standard under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (9) In this section:
- declared service* has the same meaning as in Part XIC of the *Trade Practices Act 1974*.

385 Adoption of voluntary standards

- (1) In making a technical standard under section 384, the ACA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by:
- (a) the Standards Association of Australia; or
 - (b) any other body or association;
- either:
- (c) as in force or existing at a particular time; or
 - (d) as in force or existing from time to time.
- (2) Subsection (1) does not, by implication, limit section 589.

386 Procedures for making technical standards

- (1) Before making a technical standard under section 384, the ACA must, so far as is practicable, try to ensure that:
- (a) interested persons have had an adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
 - (b) due consideration has been given to any representations so made.
- (2) The ACA may make an arrangement with any of the following bodies or associations:
- (a) the Standards Association of Australia;
 - (b) a body or association approved in writing by the Standards Association of Australia for the purposes of this subsection;
 - (c) a body or association specified in a written determination made by the ACA for the purposes of this subsection;
- under which the body or association:
- (d) prepares a draft of a standard; and
 - (e) publishes the draft standard; and
 - (f) undertakes a process of public consultation on the draft standard; and
 - (g) reports to the ACA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.

- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

387 Procedures for making technical standards

- (1) The ACA must not make a standard under section 384 relating to a particular matter unless:
 - (a) the ACA has given a body or association a written notice requesting the body or association to make a standard relating to that matter within the period specified in the notice; and
 - (b) one of the following subparagraphs applies:
 - (i) the body or association does not comply with the request;
 - (ii) the body or association complies with the request, but the ACA is not satisfied that the body's or association's standard deals with that matter in an adequate way;
 - (iii) the body or association complies with the request, but the ACA is not satisfied that the body's or association's standard is operating adequately.
- (2) The period specified under paragraph (1)(a) must run for at least 120 days after the notice was given.
- (3) In making a decision under subparagraph (1)(b)(ii) or (iii), the ACA must have regard to:
 - (a) whether the body's or association's standard is likely to promote the long-term interests of end-users of carriage services and of services supplied by means of carriage services; and
 - (b) whether the body's or association's standard is likely to reduce or eliminate the likelihood of hindrance to the provision of access to declared services.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACA may have regard.
- (5) Before making a decision under subparagraph (1)(b)(ii) or (iii), the ACA must consult the ACCC.

388 Provision of access

A reference in this Division to the *provision of access* is a reference to the provision of access to:

- (a) service providers generally; or
- (b) a particular class or classes of service providers; or
- (c) a particular service provider or particular service providers;

in order that the service provider or providers can provide carriage services and/or content services.

389 Promotion of the long-term interests of end-users of carriage services and of services supplied by means of carriage services

For the purposes of this Division, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as it is determined for the purposes of Part XIC of the *Trade Practices Act 1974*.

Division 6—Connection permits and connection rules

Subdivision A—Connection permits authorising the connection of non-standard customer equipment and non-standard cabling

390 Application for connection permit

Customer equipment

- (1) A person (the *applicant*) may apply to the ACA for a permit authorising the applicant, and such other persons as are from time to time nominated by the applicant, to:
 - (a) connect specified customer equipment to a telecommunications network or to a facility; and
 - (b) maintain such a connection.

The permit is called a *connection permit*.

Customer cabling

- (2) A person (the *applicant*) may apply to the ACA for a permit authorising the applicant, and such other persons as are from time to time nominated by the applicant, to:
 - (a) connect specified customer cabling to a telecommunications network or to a facility; and
 - (b) maintain such a connection.

The permit is called a *connection permit*.

391 Form of application

An application must be:

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

392 Application to be accompanied by charge

An application must be accompanied by the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997*.

393 Further information

- (1) The ACA may request the applicant to give the ACA further information about the application.
- (2) The ACA may refuse to consider the application until the applicant gives the ACA the information.

394 Issue of connection permits

- (1) After considering an application, the ACA may issue a connection permit in accordance with the application.
- (2) In deciding whether to issue a connection permit, the ACA may have regard to:
 - (a) whether the purpose for which the permit is sought is a purpose related to:

- (i) education or research; or
 - (ii) the testing of customer equipment or customer cabling; or
 - (iii) the demonstration of customer equipment or customer cabling; and
 - (b) the knowledge and experience of the applicant.
- (3) In deciding whether to issue a connection permit, the ACA must have regard to:
- (a) the protection of the integrity of a telecommunications network or of a facility; and
 - (b) the protection of the health or safety of persons who:
 - (i) operate; or
 - (ii) work on; or
 - (iii) use services supplied by means of; or
 - (iv) are otherwise reasonably likely to be affected by the operation of; a telecommunications network or a facility.
- (4) Subsections (2) and (3) do not, by implication, limit the matters to which the ACA may have regard.
- (5) If the ACA decides to refuse to issue the connection permit, it must give the applicant a written notice setting out the decision.

395 Connection permit has effect subject to this Act

A connection permit has effect subject to this Act.

396 Nominees of holder

If the ACA issues a connection permit, the persons nominated by the holder are called the holder's *nominees*.

397 Duration of connection permits

- (1) A connection permit comes into force when it is issued and remains in force:
- (a) if the permit specifies a day of expiration—until the end of that day; or
 - (b) otherwise—indefinitely.
- (2) The ACA may, by written notice given to the holder of a connection permit, declare that the permit has effect as if the permit had specified a day specified in the notice as the day of expiration of the connection permit. The declaration has effect accordingly.
- (3) A day specified in a notice under subsection (2) must be later than the day on which the notice is given to the holder of the connection permit.

398 Conditions of connection permits

- (1) A connection permit is subject to the following conditions:
- (a) a condition that the holder and the holder's nominees must comply with this Division;
 - (b) any condition to which the permit is subject under subsection (2);
 - (c) any other conditions specified in the permit.
- (2) The ACA may, by written instrument, determine that:

- (a) each connection permit is subject to such conditions as are specified in the determination; or
 - (b) each connection permit included in a specified class of connection permits is subject to such conditions as are specified in the determination.
- (3) The ACA may, by written notice given to the holder of a connection permit:
- (a) impose one or more further conditions to which the permit is subject; or
 - (b) vary or revoke any condition:
 - (i) imposed under paragraph (a); or
 - (ii) specified in the permit.
- (4) A condition of a connection permit may relate to the kinds of persons who can be the holder's nominees.
- (5) Subsection (4) does not, by implication, limit the conditions to which a connection permit may be subject.
- (6) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

399 Offence of contravening condition

- (1) The holder of a connection permit, or a nominee of the holder, must not contravene a condition to which the permit is subject.
- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

400 Formal warnings—breach of condition

The ACA may issue a formal warning to the holder of a connection permit if the holder, or a nominee of the holder, contravenes a condition to which the permit is subject.

401 Surrender of connection permit

The holder of a connection permit may, at any time, surrender the permit by written notice given to the ACA.

402 Cancellation of connection permit

- (1) The ACA may, by written notice given to the holder of a connection permit, cancel the permit.
- (2) In deciding whether to cancel the permit, the ACA may have regard to any matter which the ACA was entitled, under subsection 394(2), to have regard in deciding whether to issue a permit.
- (3) In deciding whether to cancel the permit, the ACA must have regard to:
- (a) any matter to which the ACA was required, under subsection 394(3), to have regard in deciding whether to issue a permit; and
 - (b) whether or not the holder, or a nominee of the holder, has been convicted of an offence against this Division.

- (4) Subsections (2) and (3) do not, by implication, limit the matters to which the ACA may have regard.

403 Register of connection permits

- (1) The ACA is to maintain a Register in which it includes:
- (a) all connection permits currently in force; and
 - (b) all conditions of such permits.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997*:
- (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 ACA 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 ACA may provide the relevant information:
- (a) on a data processing device; or
 - (b) by way of electronic transmission.

Subdivision B—Connection rules

404 Connection rules

- (1) The ACA may, by written instrument, make rules (*connection rules*) that:
- (a) are expressed to apply to specified persons; and
 - (b) relate to any or all of the following:
 - (i) the connection of specified customer equipment to a telecommunications network or to a facility;
 - (ii) maintaining a connection referred to in subparagraph (i);
 - (iii) the connection of specified customer cabling to a telecommunications network or to a facility;
 - (iv) maintaining a connection referred to in subparagraph (iii).

Note 1: A person may be specified by name, by inclusion in a specified class or in any other way.

Note 2: Equipment or cabling may be specified by name, by inclusion in a specified class or in any other way.

- (2) A person specified under paragraph (1)(a) is said to be *subject to the connection rules*.
- (3) The connection rules may make provision for or in relation to a particular matter by empowering the ACA to make decisions of an administrative character.
- (4) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

405 Procedures for making connection rules

- (1) Before making connection rules under section 404, the ACA must, so far as is practicable, try to ensure that:
 - (a) interested persons have had an adequate opportunity to make representations about the proposed rules (either directly, or indirectly by means of a report under paragraph (2)(g)); and
 - (b) due consideration has been given to any representation so made.
- (2) The ACA may make an arrangement with any of the following bodies or associations:
 - (a) the Standards Association of Australia;
 - (b) a body or association approved in writing by the Standards Association of Australia for the purposes of this subsection;
 - (c) a body or association specified in a written determination made by the ACA for the purposes of this subsection;under which the body or association:
 - (d) prepares draft rules; and
 - (e) publishes the draft rules; and
 - (f) undertakes the process of public consultation on the draft rules; and
 - (g) reports to the ACA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

Division 7—Labelling of customer equipment and customer cabling

406 Application of labels

- (1) A reference in this Division to a *label* includes a reference to a statement.
- (2) For the purposes of this Division, a label is taken to be *applied* to a thing if:
 - (a) the label is affixed to the thing; or
 - (b) the label is woven in, impressed on, worked into or annexed to the thing; or
 - (c) the label is affixed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is supplied; or
 - (d) the label is affixed to, or incorporated in, an instruction or other document that accompanies the first-mentioned thing.

407 Labelling requirements

- (1) The ACA may, by written instrument, require any person who manufactures or imports specified customer equipment or specified customer cabling to apply to the equipment or cabling a label that indicates whether the equipment or cabling meets the requirements of the section 376 standards specified in the instrument.
- (2) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

408 Requirements to apply labels—ancillary matters

- (1) This section applies to an instrument under section 407.
- (2) The label must be in the form specified by the ACA in the instrument.
- (3) The method of applying the label to the equipment or cabling must be as specified by the ACA in the instrument.
- (4) The instrument may state that the requirement does not apply to imported customer equipment, or imported customer cabling, if there is applied to the equipment or cabling a label of a specified kind that indicates that the equipment or cabling complies with the requirements of:
 - (a) a specified law of a specified foreign country; or
 - (b) a specified instrument in force under a specified law of a specified foreign country; or
 - (c) a specified convention, treaty or international agreement; or
 - (d) a specified instrument in force under a specified convention, treaty or international agreement.
- (5) The instrument may specify requirements that must be met before a label can be applied, including (but not limited to):
 - (a) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must have obtained a written statement from a certification body certifying that the equipment or cabling complies with a specified section 376 standard; and
 - (b) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the equipment or cabling must have been tested by a recognised testing authority for compliance with the standards specified in the instrument; and
 - (c) a requirement that a manufacturer or importer must:
 - (i) conduct quality assurance programs; or
 - (ii) be satisfied that quality assurance programs have been conducted; or
 - (iii) have regard to the results of quality assurance programs;before the manufacturer or importer applies the label to the equipment or cabling; and
 - (d) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer must have obtained a written statement from a competent body certifying that reasonable efforts have been made to avoid a contravention of a specified section 376 standard; and
 - (e) a requirement that, before a manufacturer or importer applies the label to the equipment or cabling, the manufacturer or importer must make a written declaration in relation to the equipment or cabling, being a declaration in a form specified in the instrument.

Note 1: **Certification body** is defined by section 410.

Note 2: **Recognised testing authority** is defined by section 409.

Note 3: **Competent body** is defined by section 409.

- (6) The instrument may specify requirements that must be met after a label has been applied to customer equipment or customer cabling, including (but not limited to) a requirement that a manufacturer or importer retain for inspection, for the period specified in the instrument:

- (a) records of the quality assurance programs conducted in accordance with the instrument in respect of the equipment or cabling; and
- (b) records of any results of any tests conducted in relation to compliance with the standards specified in the instrument; and
- (c) a declaration, or a copy of a declaration, made as mentioned in paragraph (5)(e).

409 Recognised testing authorities and competent bodies

- (1) The ACA may, by notice published in the *Gazette*, determine that a specified person or association is an **accreditation body** for the purposes of this section. The determination has effect accordingly.
- (2) An accreditation body may, by written instrument, determine that a specified person is a **recognised testing authority** for the purposes of this Division. The determination has effect accordingly.
- (3) An accreditation body may, by written instrument, determine that a specified person or association is a **competent body** for the purposes of this Division. The determination has effect accordingly.

410 Certification bodies

- (1) The ACA may, by notice published in the *Gazette*, determine that a specified person or association is an **approving body** for the purposes of this section. The determination has effect accordingly.
- (2) An approving body may, by written instrument, determine that a specified person or association is a **certification body** for the purposes of this Division. The determination has effect accordingly.

411 Connection of customer equipment or customer cabling—breach of section 376 standards

Basic prohibition

- (1) A person must not:
 - (a) connect customer equipment or customer cabling to a telecommunications network or to a facility; or
 - (b) maintain such a connection;if:
 - (c) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and
 - (d) either:
 - (i) the manufacturer or importer did not comply with the requirement; or
 - (ii) the manufacturer or importer complied with the requirement, but the label indicated that the equipment or cabling did not meet the requirements of the section 376 standards that were specified in the first-mentioned requirement.

Offence

- (2) A person who, without reasonable excuse, intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 120 penalty units.

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

Exception—connection permit

- (3) A person does not contravene subsection (1) in relation to:
- (a) connecting customer equipment, or customer cabling, to a telecommunications network, or to a facility; or
 - (b) maintaining such a connection;
- if the connection, or the maintenance of the connection, as the case may be, is in accordance with a connection permit.

Note: Connection permits are issued under section 394.

Exception—compliance with connection rules

- (4) A person does not contravene subsection (1) in relation to:
- (a) connecting customer equipment, or customer cabling, to a telecommunications network, or to a facility; or
 - (b) maintaining such a connection;
- if:
- (c) the person is subject to the connection rules; and
 - (d) the connection, or the maintenance of the connection, as the case may be, is in accordance with the connection rules.

Note: The connection rules are dealt with by section 404.

Exception—consent of network manager

- (5) A person does not contravene subsection (1) in relation to the connection of customer equipment, or customer cabling, to a telecommunications network, or to a facility, if:
- (a) the manager of the network or facility consents in writing to the connection; and
 - (b) the equipment or cabling has applied to it a label that indicates that the equipment or cabling does not meet the requirements of each of the standards under section 376 that were applicable to it when it was connected.

Note: *Manager* is defined by section 375.

412 Connection of labelled customer equipment or customer cabling not to be refused

- (1) If:
- (a) at a particular time, a person proposes to connect customer equipment or customer cabling to a telecommunications network or to a facility; and
 - (b) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and
 - (c) both:
 - (i) the manufacturer or importer complied with the requirement; and

- (ii) the label indicated that the equipment or cabling met the requirements of the section 376 standards that were specified in the first-mentioned requirement;

the manager of the network or facility must not refuse to give written consent to the connection.

Note: *Manager* is defined by section 375.

- (2) A person who, without reasonable excuse, intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

- (3) A manager of a telecommunications network, or of a facility, does not contravene subsection (1) in relation to a refusal to give consent to the connection of customer equipment, or customer cabling, to the network, or to the facility, if:
 - (a) the manager has reasonable grounds to believe that a label has been applied to the equipment or cabling in contravention of section 414 or 416; or
 - (b) the manager has reasonable grounds to believe that the connection would, or would be likely to, constitute a threat to the integrity of a telecommunications network or of a facility; or
 - (c) the manager has reasonable grounds to believe that the connection would, or would be likely to, constitute a threat to the health or safety of persons who:
 - (i) operate; or
 - (ii) work on; or
 - (iii) use services supplied by means of; or
 - (iv) are otherwise reasonably likely to be affected by the operation of; a telecommunications network or a facility.
- (4) This section does not, by implication, impose an obligation to supply a carriage service to a particular person.

413 Supply of unlabelled customer equipment or unlabelled customer cabling

- (1) If a person:
 - (a) has manufactured or imported customer equipment or customer cabling; and
 - (b) is required under section 407 to apply to it a label in a particular form; the person must not supply the equipment or cabling unless a label in that form has been applied to the equipment or cabling.
- (2) A person who, without reasonable excuse, intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

- (3) In this section:

supply includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

414 Applying labels before satisfying requirements under subsection 408(5)

- (1) If a person is subject to requirements that:
 - (a) have been specified under subsection 408(5); and
 - (b) must be met before applying a particular label to customer equipment or customer cabling;the person must not apply:
 - (c) the label; or
 - (d) a label that purports to be such a label;before the person satisfies those requirements.
- (2) A person who, without reasonable excuse, intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

415 Failure to retain records etc.

- (1) If the ACA makes an instrument under subsection 407(1) that specifies requirements to be met after a label has been applied, a manufacturer or importer must not contravene those requirements.
- (2) A person who, without reasonable excuse, intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

416 Application of labels containing false statements about compliance with standards

- (1) A person must not apply a label to customer equipment or customer cabling if:
 - (a) the label contains a statement to the effect that the equipment or cabling complies with a section 376 standard; and
 - (b) the statement is false or misleading.
- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 120 penalty units.

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

Division 8—Protected symbols

417 Protected symbols

- (1) A person must not:
 - (a) use in relation to a business, trade, profession or occupation; or
 - (b) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let on hire; or
 - (c) use in relation to:
 - (i) goods or services; or
 - (ii) the promotion, by any means, of the supply or use of goods or services;

a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

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

- (3) Nothing in subsection (1) limits anything else in that subsection.
- (4) Nothing in subsection (1), so far as it applies in relation to a protected symbol, affects rights conferred by law on a person in relation to:
- (a) a trade mark that is registered under the *Trade Marks Act 1995*; or
 - (b) a design that is registered under the *Designs Act 1906*;
- and was so registered immediately before 16 August 1996 in relation to the symbol.
- (5) Nothing in this section, so far as it applies to a protected symbol, affects the use, or rights conferred by law relating to the use, of the symbol by a person in a particular manner if, immediately before 16 August 1996, the person:
- (a) was using the symbol in good faith in that manner; or
 - (b) would have been entitled to prevent another person from passing off, by means of the use of the symbol or a similar symbol, goods or services as the goods or services of the first-mentioned person.
- (6) This section does not apply to a person who uses or applies a protected symbol for the purposes of labelling customer equipment or customer cabling in accordance with section 407 of this Act or labelling a device in accordance with section 182 of the *Radiocommunications Act 1992*. For this purpose, *device* has the same meaning as in the *Radiocommunications Act 1992*.
- (7) This section does not apply to a person who uses or applies a protected symbol for a purpose of a kind specified in a written determination made by the ACA.
- (8) A reference in this section to a ***protected symbol*** is a reference to:
- (a) the symbol known in the telecommunications industry as the C-Tick mark:
 - (i) the design of which is set out in a written determination made by the ACA; and
 - (ii) a purpose of which, after the commencement of this section, is to indicate compliance by customer equipment or customer cabling with applicable section 376 standards; or
 - (b) a symbol:
 - (i) the design of which is set out in a written determination made by the ACA; and
 - (ii) a purpose of which, after the commencement of this section, is to indicate compliance by customer equipment or customer cabling with applicable section 376 standards; or
 - (c) a symbol:
 - (i) the design of which is set out in a written determination made by the ACA; and
 - (ii) a purpose of which, after the commencement of this section, is to indicate non-compliance by customer equipment or customer cabling with applicable section 376 standards.

- (9) For the purposes of this Part, if:

- (a) a label is applied to customer equipment or customer cabling; and
 - (b) the label embodies a symbol referred to in paragraph (8)(a) or (b);
- the label is taken to indicate that the equipment or cabling meets the requirements of each applicable section 376 standard.
- (10) For the purposes of this Part, if:
- (a) a label is applied to customer equipment or customer cabling; and
 - (b) the label embodies a symbol referred to in paragraph (8)(c);
- the label is taken to indicate that the equipment or cabling does not meet the requirements of each applicable section 376 standard.
- (11) For the purposes of this section, a section 376 standard is taken to be applicable in relation to customer equipment or customer cabling if, and only if, the standard was specified in the section 407 requirement that dealt with the manufacture or importation of the equipment or cabling.
- (12) A determination made by the ACA under subsection (7) or (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (13) In addition to its effect apart from this subsection, this section also has the effect it would have if a reference in subsection (1) to a person were, by express provision, confined to a corporation to which paragraph 51(xx) of the Constitution applies.
- (14) In addition to its effect apart from this subsection, this section also has the effect it would have if each reference in subsection (1) to use, or to application, were a reference to use or application, as the case may be, in the course of, or in relation to:
- (a) trade or commerce between Australia and places outside Australia; or
 - (b) trade or commerce among the States; or
 - (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
 - (d) the supply of goods or services to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory; or
 - (e) the defence of Australia; or
 - (f) the operation of lighthouses, lightships, beacons or buoys; or
 - (g) astronomical or meteorological observations; or
 - (h) an activity of a corporation to which paragraph 51(xx) of the Constitution applies; or
 - (i) banking, other than State banking; or
 - (j) insurance, other than State insurance; or
 - (k) weighing or measuring.

Division 9—Cabling providers

418 Cabling work

A reference in this Division to *cabling work* is a reference to:

- (a) the installation of customer cabling for connection to a telecommunications network or to a facility; or
- (b) the connection of customer cabling to a telecommunications network or to a facility; or

- (c) the maintenance of customer cabling connected to a telecommunications network or to a facility.

419 Types of cabling work

- (1) The ACA may, by notice in the *Gazette*, declare that a specified kind of cabling work is a type of cabling work for the purposes of this Division.
- (2) The declaration has effect accordingly.
- (3) For the purposes of this Division, the type of cabling work is to be ascertained solely by reference to the declaration.
- (4) A declaration under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

420 Prohibition of unauthorised cabling work

- (1) A person must not perform a particular type of cabling work unless:
 - (a) the person is subject to the cabling provider rules; or
 - (b) the person performs the work under the supervision of another person who is subject to the cabling provider rules; or
 - (c) the person is the holder of a cabling licence that authorises the performance of that type of cabling work; or
 - (d) the person performs the work under the supervision of the holder of a cabling licence that authorises the performance of that type of cabling work.
- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 120 penalty units.

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

421 Cabling provider rules

- (1) The ACA may, by written instrument, make rules (***cabling provider rules***) that:
 - (a) are expressed to apply to specified persons; and
 - (b) relate to:
 - (i) the performance of cabling work; or
 - (ii) the supervision of the performance of cabling work;or both.

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

- (2) A person specified under paragraph (1)(a) is said to be ***subject to the cabling provider rules***.
- (3) A person who is subject to the cabling provider rules must comply with the cabling provider rules.
- (4) A person who intentionally or recklessly contravenes subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

- (5) The cabling provider rules may make provision for or in relation to a particular matter by empowering the ACA to make decisions of an administrative character.
- (6) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

422 Procedures for making cabling provider rules

- (1) Before making cabling provider rules under section 421, the ACA must, so far as is practicable, try to ensure that:
 - (a) interested persons have had an adequate opportunity to make representations about the proposed rules (either directly, or indirectly by means of a report under paragraph (2)(g)); and
 - (b) due consideration has been given to any representation so made.
- (2) The ACA may make an arrangement with any of the following bodies or associations:
 - (a) the Standards Association of Australia;
 - (b) a body or association approved in writing by the Standards Association of Australia for the purposes of this subsection;
 - (c) a body or association specified in a written determination made by the ACA for the purposes of this subsection;under which the body or association:
 - (d) prepares a draft of the cabling provider rules; and
 - (e) publishes the draft rules; and
 - (f) undertakes a process of public consultation on the draft rules; and
 - (g) reports to the ACA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.
- (5) For the purposes of subsection (1), interested persons are taken not to have had an adequate opportunity to make representations unless there was a period of at least 60 days during which the representations could be made.

423 Application for cabling licence

An individual may apply to the ACA for a cabling licence that authorises the performance of a particular type of cabling work.

424 Form of application

- (1) An application must:
 - (a) be in writing; and
 - (b) describe the knowledge and experience of the applicant to perform cabling work; and
 - (c) be in accordance with the form approved in writing by the ACA.
- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.

425 Application to be accompanied by charge

An application must be accompanied by the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997*.

426 Further information

- (1) The ACA may, within 7 days after an application is made, request the applicant to give the ACA further information about the application.
- (2) The ACA may refuse to consider the application until the applicant gives the ACA the information.

427 Grant of cabling licence

- (1) After considering an application, the ACA may grant a cabling licence in accordance with the application.
- (2) The ACA must not grant a cabling licence authorising the performance of a particular type of cabling work unless it is satisfied that:
 - (a) the applicant has the necessary knowledge and experience to perform cabling work of that type; and
 - (b) cabling work of that type performed in accordance with the conditions included in the licence would comply with standards in force under section 376; and
 - (c) the issue of the licence is not contrary to directions given by the Minister under section 440.

428 Time limit on licence decision

If the ACA neither grants, nor refuses to grant, a cabling licence before the end of whichever of the following periods is applicable:

- (a) if the ACA did not give a request under section 426 in relation to the licence application—the period of 30 days after the day on which the ACA received the application;
- (b) if:
 - (i) the ACA gave a request under section 426 in relation to the licence application; and
 - (ii) the request was complied with;the period of 30 days after the day on which the request was complied with;
- (c) if:
 - (i) the ACA gave a request under section 426 in relation to the licence application; and
 - (ii) the request was not complied with;the period of 30 days after the end of the period specified in the request; the ACA is taken, at the end of that 30-day period, to have refused to grant the licence under section 427.

429 Notification of refusal of application

If the ACA decides to refuse to grant a cabling licence, the ACA must give written notice of the decision to the applicant.

430 Cabling licence has effect subject to this Act

A cabling licence has effect subject to this Act.

431 Duration of cabling licence

A cabling licence comes into force when it is issued and remains in force:

- (a) if the licence specifies a day of expiration—until the end of that day; or
- (b) otherwise—indefinitely.

432 Conditions of cabling licence

- (1) A cabling licence is subject to such conditions as are specified in a written determination made by the ACA for the purposes of this subsection.
- (2) A cabling licence is subject to such conditions as are specified in the licence.
- (3) The ACA may, by written notice given to the holder of a cabling licence:
 - (a) impose one or more further conditions to which the licence is subject; or
 - (b) revoke or vary any condition:
 - (i) imposed under paragraph (a); or
 - (ii) specified in the licence.
- (4) The following are examples of conditions to which a cabling licence could be subject:
 - (a) conditions relating to the types of premises in or on which the holder of the licence may perform cabling work;
 - (b) conditions requiring customer cabling to be inspected by persons authorised in writing by the ACA for the purposes of this paragraph.
- (5) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

433 Procedures for changing licence conditions

- (1) The ACA's powers under subsection 432(3) may be exercised:
 - (a) on the ACA's own initiative; or
 - (b) on application made to the ACA by the holder of the licence.
- (2) An application under paragraph (1)(b) must:
 - (a) be in writing; and
 - (b) be in accordance with the form approved in writing by the ACA.
- (3) The approved form of application may provide for verification by statutory declaration of statements in applications.
- (4) If the ACA refuses an application under paragraph (1)(b), the ACA must give written notice of the refusal to the applicant.

- (5) If the ACA neither grants, nor refuses to grant, an application under paragraph (1)(b) before the end of 30 days after receiving the application, the ACA is taken, at the end of that period, to have refused the application.

434 Offence of contravening condition

- (1) The holder of a cabling licence that authorises the performance of a particular type of cabling work must not, in performing cabling work of that type, contravene a condition to which the licence is subject.
- (2) The holder of a cabling licence that authorises the performance of a particular type of cabling work must take all reasonable steps to ensure that cabling work of that type performed under his or her supervision does not contravene the conditions of the licence.
- (3) A person who intentionally or recklessly contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

435 Formal warnings—breach of condition

The ACA may issue a formal warning if the holder of a cabling licence contravenes a condition to which the licence is subject.

436 Surrender of cabling licence

- (1) The holder of a cabling licence may, at any time, surrender the licence by:
 - (a) returning it to the ACA; and
 - (b) giving the ACA written notice that it is surrendered.
- (2) The surrender of a cabling licence takes effect on the day on which the notice is given to the ACA.

437 Suspension of cabling licence

- (1) The ACA may, by written notice given to the holder of a cabling licence, suspend the cabling licence for a period of not longer than 28 days.
- (2) In deciding whether to suspend the cabling licence, the ACA must have regard to:
 - (a) any matter to which the ACA was required, under section 427, to have regard in deciding whether to grant a cabling licence; and
 - (b) whether or not the holder of the cabling licence has been convicted of an offence against this Division.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACA may have regard.
- (4) During the period of suspension, section 420 has effect as if the licence did not exist.

438 Cancellation of cabling licence

- (1) The ACA may, by written notice given to the holder of a cabling licence, cancel the cabling licence.

- (2) In deciding whether to cancel the cabling licence, the ACA must have regard to:
 - (a) any matter to which the ACA was required, under section 427, to have regard in deciding whether to grant a cabling licence; and
 - (b) whether or not the holder of the cabling licence has been convicted of an offence against this Division.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACA may have regard.

439 ACA may limit application of Division in relation to customer cabling

- (1) The ACA may, by written instrument, declare that this Division, or specified provisions of it, do not apply in relation to specified kinds of customer cabling.
- (2) An instrument under subsection (1) may specify a kind of customer cabling:
 - (a) by reference to the technical characteristics of the cabling; or
 - (b) by reference to the functions of the cabling; or
 - (c) by reference to the purposes for which the cabling is used, or is intended to be used, by the customer concerned; or
 - (d) by reference to the location of the cabling.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) This Division has effect in accordance with an instrument in force under subsection (1).
- (5) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

440 Ministerial directions

- (1) The Minister may give the ACA written directions about how it is to perform its functions or exercise its powers under this Division.
- (2) A direction under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) A direction under subsection (1) must not concern the way in which the ACA is to deal with a particular application for a cabling licence.
- (4) The Minister must not give the ACA a direction under section 12 of the *Australian Communications Authority Act 1997* about how the ACA is to perform its functions or exercise its powers under this Division.

441 Delegation

- (1) The ACA may, by writing, delegate to a person any or all of its functions and powers under this Division.
- (2) Subsection (1) does not apply to the following powers:
 - (a) the power to refuse an application for a cabling licence;
 - (b) the power conferred by subsection 432(3);
 - (c) the power to cancel or suspend a cabling licence;
 - (d) the power to make a declaration under section 439.

- (3) The delegate is, in the exercise of the delegated function or power, subject to the written directions of the ACA.
- (4) This section has effect in addition to section 49 of the *Australian Communications Authority Act 1997*.

442 Register of cabling licences

- (1) The ACA is to maintain a Register in which it includes:
 - (a) all cabling licences currently in force; and
 - (b) all conditions of such licences.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997*:
 - (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 ACA 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 ACA may provide the relevant information:
 - (a) on a data processing device; or
 - (b) by way of electronic transmission.

Division 10—Remedies for unauthorised connections to telecommunications networks etc.

443 Civil action for unauthorised connections to telecommunications networks etc.

- (1) If:
 - (a) a person:
 - (i) connects customer equipment, or customer cabling, to a telecommunications network, or to a facility, contrary to section 411; or
 - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network, or to a facility, where the equipment or cabling was so connected by another person contrary to section 411; and
 - (b) as a result of:
 - (i) the connection of the customer equipment or customer cabling to the network or facility; or
 - (ii) the customer equipment or customer cabling being used while it was so connected;
- either:
- (iii) damage is caused to the network or the facility; or
 - (iv) the manager of the network or facility suffers a loss or incurs a liability;

the manager of the network or facility may apply to the Federal Court for remedial relief.

- (2) The relief that may be granted includes an injunction and, at the option of the manager, either damages or an account of profits.
- (3) If an application is made to the Federal Court for an injunction under this section, the court may grant an interim injunction pending determination of the application.
- (4) The power of the court under this section to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
 - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.
- (5) The power of the court under this section to grant an injunction requiring a person to do an act or thing may be exercised:
 - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.
- (6) An application under this section must be made within 3 years after the damage was caused, the loss was suffered or the liability was incurred, as the case requires.

444 Remedy for contravention of labelling requirements

- (1) If:
 - (a) a person (the *first person*) contravenes section 413, 414 or 415 in relation to particular customer equipment or particular customer cabling; and
 - (b) a person (who may be the first person) connects the equipment or cabling to a telecommunications network or to a facility; and
 - (c) as a result of:
 - (i) the connection of the equipment or cabling to the network or facility; or
 - (ii) the equipment or cabling being used while it was so connected;either:
 - (iii) damage is caused to the network or the facility; or
 - (iv) the manager of the network or facility suffers a loss;the manager of the network or facility may apply to the Federal Court for the recovery from the first person of the amount of the loss or damage.

- (2) An application under this section must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

445 Remedies for connection of unlabelled customer equipment or unlabelled customer cabling

- (1) This section applies if:
 - (a) a person:
 - (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
 - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
 - (b) the manufacturer or importer of the equipment or cabling was required by subsection 407(1) to apply a label to the equipment or cabling; and
 - (c) either:
 - (i) the manufacturer or importer did not comply with the requirement; or
 - (ii) the manufacturer or importer complied with the requirement, but the label indicated that the equipment or cabling did not meet the requirements of the section 376 standards that were specified in the first-mentioned requirement.
- (2) If, as a result of:
 - (a) the connection of the equipment or cabling to the network or facility; or
 - (b) the equipment or cabling being used while it was so connected;either:
 - (c) damage is caused to the network or the facility; or
 - (d) the manager of the network or facility suffers a loss;the manager of the network or facility may apply to the Federal Court for remedial relief.
- (3) The relief that may be granted includes an injunction and, at the option of the manager, either damages or an account of profits.
- (4) The manager of the network or facility may disconnect the equipment or cabling from the network or facility.
- (5) If it is necessary for other customer equipment or other customer cabling to be disconnected from the network or facility in order to achieve the disconnection mentioned in subsection (4), the manager may disconnect that other equipment or cabling.
- (6) If an application is made to the Federal Court for an injunction under this section, the court may grant an interim injunction pending determination of the application.
- (7) The power of the court under this section to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
 - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is

an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

- (8) The power of the court under this section to grant an injunction requiring a person to do an act or thing may be exercised:
 - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.
- (9) An application under this section must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

446 Disconnection of dangerous customer equipment or customer cabling

- (1) If:
 - (a) a person (the *first person*):
 - (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
 - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
 - (b) the manager of the network or facility has an honest belief that the equipment or cabling is, or is likely to be, a threat to the health or safety of persons who:
 - (i) operate; or
 - (ii) work on; or
 - (iii) use services supplied by means of; or
 - (iv) are otherwise reasonably likely to be affected by the operation of; a telecommunications network or a facility;the manager of the network or facility may:
 - (c) disconnect the equipment or cabling; and
 - (d) if it is necessary to disconnect other customer equipment or other customer cabling for the purposes of achieving the disconnection referred to in paragraph (c)—disconnect that other equipment or cabling.
- (2) If:
 - (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
 - (b) the ACA is satisfied that there were no reasonable grounds for the belief mentioned in paragraph (1)(b);the ACA may, by written notice given to the manager of the network or facility, direct the manager to reconnect the equipment or cabling.
- (3) A person must comply with a direction under subsection (2).
- (4) If:
 - (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and

- (b) the manager of the network or facility had no reasonable grounds for the belief mentioned in paragraph (1)(b); and
 - (c) as a result of the disconnection, the first person suffers loss or damage; the first person may apply to the Federal Court for the recovery from the manager of the amount of the loss or damage.
- (5) An application under subsection (4) must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

447 Disconnection of customer equipment or customer cabling—protection of the integrity of networks and facilities

- (1) If:
- (a) a person (the *first person*):
 - (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
 - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
 - (b) the manager of the network or facility has an honest belief that the equipment or cabling is, or is likely to be, a threat to the integrity of a telecommunications network or a facility;
- the manager of the network or facility may:
- (c) disconnect the equipment or cabling; and
 - (d) if it is necessary to disconnect other customer equipment or other customer cabling for the purposes of achieving the disconnection referred to in paragraph (c)—disconnect that other equipment or cabling.
- (2) If:
- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
 - (b) the ACA is satisfied that there were no reasonable grounds for the belief mentioned in paragraph (1)(b);
- the ACA may, by written notice given to the manager of the network or facility, direct the manager to reconnect the equipment or cabling.
- (3) A person must comply with a direction under subsection (2).
- (4) If:
- (a) equipment or cabling is disconnected, or purportedly disconnected, under subsection (1); and
 - (b) the manager of the network or facility had no reasonable grounds for the belief mentioned in paragraph (1)(b); and
 - (c) as a result of the disconnection, the first person suffers loss or damage; the first person may apply to the Federal Court for the recovery from the manager of the amount of the loss or damage.
- (5) An application under subsection (4) must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

448 Civil action for dangerous connections to telecommunications networks etc.

- (1) If:
- (a) a person:

- (i) connects customer equipment, or customer cabling, to a telecommunications network or to a facility; or
 - (ii) has under his or her control customer equipment, or customer cabling, connected to a telecommunications network or to a facility; and
- (b) the equipment or cabling is, or is likely to be, a threat to the health or safety of persons who:
 - (i) operate; or
 - (ii) work on; or
 - (iii) use services supplied by means of; or
 - (iv) are otherwise reasonably likely to be affected by the operation of; a telecommunications network or a facility; and
- (c) as a result of:
 - (i) the connection of the equipment or cabling to the network or facility; or
 - (ii) the equipment or cabling being used while it was so connected; either:
 - (iii) damage is caused to the network or the facility; or
 - (iv) the manager of the network or facility suffers a loss;

the manager of the network or facility may apply to the Federal Court for the recovery from the person of the amount of the loss or damage.
- (2) An application under subsection (1) must be made within 3 years after the damage was caused or the loss was suffered, as the case requires.

449 Other remedies not affected

This Division does not, by implication, affect other remedies.

Division 11—Prohibited customer equipment and prohibited customer cabling

450 Declaration of prohibited customer equipment or prohibited customer cabling

- (1) The ACA may, by written instrument, declare that operation or supply, or possession for the purpose of operation or supply, of:
 - (a) specified customer equipment; or
 - (b) specified customer cabling;

is prohibited for the reasons set out in the instrument.
- (2) Those reasons must relate to:
 - (a) the protection of the integrity of a telecommunications network or of a facility; or
 - (b) the protection of the health or safety of persons who:
 - (i) operate; or
 - (ii) work on; or
 - (iii) use services supplied by means of; or
 - (iv) are otherwise reasonably likely to be affected by the operation of; a telecommunications network or a facility.

- (3) A copy of an instrument under subsection (1) must be published in one or more newspapers circulating generally in the capital city of each State.
- (4) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) In this section:

State includes the Northern Territory and the Australian Capital Territory.

supply includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

451 Consultation on proposed declaration

- (1) Before making an instrument under section 450, the ACA must, by notice published in the *Gazette*:
 - (a) describe the customer equipment or customer cabling concerned; and
 - (b) specify the reasons why the ACA proposes to make the instrument; and
 - (c) invite interested persons to make representations about the proposed declaration within the period specified in the notice.The period must not be less than 28 days.
- (2) If a person makes representations to the ACA in accordance with the notice, the ACA must give due consideration to those representations.
- (3) This section does not apply if the ACA is satisfied that making the instrument is a matter of urgency.

452 Operation of prohibited customer equipment or customer cabling

- (1) A person must not:
 - (a) operate or supply customer equipment, or customer cabling, in respect of which a declaration is in force under section 450; or
 - (b) have in his or her possession customer equipment, or customer cabling, in respect of which such a declaration is in force, if the possession is for the purpose of operating or supplying the equipment or cabling.
- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units.

Note: See also sections 4AA and 4B of the *Crimes Act 1914*.
- (3) In this section:

supply includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

Division 12—Pre-commencement labels

453 Pre-commencement labels

- (1) This section applies if:

- (a) before the commencement of this section, customer equipment was labelled in accordance with a condition of a kind mentioned in paragraph 258(2)(a) of the *Telecommunications Act 1991*; and
 - (b) the label embodied the protected symbol (within the meaning of section 402A of that Act).
- (2) This Part has effect as if:
- (a) at the time when the equipment was manufactured or imported, the manufacturer or importer had been required by subsection 407(1) to apply the label to the equipment; and
 - (b) the manufacturer or importer had complied with that requirement by applying the label to the equipment; and
 - (c) the label had indicated that the equipment met the requirements of each of the section 376 standards that were applicable to the equipment when it was manufactured or imported.

Part 22—Numbering of carriage services and regulation of electronic addressing

Division 1—Simplified outline

454 Simplified outline

The following is a simplified outline of this Part:

- The ACA is required to make a plan for:
 - (a) the numbering of carriage services in Australia; and
 - (b) the use of numbers in connection with the supply of such services.
- The plan is called the *numbering plan*.
- Numbers may be allocated to carriage service providers:
 - (a) in accordance with an allocation system; or
 - (b) otherwise than in accordance with such a system.
- The numbering plan will specify emergency service numbers.
- The ACA and the ACCC may give directions to managers of electronic addressing so long as the electronic addressing is of public importance.

Division 2—Numbering of carriage services

Subdivision A—Numbering plan

455 Numbering plan

- (1) The ACA must, by written instrument, make a plan for:
 - (a) the numbering of carriage services in Australia; and
 - (b) the use of numbers in connection with the supply of such services.
- (2) The plan is called the *numbering plan*.
- (3) The numbering plan must specify the numbers that are for use in connection with the supply of carriage services to the public in Australia.

Note: *Specification* is the “first tier” concept. It operates at the level of a general specification of numbers.

- (4) Different numbers may be specified for use in connection with the supply of different types of carriage services.
- (5) The numbering plan may set out rules about:
 - (a) the allocation of numbers to carriage service providers; and
 - (b) the transfer of allocated numbers between carriage service providers; and
 - (c) the surrender or withdrawal of allocated numbers; and
 - (d) the portability of allocated numbers (including rules about the maintenance of, and access to, databases that facilitate portability); and
 - (e) the use of allocated numbers in connection with the supply of carriage services to the public in Australia (including rules about the issue of allocated numbers by carriage service providers to customers for use in connection with the supply of carriage services).

Note 1: *Allocation* is the “second tier” concept. It operates at the level of particular carriage service providers.

Note 2: *Issue* is the “third tier” concept. It operates at the level of particular customers of carriage service providers. The issue of an allocated number to a customer does not affect the allocation of the number to the carriage service provider concerned.

- (6) Rules made for the purposes of paragraph (5)(a) may authorise the allocation of specified numbers:
 - (a) in accordance with an allocation system determined under section 463; or
 - (b) otherwise than in accordance with such a system.
- (7) The numbering plan may make provision for, or in relation to, a matter by empowering the ACA to make decisions of an administrative character.
- (8) Subsections (3) to (7) (inclusive) do not, by implication, limit the matters that may be dealt with by the numbering plan.
- (9) The renumbering of a number in accordance with the numbering plan does not affect the continuity of:
 - (a) the allocation of the number; or
 - (b) the issue of the number.
- (10) In making or varying the numbering plan, the ACA must have regard to:
 - (a) the obligations imposed on carriage service providers by Part 8; and
 - (b) recognised international standards.

This subsection does not, by implication, limit the matters to which regard may be had.

- (11) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (12) Despite subsection (1), the ACA is not required to make a numbering plan before 1 January 1998.

456 Numbering plan—supply to the public

- (1) This section sets out the circumstances in which a carriage service is taken, for the purposes of section 455, to be supplied to the public.
- (2) If:
 - (a) a carriage service is used for the carriage of communications between 2 end-users; and
 - (b) each end-user is outside the immediate circle of the supplier of the service; the service is supplied to the public.

457 Numbering plan—allocation otherwise than in accordance with an allocation system

- (1) The numbering plan must impose the following requirements in relation to an application for the allocation of a number otherwise than in accordance with an allocation system determined under section 463:
 - (a) a requirement that the application must be accompanied by the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997*;
 - (b) a requirement that the applicant must tender the amount of charge (if any) imposed on the allocation by Part 2 of the *Telecommunications (Numbering Charges) Act 1997*.
- (2) If an applicant tenders an amount as mentioned in paragraph (1)(b), but the application is not successful, the amount is to be refunded to the applicant.

458 Numbering plan—rules about portability of allocated numbers

- (1) The ACA must not make a numbering plan that sets out rules about the matter mentioned in paragraph 455(5)(d) (portability of allocated numbers) unless the ACA is directed to do so by the ACCC under subsection (2).
- (2) The ACCC may give written directions to the ACA in relation to the exercise of the power to determine a numbering plan setting out rules as mentioned in subsection (1).
- (3) In exercising the power conferred by subsection (1), the ACCC must ensure that, at all times when the numbering plan is in force, the plan sets out rules about the matter mentioned in paragraph 455(5)(d).
- (4) The ACA must exercise its powers under section 455 in a manner consistent with any directions given by the ACCC under subsection (2).
- (5) In exercising the power conferred by subsection (2), the ACCC must have regard to whether portability of particular allocated numbers is required in order to

promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services.

- (6) For the purposes of this section, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as that question is determined for the purposes of Part XIC of the *Trade Practices Act 1974*.

459 ACA to administer numbering plan

The ACA has the general administration of the numbering plan.

460 Consultation about numbering plan

- (1) Before making a numbering plan, the ACA must:
- (a) cause to be published in a newspaper circulating in each State a notice:
 - (i) stating that the ACA has prepared a draft of the plan; and
 - (ii) stating that copies of the draft will be available for inspection and purchase by members of the public during normal office hours throughout the period of 90 days after the publication of the notice; and
 - (iii) specifying the place or places where the copies will be available for inspection and purchase; and
 - (iv) inviting interested persons to give written comments about the draft to the ACA within 90 days after the publication of the notice; and
 - (b) make copies of the draft available for inspection and purchase in accordance with the notice.
- (2) If interested persons have given comments about the draft in accordance with the notice, the ACA must have due regard to those comments in making the plan.
- (3) If the ACA is of the opinion:
- (a) that a variation of a numbering plan will affect a number issued to a customer of a carriage service provider, being a customer located in a particular State; or
 - (b) that it is in the public interest that the public in a particular State should be consulted about a variation of a numbering plan;
- the ACA must:
- (c) cause to be published in a newspaper circulating in the State a notice:
 - (i) stating that the ACA has prepared a draft of the variation; and
 - (ii) stating that copies of the draft will be available for inspection and purchase by members of the public during normal office hours throughout the period of 90 days after the publication of the notice; and
 - (iii) specifying the place or places where the copies will be available for inspection and purchase; and
 - (iv) inviting interested persons to give written comments about the draft to the ACA within 90 days after the publication of the notice; and
 - (d) make copies of the draft available for inspection and purchase in accordance with the notice.

- (4) If interested persons have given comments about the draft in accordance with the notice, the ACA must have due regard to those comments in varying the plan.
- (5) In this section:

State includes the Northern Territory and the Australian Capital Territory.

461 Consultation with ACCC

- (1) Before making or varying a numbering plan, the ACA must consult the ACCC.
- (2) The numbering plan may provide that, before exercising a power conferred on the ACA by the numbering plan, the ACA must consult the ACCC.

462 Compliance with the numbering plan

- (1) A person who is a carrier or a carriage service provider must comply with the numbering plan.
- (2) If:
 - (a) a person (the *first person*) is a carrier or a carriage service provider; and
 - (b) the plan requires the first person to provide number portability in relation to customers of a carriage service provider;the first person must comply with that requirement on such terms and conditions as are:
 - (c) agreed between the following parties:
 - (i) the first person;
 - (ii) the carriage service provider; or
 - (d) failing agreement, determined by an arbitrator appointed by the parties.If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subsection (4) does not, by implication, limit subsection (3).
- (6) A determination made in an arbitration under this section must not be inconsistent with:
 - (a) the numbering plan; or
 - (b) with a pricing principles determination.For this purpose, a *pricing principles determination* is a written determination made by the Minister that sets out principles dealing with price-related terms and conditions relating to a requirement of a kind referred to in paragraph (2)(b).
- (7) A determination made by the Minister under subsection (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (8) In this section:

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

Subdivision B—Allocation system for numbers

463 Allocation system for numbers

- (1) The ACA may, by written instrument, determine an allocation system for allocating specified numbers to carriage service providers.
- (2) Before so determining the system, the ACA must consult the ACCC.
- (3) A system so determined:
 - (a) may apply generally or in respect of a particular area; and
 - (b) may require payment of an application fee.
- (4) A system so determined may:
 - (a) impose limits on the quantity of numbers that the ACA may allocate to:
 - (i) any one person; or
 - (ii) a specified person; or
 - (b) impose limits on the quantity of numbers that the ACA may, in total, allocate to the members of a specified group of persons.

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

- (5) Subsections (3) and (4) do not, by implication, limit subsection (1).
- (6) A system so determined must provide for:
 - (a) the successful applicant for the allocation of a particular number; and
 - (b) an amount, to be known as the eligible amount, in relation to the allocation of that number;to be determined by reference to the results of:
 - (c) a tender process; or
 - (d) a public auction; or
 - (e) another process;carried out or conducted as provided by the system.
- (7) The ACA may enter into an arrangement with a person about the collection, on behalf of the ACA, of fees of a kind referred to in subsection (3).

464 Consultation about an allocation system

- (1) Before determining or varying an allocation system under section 463, the ACA must:
 - (a) cause to be published in a newspaper circulating in each State a notice:
 - (i) stating that the ACA has prepared a draft of the plan or variation; and
 - (ii) stating that copies of the draft will be available for inspection and purchase by members of the public during normal office hours throughout the period of 30 days after the publication of the notice; and
 - (iii) specifying the place or places where the copies will be available for inspection and purchase; and

- (iv) inviting interested persons to give written comments about the draft to the ACA within 30 days after the publication of the notice; and
 - (b) make copies of the draft available for inspection and purchase in accordance with the notice.
- (2) If interested persons have given comments about the draft in accordance with the notice, the ACA must have due regard to those comments in determining or varying the system, as the case may be.
- (3) Subsection (1) does not apply to a variation if the variation is of a minor nature.
- (4) In this section:

State includes the Northern Territory and the Australian Capital Territory.

Subdivision C—Miscellaneous

465 Register of allocated numbers

- (1) For the purposes of this section, the *designated authority* is:
- (a) the ACA; or
 - (b) if the ACA enters into an arrangement with another person under which the other person agrees to perform the functions conferred on the designated authority by this section—that other person.

Note: An arrangement under paragraph (b) may provide for the payment of amounts by the ACA to the other person.

- (2) The designated authority is to maintain a Register in which the designated authority includes:
- (a) particulars of numbers that have been allocated to carriage service providers under the authority of the numbering plan; and
 - (b) in the case of a number that has been allocated in accordance with an allocation system determined under section 463:
 - (i) the name of the successful applicant for the allocation; and
 - (ii) the eligible amount in relation to the allocation of the number; and
 - (c) in the case of numbers that have been allocated otherwise than in accordance with such a system—the names of the persons to whom the numbers were allocated.
- (3) The designated authority may include in the Register particulars relating to numbers that are taken, for the purposes of Part 3 of the *Telecommunications (Numbering Charges) Act 1997*, to be held by carriage service providers. Those particulars are to include the names of the carriage service providers concerned.
- (4) The Register may be maintained by electronic means.
- (5) If the ACA is the designated authority, a person may, on payment of the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997*:
- (a) inspect the Register; and
 - (b) make a copy of, or take extracts from, the Register.
- (6) If the ACA is not the designated authority, a person may, on payment to the designated authority of the fee (if any) specified in the regulations:
- (a) inspect the Register; and

- (b) make a copy of, or take extracts from, the Register.
- (7) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the designated authority gives the person a printout of, or of the relevant parts of, the Register.
- (8) If a person requests that a copy be provided in an electronic form, the designated authority may provide the relevant information:
 - (a) on a data processing device; or
 - (b) by way of electronic transmission.

466 Emergency service numbers

- (1) The object of this section is to identify numbers for the purpose of calling an emergency call service in connection with emergencies that are likely to require the provision of assistance by any or all of the following services:
 - (a) a police force or service;
 - (b) a fire service;
 - (c) an ambulance service;
 - (d) a service specified in the numbering plan for the purposes of this paragraph.
- (2) For the purposes of this Act, an *emergency service number* is a number specified in the numbering plan for the purposes of this subsection.
- (3) The numbering plan may specify different numbers for use in different areas.
- (4) The numbering plan may specify different numbers for use in connection with different types of services.
- (5) The numbering plan may set out rules about the use of emergency service numbers.
- (6) In making the numbering plan, the ACA must have regard to the objective that, as far as practicable, there should be no more than one emergency service number for use throughout Australia.
- (7) Subsection (6) does not, by implication, limit section 455.

467 Delegation

- (1) The ACA may, by writing, delegate any or all of the powers conferred on the ACA by the numbering plan to a body corporate.
- (2) The delegate is, in the exercise of a delegated power, subject to the written directions of the ACA.
- (3) Before giving a direction under subsection (2), the ACA must consult the ACCC.

468 Collection of numbering charges

Definitions

- (1) In this section:

allocation charge means a charge imposed by Part 2 of the *Telecommunications (Numbering Charges) Act 1997*.

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

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

When allocation charge due and payable

- (2) An allocation charge imposed on the allocation of a number is due and payable when the number is allocated.

When annual charge due and payable

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

Late payment penalty

- (4) The ACA 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 ACA to make decisions about the remission of the whole or a part of an amount of late payment penalty.

Payment of charge and late payment penalty

- (7) Allocation charge, annual charge and late payment penalty are payable to the ACA on behalf of the Commonwealth.

Recovery of charge and penalty

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

Payment into Consolidated Revenue Fund

- (9) Amounts received by way of allocation charge, annual charge or late payment penalty must be paid into the Consolidated Revenue Fund.

Withdrawal of number for non-payment of annual charge

- (10) If any annual charge payable by a person in relation to a number remains unpaid after the time when it became due for payment, the ACA may, by written notice

given to the person, withdraw the number. Such a withdrawal is taken to be in accordance with the numbering plan.

Disallowable instrument

- (11) A determination under subsection (3) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

469 Collection of charges on behalf of the Commonwealth

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

470 Cancellation of certain exemptions from charge

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

471 Commonwealth not liable to charge

- (1) The Commonwealth is not liable to pay charge imposed by the *Telecommunications (Numbering Charges) Act 1997*.
- (2) Even though the Commonwealth is not liable to pay charge imposed by Division 1 of Part 2 of the *Telecommunications (Numbering Charges) Act 1997*, it is the intention of the Parliament that the following should be notionally liable for such a charge:
- (a) a Department of State;
 - (b) a Department of the Parliament;
 - (c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable by, the Secretary to a Department of the Australian Public Service;
 - (d) an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.
- (3) The Minister for Finance may give such written directions as are necessary or convenient to be given for carrying out or giving effect to subsection (2) and, in particular, may give directions in relation to the transfer of money within the Public Account.
- (4) Directions under subsection (3) have effect, and must be complied with, despite any other law of the Commonwealth.
- (5) A reference in this section to the *Commonwealth* includes a reference to an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.

472 Integrated public number database

- (1) The Minister may, by written instrument, determine that a specified person (other than Telstra) is to provide and maintain an integrated public number database.
- (2) If a determination is in force under subsection (1) in relation to a person, the person must comply with the determination.
- (3) If a determination is in force under subsection (1) in relation to a person, the Minister may, by written notice given to the person, direct the person to do, or refrain from doing, a specified act or thing relating to the provision or maintenance of the integrated public number database.
- (4) A direction under subsection (3) may require the database to include specified information. This subsection does not, by implication, limit subsection (3).
- (5) A determination under subsection (1) has no effect if Telstra is obliged by a condition of a carrier licence to provide and maintain an integrated public number database.
- (6) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (7) In this section:

public number means a number specified in the numbering plan as mentioned in subsection 455(3).

473 Letters and symbols taken to be numbers

For the purposes of this Division, a letter or a symbol is taken to be a number.

Division 3—Regulation of electronic addressing

474 Declared manager of electronic addressing

- (1) The ACA may, by notice in the *Gazette*, determine that, for the purposes of this Division, a specified person or association is the *declared manager of electronic addressing* in relation to a specified kind of listed carriage service.
- (2) The determination has effect accordingly.
- (3) The ACA must not make a determination under subsection (1) in relation to a particular person or association unless:
 - (a) the ACA is directed to do so by the ACCC under subsection (4); or
 - (b) the ACA is of the opinion that the person or association is not managing electronic addressing in accordance with generally accepted principles and standards.
- (4) The ACCC may give written directions to the ACA in relation to the exercise of the power conferred by subsection (1).
- (5) The ACA must exercise its powers under subsection (1) in a manner consistent with directions given by the ACCC under subsection (4).
- (6) The ACCC must not give a direction under subsection (4) unless, in the ACCC's opinion, compliance with the direction is likely to have a bearing on competition.

475 ACA may give directions to declared manager of electronic addressing

- (1) The ACA may, by written notice given to a declared manager of electronic addressing in relation to a particular kind of carriage service, direct the manager to do, or refrain from doing, a specified act or thing relating to electronic addressing in connection with that kind of carriage service.
- (2) The ACA must not give a direction under this section unless, in the ACA's opinion, the electronic addressing is of public importance.
- (3) In determining whether the electronic addressing is of public importance, the ACA must have regard to the extent to which the addressing is of significant social and/or economic importance to:
 - (a) service providers; and
 - (b) end-users of carriage services.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACA may have regard.
- (5) Before giving a direction under this section, the ACA must consult the ACCC.
- (6) A person must comply with a direction under this section.
- (7) A person who intentionally or recklessly contravenes subsection (6) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

Note: See also sections 4AA and 4B of the *Crimes Act 1914*.
- (8) A direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

476 ACCC may give directions to declared manager of electronic addressing

- (1) The ACCC may, by written notice given to a declared manager of electronic addressing in relation to a particular kind of carriage service, direct the manager to do, or refrain from doing, a specified act or thing relating to electronic addressing in connection with that kind of carriage service.
- (2) The ACCC must not give a direction under this section unless, in the ACCC's opinion:
 - (a) the electronic addressing is of public importance; and
 - (b) compliance with the direction is likely to have a bearing on competition.
- (3) In determining whether the electronic addressing is of public importance, the ACCC must have regard to the extent to which the addressing is of significant social and/or economic importance to:
 - (a) service providers; and
 - (b) end-users of carriage services.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACCC may have regard.
- (5) Before giving a direction under this section, the ACCC must consult the ACA.
- (6) A person must comply with a direction under this section.

- (7) A person who intentionally or recklessly contravenes subsection (6) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

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

- (8) A direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

477 ACCC's directions to prevail over the ACA's directions

A direction given by the ACA under section 475 has no effect to the extent to which it is inconsistent with a direction given by the ACCC under section 476.

Part 23—Standard agreements for the supply of carriage services

478 Simplified outline

The following is a simplified outline of this Part:

- The terms and conditions on which certain telecommunications-related goods and services are supplied are:
 - (a) as agreed between the supplier and the customer; or
 - (b) failing agreement, set out in a standard form of agreement formulated for the purposes of this Part.

479 Standard terms and conditions apply unless excluded

- (1) This section applies to the supply to an ordinary person by a carriage service provider of:
- (a) a standard telephone service; or
 - (b) a carriage service of a kind specified in the regulations; or
 - (c) ancillary goods of a kind specified in the regulations; or
 - (d) an ancillary service of a kind specified in the regulations.
- (2) The terms and conditions on which the goods or services are supplied are:
- (a) so far as the provider and the person agree on the terms and conditions on which the goods or services are supplied—the agreed terms and conditions; and
 - (b) if the provider and the person do not agree on terms and conditions, but terms and conditions are set out in a standard form of agreement that:
 - (i) is formulated by the provider for the purpose of this section; and
 - (ii) relates to the goods or services; and
 - (iii) is in force at the time of the supply;the terms and conditions so set out, so far as they are applicable to the supply of the goods or services.
- (3) Subsection (2) has effect subject to any express provision of this Act or any other Act.
- (4) In this section:

ancillary goods means goods for use in connection with a carriage service.

ancillary service means a service for use in connection with a carriage service.

ordinary person means a person other than a carrier or a carriage service provider.

terms and conditions, in relation to the supply of goods or services, includes:

- (a) charges for the supply of the goods or services; and
- (b) any discounts, allowances, rebates or credits given or allowed in relation to the supply of the goods or services; and
- (c) any commissions or similar benefits (whether monetary or otherwise) payable or given in relation to the supply of the goods or services; and
- (d) the supply of other goods or services, where the other goods or services are supplied in connection with the first-mentioned goods or services; and
- (e) the making of payments for such other goods or services.

480 Standard form of agreement to be publicly available

- (1) This section applies to a standard form of agreement formulated by a carriage service provider for the purposes of section 479.
- (2) The provider must ensure that copies of the agreement are made available for inspection and purchase at each of its business offices.
- (3) A person may request the provider to give the person a copy of the whole, or of a specified part, of the agreement.
- (4) The provider must comply with a request under subsection (3):
 - (a) if the agreement is relevant to ascertaining the terms and conditions governing the commercial relationship between the provider and the person who made the request—without requiring any payment from the person; or
 - (b) in any other case—on payment, by the person who made the request, of such reasonable charge (if any) as the provider requires.
- (5) If the agreement is relevant to ascertaining the terms and conditions governing the commercial relationship between the provider and a customer of the provider, the provider must, if requested to do so by the customer, give the customer a free copy of a summary of the material terms and conditions set out in the agreement.
- (6) If:
 - (a) the agreement is relevant to ascertaining the terms and conditions governing the commercial relationship between the provider and any of its customers; and
 - (b) the provider proposes to vary the agreement;then, before varying the agreement, the provider must cause a copy of a summary of the effect of the proposed variation to be published in one or more newspapers circulating generally in the capital city of each State in which those customers are located.

However, this subsection does not apply if the variation would not cause detriment to any of those customers.

- (7) In this section:

State includes the Northern Territory and the Australian Capital Territory.

481 Standard form of agreement to be given to the ACA

- (1) This section applies to a standard form of agreement formulated by a carriage service provider for the purposes of section 479.
- (2) The provider must give a copy of:
 - (a) the agreement; and
 - (b) any variation of that agreement;to the ACA as soon as practicable after the agreement or variation comes into force.

482 Concurrent operation of State/Territory laws

This Part does not prevent or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.

483 Trade Practices Act not affected by this Part

This Part has no effect to the extent (if any) to which it is inconsistent with the *Trade Practices Act 1974*.

Part 24—Carriers’ powers and immunities

484 Schedule 3

Schedule 3 has effect.

Part 25—Public inquiries

Division 1—Simplified outline

485 Simplified outline

The following is a simplified outline of this Part:

- The ACA and the ACCC may hold public inquiries about certain matters relating to telecommunications.

Division 2—Inquiries by the ACA

486 When inquiry must be held

- (1) The Minister may give the ACA a written direction to hold a public inquiry under this Division about a specified matter concerning:
 - (a) carriage services; or
 - (b) content services; or
 - (c) the telecommunications industry.
- (2) The Minister must not give the ACA a direction under subsection (1) to hold a public inquiry about a matter concerning the content of a content service.

- (3) If the Minister gives a direction under subsection (1) about a particular public inquiry, the Minister may direct the ACA to:
 - (a) consult with one or more specified persons, bodies or agencies in connection with the conduct of the inquiry; and
 - (b) have regard to one or more specified matters in connection with the conduct of the inquiry.
- (4) The ACA must comply with a direction under this section.

487 When inquiry may be held

- (1) This section applies if the ACA considers that it is appropriate and practicable to hold a public inquiry under this Division about a matter relating to:
 - (a) the performance of any of the ACA's telecommunications functions; or
 - (b) the exercise of any of the ACA's telecommunications powers.
- (2) The ACA may hold such an inquiry about the matter.

488 Informing the public about an inquiry

- (1) If the ACA holds a public inquiry, it must publish, in whatever ways it thinks appropriate, notice of:
 - (a) the fact that it is holding the inquiry; and
 - (b) the period during which the inquiry is to be held; and
 - (c) the nature of the matter to which the inquiry relates; and
 - (d) the period within which, and the form in which, members of the public may make submissions to the ACA about that matter; and
 - (e) the matters that the ACA would like such submissions to deal with; and
 - (f) the address or addresses to which submissions may be sent.
- (2) The ACA need not publish at the same time or in the same way notice of all the matters referred to in subsection (1).

489 Discussion paper

- (1) After deciding to hold a public inquiry about a matter, the ACA may cause to be prepared a discussion paper that:
 - (a) identifies the issues that, in the ACA's opinion, are relevant to that matter; and
 - (b) sets out such background material about, and discussion of, those issues as the ACA thinks appropriate.
- (2) The ACA must make copies of the discussion paper available at each of the ACA's offices. The ACA may charge a reasonable price for supplying copies of the discussion paper in accordance with this subsection.
- (3) The ACA may otherwise publish the discussion paper, including in electronic form. The ACA may charge for supplying a publication under this subsection in accordance with a determination under section 53 of the *Australian Communications Authority Act 1997*.

490 Written submissions and protection from civil actions

- (1) The ACA must provide a reasonable opportunity for any member of the public to make a written submission to the ACA about the matter to which a public inquiry relates.
- (2) For the purposes of subsection (1), the ACA is taken not to have provided a reasonable opportunity to make submissions unless there was a period of at least 28 days during which the submissions could be made.
- (3) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information, to the ACA in connection with a public inquiry under this Division.
- (4) The rule in subsection (3) applies whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

491 Hearings

- (1) The ACA may hold hearings for the purposes of a public inquiry.
- (2) Hearings may be held, for example:
 - (a) in order to receive submissions about the matter to which the inquiry relates; or
 - (b) in order to provide a forum for public discussion of issues relevant to that matter.
- (3) At a hearing, the ACA may be constituted by:
 - (a) a member or members determined in writing by the Chairman for the purposes of that hearing; or
 - (b) if the functions and powers of the ACA in relation to the hearing have been delegated to a person under section 49 of the *Australian Communications Authority Act 1997*—that person.
- (4) The Chairman is to preside at all hearings at which he or she is present.
- (5) If, at a hearing:
 - (a) the ACA is not constituted by a delegate referred to in paragraph (3)(b); and
 - (b) the Chairman is not present at the hearing;the member specified, in an instrument under paragraph (3)(a), as the member who is to preside at the hearing is to preside.
- (6) The ACA may regulate the conduct of proceedings at a hearing as it thinks appropriate.

492 Hearing to be in public except in exceptional cases

- (1) This section applies to a hearing conducted under this Division.
- (2) The basic rule is that the hearing must take place in public.
- (3) However, the hearing, or a part of the hearing, may be conducted in private if the ACA is satisfied that:

- (a) evidence that may be given, or a matter that may arise, during the hearing or a part of the hearing is of a confidential nature; or
 - (b) hearing a matter, or part of a matter, in public would not be conducive to the due administration of this Act.
- (4) If the hearing is to be conducted in public, the ACA must give reasonable public notice of the conduct of the hearing.

493 Confidential material not to be published

- (1) This section applies to a hearing conducted under this Division.
- (2) If:
- (a) the hearing, or a part of the hearing, takes place in public; and
 - (b) the ACA is of the opinion that:
 - (i) evidence or other material presented to the hearing; or
 - (ii) material in a written submission lodged with the ACA;is of a confidential nature;
- the ACA may order that:
- (c) the evidence or material not be published; or
 - (d) its disclosure be restricted.
- (3) A person must not, without reasonable excuse, fail to comply with an order under subsection (2).
- (4) A person who intentionally or recklessly contravenes subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

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

494 Direction about private hearings

- (1) This section applies to a hearing conducted under this Division.
- (2) If the hearing, or a part of the hearing, takes place in private, the ACA:
- (a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and
 - (b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.
- (3) A person must not, without reasonable excuse, fail to comply with a direction under subsection (2).
- (4) A person who intentionally or recklessly contravenes subsection (3) is guilty of an offence punishable on conviction:
- (a) in the case of a direction under paragraph (2)(a)—by a fine not exceeding 10 penalty units; or
 - (b) in the case of a direction under paragraph (2)(b)—by a fine not exceeding 50 penalty units.

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

495 Reports on inquiries

- (1) If the ACA holds a public inquiry, the ACA must prepare a report setting out its findings as a result of the inquiry.

- (2) If the inquiry was held because of a direction given by the Minister under section 486, the ACA must give a copy of the report to the Minister.
- (3) If the inquiry was held otherwise than because of a direction given by the Minister under section 486, the ACA must publish the report.
- (4) The ACA is not required to include in a report any material:
 - (a) that is of a confidential nature; or
 - (b) the disclosure of which is likely to prejudice the fair trial of a person; or
 - (c) that is the subject of an order or direction under section 493 or 494.

Division 3—Inquiries by the ACCC

496 When inquiry must be held

- (1) The Minister may give the ACCC a written direction to hold a public inquiry under this Division about a specified matter concerning:
 - (a) carriage services; or
 - (b) content services; or
 - (c) the telecommunications industry.
- (2) The Minister must not give the ACCC a direction under subsection (1) to hold a public inquiry about a matter concerning the content of a content service.
- (3) If the Minister gives a direction under subsection (1) about a particular public inquiry, the Minister may direct the ACCC to:
 - (a) consult with one or more specified persons, bodies or agencies in connection with the conduct of the inquiry; and
 - (b) have regard to one or more specified matters in connection with the conduct of the inquiry.
- (4) The ACCC must comply with a direction under this section.

497 When inquiry may be held

- (1) This section applies if the ACCC considers that it is appropriate and practicable to hold a public inquiry under this Division about a matter relating to the ACCC's telecommunications functions and powers.
- (2) The ACCC may hold such an inquiry about the matter.

498 Informing the public about an inquiry

- (1) If the ACCC holds a public inquiry, it must publish, in whatever ways it thinks appropriate, notice of:
 - (a) the fact that it is holding the inquiry; and
 - (b) the period during which the inquiry is to be held; and
 - (c) the nature of the matter to which the inquiry relates; and
 - (d) the period within which, and the form in which, members of the public may make submissions to the ACCC about that matter; and
 - (e) the matters that the ACCC would like such submissions to deal with; and
 - (f) the address or addresses to which submissions may be sent.

- (2) The ACCC need not publish at the same time or in the same way notice of all the matters referred to in subsection (1).

499 Discussion paper

- (1) After deciding to hold a public inquiry about a matter, the ACCC may cause to be prepared a discussion paper that:
 - (a) identifies the issues that, in the ACCC's opinion, are relevant to that matter; and
 - (b) sets out such background material about, and discussion of, those issues as the ACCC thinks appropriate.
- (2) The ACCC must make copies of the discussion paper available at each of the ACCC offices. The ACCC may charge a reasonable price for supplying copies of the discussion paper in accordance with this subsection.
- (3) The ACCC may otherwise publish the discussion paper, including in electronic form. The ACCC may charge a fee for supplying a publication under this subsection.

500 Written submissions and protection from civil actions

- (1) The ACCC must provide a reasonable opportunity for any member of the public to make a written submission to the ACCC about the matter to which a public inquiry relates.
- (2) For the purposes of subsection (1), the ACCC is taken not to have provided a reasonable opportunity to make submissions unless there was a period of at least 28 days during which the submissions could be made.
- (3) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information, to the ACCC in connection with a public inquiry under this Division.
- (4) The rule in subsection (3) applies whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

501 Hearings

- (1) The ACCC may hold hearings for the purposes of a public inquiry.
- (2) Hearings may be held, for example:
 - (a) in order to receive submissions about the matter to which the inquiry relates; or
 - (b) in order to provide a forum for public discussion of issues relevant to that matter.
- (3) At a hearing, the ACCC may be constituted by a member or members determined in writing by the Chairperson for the purposes of that hearing.
- (4) The Chairperson is to preside at all hearings at which he or she is present.
- (5) If the Chairperson is not present at a hearing, the member specified, in an instrument under subsection (3), as the member who is to preside at the hearing is to preside.

- (6) The ACCC may regulate the conduct of proceedings at a hearing as it thinks appropriate.

502 Hearing to be in public except in exceptional cases

- (1) This section applies to a hearing conducted under this Division.
- (2) The basic rule is that the hearing must take place in public.
- (3) However, the hearing, or a part of the hearing, may be conducted in private if the ACCC is satisfied that:
 - (a) evidence that may be given, or a matter that may arise, during the hearing or a part of the hearing is of a confidential nature; or
 - (b) hearing a matter, or part of a matter, in public would not be conducive to the due administration of this Act.
- (4) If the hearing is to be conducted in public, the ACCC must give reasonable public notice of the conduct of the hearing.

503 Confidential material not to be published

- (1) This section applies to a hearing conducted under this Division.
- (2) If:
 - (a) the hearing, or a part of the hearing, takes place in public; and
 - (b) the ACCC is of the opinion that:
 - (i) evidence or other material presented to the hearing; or
 - (ii) material in a written submission lodged with the ACCC;is of a confidential nature;the ACCC may order that:
 - (c) the evidence or material not be published; or
 - (d) its disclosure be restricted.
- (3) A person must not, without reasonable excuse, fail to comply with an order under subsection (2).
- (4) A person who intentionally or recklessly contravenes subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

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

504 Direction about private hearings

- (1) This section applies to a hearing conducted under this Division.
- (2) If the hearing, or a part of the hearing, takes place in private, the ACCC:
 - (a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and
 - (b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.
- (3) A person must not, without reasonable excuse, fail to comply with a direction under subsection (2).
- (4) A person who intentionally or recklessly contravenes subsection (3) is guilty of an offence punishable on conviction:

- (a) in the case of a direction under paragraph (2)(a)—by a fine not exceeding 10 penalty units; or
- (b) in the case of a direction under paragraph (2)(b)—by a fine not exceeding 50 penalty units.

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

505 Reports on inquiries

- (1) If the ACCC holds a public inquiry, the ACCC must prepare a report setting out its findings as a result of the inquiry.
- (2) If the inquiry was held because of a direction given by the Minister under section 496, the ACCC must give a copy of the report to the Minister.
- (3) If the inquiry was held otherwise than because of a direction given by the Minister under section 496, the ACCC must publish the report.
- (4) The ACCC is not required to include in a report any material:
 - (a) that is of a confidential nature; or
 - (b) the disclosure of which is likely to prejudice the fair trial of a person; or
 - (c) that is the subject of an order or direction under section 503 or 504.

506 ACCC's other powers not limited

This Division does not, by implication, limit the powers conferred on the ACCC by the *Trade Practices Act 1974*.

Part 26—Investigations

507 Simplified outline

The following is a simplified outline of this Part:

- The ACA may investigate certain matters relating to telecommunications.

508 Matters to which this Part applies

This Part applies to the following matters:

- (a) a contravention of this Act;
 - (b) a contravention of a code registered under Part 6;
 - (c) a failure by a carriage service provider to comply with an obligation, or discharge a liability, under Part 9;
 - (d) a matter relating to the supply of, or a refusal or failure to supply, a carriage service;
 - (e) a matter relating to the connection of, or a refusal or failure to connect, customer equipment;
 - (f) a matter relating to the performance of the ACA's telecommunications functions, or the exercise of the ACA's telecommunications powers;
- except to the extent (if any) to which the matter relates to the content of a content service.

509 Complaints to the ACA

- (1) A person may complain to the ACA about a matter.
- (2) A complaint must be in writing.
- (3) A complaint must specify, as the respondent in respect of the complaint, the person against whom the complaint is made.
- (4) If it appears to the ACA that:
 - (a) a person wishes to make a complaint; and
 - (b) the person requires assistance to formulate the complaint or to reduce it to writing;it is the duty of the ACA to take reasonable steps to provide appropriate assistance to the person.

510 Investigations by the ACA

- (1) The ACA may investigate a matter of a kind referred to in section 508 if:
 - (a) in the case of a matter covered by paragraph 508(a)—the ACA has reason to suspect that a person may have contravened this Act; or
 - (b) in any case—a complaint is made under section 509; or
 - (c) in any case—the ACA thinks that it is desirable to investigate the matter.
- (2) The ACA must not conduct such an investigation if it thinks that the subject matter of the investigation would not be a matter relevant to the performance of any of its functions.
- (3) The ACA must investigate:
 - (a) a matter of a kind referred to in section 508; or
 - (b) any other matter concerning carriage services or the telecommunications industry;if the Minister requests the ACA so to investigate.

511 Preliminary inquiries

If a complaint has been made to the ACA under section 509, the ACA may make inquiries of the respondent for the purposes of determining:

- (a) whether the ACA has power to investigate the matter to which the complaint relates; or
- (b) whether the ACA should, in its discretion, investigate the matter.

512 Conduct of investigations

- (1) Before beginning an investigation of a matter to which a complaint relates, the ACA must inform the respondent that the matter is to be investigated.
- (2) An investigation under this Part is to be conducted as the ACA thinks fit.
- (3) The ACA may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as it thinks fit.
- (4) It is not necessary for a complainant or a respondent to be given an opportunity to appear before the ACA in connection with an investigation. This subsection has effect subject to subsection (5).

- (5) The ACA must not, as a result of the investigation, make a finding that is adverse to a complainant or a respondent unless it has given the complainant or respondent an opportunity to make submissions about the matter to which the investigation relates.

513 Complainant and certain other persons to be informed of various matters

If the ACA decides not to investigate, or not to investigate further, a matter to which a complaint relates, it must, as soon as practicable and in such manner as it thinks fit, inform the complainant and the respondent of the decision and of the reasons for the decision.

514 Reference of matters to Ombudsman or other responsible person

- (1) If, before the ACA starts, or after it has started, an investigation of a matter to which a complaint relates, the ACA forms the opinion that:
- (a) a complaint relating to that matter has been, or could have been, made by the complainant to:
 - (i) the Ombudsman under the *Ombudsman Act 1976*; or
 - (ii) the Telecommunications Industry Ombudsman; or
 - (iii) another person or body responsible for handling complaints under a code registered, or standard determined, under Part 6; and
 - (b) the matter could be more conveniently or effectively dealt with by:
 - (i) the Ombudsman; or
 - (ii) the Telecommunications Industry Ombudsman; or
 - (iii) another person or body responsible for handling complaints under a code registered, or standard determined, under Part 6;
- the ACA may decide not to investigate the matter, or not to investigate the matter further, as the case may be.
- (2) If the ACA decides as mentioned in subsection (1), it must:
- (a) transfer the complaint to:
 - (i) the Ombudsman; or
 - (ii) the Telecommunications Industry Ombudsman; or
 - (iii) another person or body responsible for handling complaints under a code registered, or standard determined, under Part 6;as the case requires; and
 - (b) give written notice to the complainant stating that the complaint has been so transferred.
- (3) If the ACA decides as mentioned in subsection (1), then:
- (a) in a case where subparagraph (1)(a)(i) applies—the ACA must give the Ombudsman any information or documents that relate to the complaint and that are in the ACA’s possession or under its control; and
 - (b) in a case where subparagraph (1)(a)(ii) applies—the ACA may give the Telecommunications Industry Ombudsman any information or documents that relate to the complaint and that are in the ACA’s possession or under its control; and
 - (c) in a case where subparagraph (1)(a)(iii) applies—the ACA may give the person or body mentioned in that subparagraph:
 - (i) any information or documents that relate to the complaint and that are in the ACA’s possession or under its control; or

- (ii) copies of, or extracts from, such information or documents.
- (4) A complaint transferred under subsection (2) to the Ombudsman is taken to be a complaint made to the Ombudsman under the *Ombudsman Act 1976*.

515 Reference of matters to the ACCC

- (1) If, before the ACA commences, or after it has commenced, an investigation of a matter to which a complaint relates, the ACA forms the opinion that the matter could be more conveniently or effectively dealt with by the ACCC, it may decide not to investigate the matter, or not to investigate the matter further, as the case may be.
- (2) If the ACA so decides, it must:
 - (a) transfer the complaint to the ACCC; and
 - (b) give written notice to the complainant stating that the complaint has been so transferred; and
 - (c) give to the ACCC any information or documents that relate to the complaint and that are in the ACA's possession or under its control.
- (3) The ACCC may hold an investigation into the matter and, if it decides to do so, it must report to the ACA on:
 - (a) the conduct of the investigation; and
 - (b) any findings that it has made as a result of the investigation; and
 - (c) the evidence and other material on which those findings were based; and
 - (d) such other matters relating to, or arising out of, the investigation as the ACCC thinks fit.
- (4) If the ACCC decides not to hold an investigation into the matter, it must give to the ACA a written notice informing the ACA of its decision and of the reasons for its decision.

516 Reports on investigations

- (1) After concluding an investigation under subsection 510(1), the ACA may prepare and give to the Minister a report under this section.
- (2) After concluding an investigation under subsection 510(3), the ACA must prepare and give to the Minister a report under this section.
- (3) A report under this section must cover:
 - (a) the conduct of the investigation concerned; and
 - (b) any findings that the ACA has made as a result of the investigation; and
 - (c) the evidence and other material on which those findings were based; and
 - (d) such other matters relating to, or arising out of, the investigation as the ACA thinks fit or as the Minister directs.

517 Publication of reports

- (1) This section applies if the ACA prepares a report under section 516.
- (2) If the report was prepared under subsection 516(1), the ACA may cause the report to be published.

- (3) If the report was prepared under subsection 516(2), the Minister may direct the ACA to publish the report. The ACA must comply with the direction. The ACA must not otherwise cause the report to be published.
- (4) The ACA is not required to publish, or to disclose to a person to whose affairs it relates, a report or a part of a report if the publication or disclosure would:
 - (a) disclose a matter of a confidential character; or
 - (b) be likely to prejudice the fair trial of a person.
- (5) The ACA is not required to publish a report or part of a report if the publication would involve the unreasonable disclosure of personal information about any individual (including a deceased individual).

518 Person adversely affected by report to be given opportunity to comment

- (1) This section applies if the publication of a matter in a report or a part of a report would, or would be likely to, adversely affect the interests of a person.
- (2) The ACA must not publish the report or the part of the report, as the case may be, until the ACA has given the person a reasonable period (not exceeding 30 days) to make representations, either orally or in writing, in relation to the matter.

519 Protection from civil actions

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:
 - (a) the making of a complaint under section 509;
 - (b) the making of a statement to, or the giving of a document or information to, the ACA in connection with an investigation under section 510;
 - (c) the making of a complaint to the Telecommunications Industry Ombudsman;
 - (d) subject to subsection (2), the making of a statement to, or the giving of a document or information to, the Telecommunications Industry Ombudsman in connection with the consideration by the Telecommunications Industry Ombudsman of a complaint.
- (2) Paragraph (1)(d) does not apply to the making of a statement, or the giving of a document or information, by:
 - (a) a carrier; or
 - (b) a person who is a service provider and who is participating in the Telecommunications Industry Ombudsman scheme under which the Telecommunications Industry Ombudsman has been appointed.

Part 27—The ACA’s information-gathering powers

Division 1—Simplified outline

520 Simplified outline

The following is a simplified outline of this Part:

- The ACA may obtain information from carriers, service providers and other persons if the information is relevant to:
 - (a) the performance of any of the ACA's telecommunications functions; or
 - (b) the exercise of any of the ACA's telecommunications powers.
- The ACA may make record-keeping rules that apply to carriers and carriage service providers.

Division 2—Information-gathering powers

521 The ACA may obtain information and documents from carriers and service providers

- (1) This section applies to a carrier or a service provider if the ACA has reason to believe that the carrier or provider:
 - (a) has information or a document that is relevant to:
 - (i) the performance of any of the ACA's telecommunications functions; or
 - (ii) the exercise of any of the ACA's telecommunications powers; or
 - (b) is capable of giving evidence which the ACA has reason to believe is relevant to:
 - (i) the performance of any of the ACA's telecommunications functions; or
 - (ii) the exercise of any of the ACA's telecommunications powers.
- (2) The ACA may, by written notice given to the carrier or provider, require the carrier or provider:
 - (a) to give to the ACA, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the ACA, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the ACA, within the period and in the manner specified in the notice, those copies; or
 - (d) if the carrier or provider is an individual—to appear before the ACA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
 - (e) if the carrier or provider is a body corporate or a public body—to cause a competent officer of the body to appear before the ACA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
 - (f) if the carrier or provider is a partnership—to cause an individual who is:
 - (i) a partner in the partnership; or
 - (ii) an employee of the partnership;
 to appear before the ACA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

- (3) A carrier or service provider must comply with a requirement under subsection (2).
- (4) A notice given to a carrier under this section must set out the effect of the following provisions:
 - (a) subsection (3);
 - (b) section 68;
 - (c) section 570;
 - (d) Part 1 of Schedule 1;
 - (e) section 525;
 - (f) section 526.
- (5) A notice given to a service provider under this section must set out the effect of the following provisions:
 - (a) subsection (3);
 - (b) section 101;
 - (c) section 570;
 - (d) Part 1 of Schedule 2;
 - (e) section 525;
 - (f) section 526.

522 The ACA may obtain information and documents from other persons

- (1) This section applies to a person if the ACA has reason to believe that the person:
 - (a) has information or a document that is relevant to:
 - (i) the performance of any of the ACA's telecommunications functions;
 - or
 - (ii) the exercise of any of the ACA's telecommunications powers; or
 - (b) is capable of giving evidence which the ACA has reason to believe is relevant to:
 - (i) the performance of any of the ACA's telecommunications functions;
 - or
 - (ii) the exercise of any of the ACA's telecommunications powers.
- (2) The ACA may, by written notice given to the person, require the person:
 - (a) to give to the ACA, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the ACA, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the ACA, within the period and in the manner specified in the notice, those copies; or
 - (d) if the person is an individual—to appear before the ACA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
 - (e) if the person is a body corporate or a public body—to cause a competent officer of the body to appear before the ACA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
 - (f) if the person is a partnership—to cause an individual who is:
 - (i) a partner in the partnership; or
 - (ii) an employee of the partnership;

to appear before the ACA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

- (3) A person must comply with a requirement under subsection (2).
- (4) A person who intentionally or recklessly contravenes subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.
Note: See also sections 4AA and 4B of the *Crimes Act 1914*.
- (5) A notice under this section must set out the effect of the following provisions:
 - (a) subsection (4);
 - (b) section 525;
 - (c) section 526.

523 Copying documents—reasonable compensation

A person is entitled to be paid by the ACA reasonable compensation for complying with a requirement covered by paragraph 521(2)(c) or 522(2)(c).

524 Self-incrimination

- (1) An individual is not excused from giving information or evidence or producing a document or a copy of a document under this Division on the ground that the information or evidence or the production of the document or copy might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
 - (a) giving the information or evidence or producing the document or copy; or
 - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document or copy;is not admissible in evidence against the individual in:
 - (c) criminal proceedings other than proceedings under, or arising out of, subsection 522(4) or section 525 or 526; or
 - (d) proceedings under section 570 for recovery of a pecuniary penalty in relation to a contravention of section 521.

525 Giving false or misleading information or evidence

A person must not, under section 521 or 522, intentionally or recklessly give information or evidence that is false or misleading.

Penalty: Imprisonment for 12 months.

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

526 Provision of false or misleading documents

- (1) A person must not, under section 521 or 522, produce a document, or a copy of a document, that, to the knowledge of the person, is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

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

- (2) Subsection (1) does not apply to a person who produces a document, or a copy of a document, that, to the knowledge of the person, is false or misleading in a material particular if the document or copy is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
 - (a) stating that the document or copy is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
 - (b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the first-mentioned person, false or misleading.

527 Copies of documents

- (1) The ACA may inspect a document or copy produced under this Division and may make and retain copies of, or take and retain extracts from, such a document.
- (2) The ACA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 521(2)(c) or 522(2)(c).

528 ACA may retain documents

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

Division 3—Record-keeping rules

529 ACA may make record-keeping rules

- (1) The ACA may, by written instrument, make rules for and in relation to requiring one or more specified carriers or one or more specified carriage service providers to keep and retain records. Rules under this subsection are to be known as *record-keeping rules*.

Note: Carriers and carriage service providers may be specified by name, by inclusion in a specified class or in any other way.

- (2) The rules may specify the manner and form in which the records are to be kept.
- (3) If the rules apply to a particular carrier or carriage service provider, the ACA must give the carrier or provider a copy of the rules.
- (4) The ACA must not exercise its powers under this section so as to require the keeping or retention of records unless the records contain, or will contain, information that is relevant to:

- (a) the performance by the ACA of a function, or the exercise by the ACA of a power, conferred on the ACA by or under Part 5 (which deals with the monitoring of the performance of carriers and carriage service providers);
or
- (b) the performance by the ACA of a function, or the exercise by the ACA of a power, conferred on the ACA by or under Part 7 (which deals with universal service).

Note: Under section 521, the ACA may require a carrier or carriage service provider to produce a document (including a record kept in accordance with the record-keeping rules).

530 Compliance with record-keeping rules

A carrier or carriage service provider must comply with any record-keeping rules that are applicable to the carrier or provider.

531 Incorrect records

- (1) A person must not, in purported compliance with a requirement imposed by the record-keeping rules, make a record of any matter or thing in such a way that it does not correctly record the matter or thing.
- (2) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

Part 28—Enforcement

Division 1—Simplified outline

532 Simplified outline

The following is a simplified outline of this Part:

- A person may be appointed as an *inspector*.
- Searches relating to offences against Part 21 (technical regulation) may be conducted:
 - (a) under the authority of a search warrant; or
 - (b) with the consent of the owner or occupier concerned; or
 - (c) in an emergency.
- Searches to monitor compliance with Part 21 (technical regulation) may be conducted with the consent of the occupier concerned.
- An inspector may require the production of a carrier licence.

- An inspector may require the giving of certain information, and the production of certain documents, relevant to compliance with Part 21 (technical regulation).
- A court may order forfeiture of goods used or otherwise involved in the commission of an offence against this Act.

Division 2—Inspectors and identity cards

533 Inspectors

- (1) A person is an *inspector* for the purposes of a particular provision of this Act if:
- (a) the person is an officer appointed by the ACA, by written instrument, to be an inspector:
 - (i) for the purposes of this Act in general; or
 - (ii) for the purposes of that provision; or
 - (b) the person is an officer included in a class of officers appointed by the ACA, by notice in the *Gazette*, to be inspectors:
 - (i) for the purposes of this Act in general; or
 - (ii) for the purposes of that provision; or
 - (c) if the person is a member (other than a special member) of the Australian Federal Police or of the police force of a Territory.

- (2) In this section:

Commonwealth officer means:

- (a) a person who, whether on a full-time or a part-time basis, and whether in a permanent capacity or otherwise:
 - (i) is in the service or employment of the Commonwealth, the Administration of an external Territory or an authority of the Commonwealth; or
 - (ii) holds or performs the duties of any office or position established by or under a law of the Commonwealth or an external Territory; or
- (b) a member of the Defence Force.

officer means:

- (a) a Commonwealth officer; or
- (b) a State officer.

State includes:

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

State officer means a person who, whether on a full-time basis or a part-time basis and whether in a permanent capacity or otherwise:

- (a) is in the service or employment of a State or an authority of a State; or
- (b) holds or performs the duties of any office or position established by or under a law of a State;

and includes a member of a police force of a State.

534 Identity cards

- (1) The ACA may issue an identity card to an inspector, other than a member of a police force, in a form approved, in writing, by the ACA.
- (2) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the ACA.
- (3) A person must not, without reasonable excuse, intentionally or recklessly contravene subsection (2).

Penalty: 5 penalty units.

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

Division 3—Search warrants relating to offences against Part 21

535 Magistrate may issue warrant

- (1) If:
 - (a) an information on oath is laid before a magistrate alleging that an inspector suspects on reasonable grounds that there may be on any land, or in or on any premises, vessel, aircraft or vehicle:
 - (i) anything in respect of which an offence against Part 21 has been committed; or
 - (ii) anything that may afford evidence about the commission of an offence against Part 21; or
 - (iii) anything that was used, or is intended to be used, for the purposes of committing an offence against Part 21; and
 - (b) the information sets out those grounds;

the magistrate may issue a search warrant authorising the inspector named in the warrant, with such assistance, and by such force, as is necessary and reasonable, to enter the land, premises, vessel, aircraft or vehicle and exercise the powers referred to in paragraphs 542(2)(b), (c) and (d), in respect of the thing.

- (2) A reference in this section to an *offence against Part 21* includes a reference to an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to Part 21 of this Act.

536 Reasonable grounds for issuing warrant etc.

A magistrate is not to issue a warrant under section 535 unless:

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

537 Contents of warrant

The following must be stated in a warrant issued under section 535:

- (a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry and search are authorised;

- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things to be seized;
- (d) a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

538 Warrants may be issued by telephone etc.

If, because of circumstances of urgency, an inspector thinks it necessary to do so, the inspector may apply to a magistrate for a warrant under section 535 by telephone, telex, fax or other electronic means.

539 Provisions relating to issue of warrant by telephone etc.

- (1) Before applying under section 538 for a warrant, an inspector must prepare an information of a kind referred to in section 535 that sets out the grounds on which the issue of the warrant is being sought. However, the inspector may, if it is necessary to do so, make the application before the information has been sworn.
- (2) If the magistrate to whom an application under section 538 is made is satisfied:
 - (a) after having considered the terms of the information prepared under subsection (1); and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign such a search warrant as the magistrate would issue under section 535 if the application had been made under that section.
- (3) If the magistrate signs a warrant under subsection (2):
 - (a) the magistrate must:
 - (i) inform the inspector of the terms of the warrant; and
 - (ii) inform the inspector of the day on which and the time at which the warrant was signed; and
 - (iii) inform the inspector of the day (not more than 7 days after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
 - (iv) record on the warrant the reasons for issuing the warrant; and
 - (b) the inspector must:
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on it the magistrate's name and the day on which and the time at which the warrant was signed.
- (4) The inspector must, not later than the day after the date of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
 - (a) the form of warrant completed by the inspector; and
 - (b) the information duly sworn in connection with the warrant.
- (5) On receiving the documents referred to in subsection (4), the magistrate must:
 - (a) attach to them the warrant signed by the magistrate; and

- (b) deal with the documents in the way which the magistrate would have dealt with the information if the application for the warrant had been made under section 535.
- (6) A form of warrant duly completed by an inspector under subsection (3), if it is in accordance with the terms of the warrant signed by the magistrate, is authority for an entry, search, seizure or other exercise of a power that the warrant so signed authorises.

540 Proceedings involving warrant issued by telephone etc.

If:

- (a) it is material in any proceedings for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with section 539; and
 - (b) a warrant signed by a magistrate under section 539 authorising the entry, search, seizure or other exercise of power is not produced in evidence;
- the court is to assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant.

Division 4—Searches and seizures relating to offences against Part 21

541 When is a thing connected with an offence?

For the purposes of this Division, a thing is *connected with* a particular offence if it is:

- (a) a thing in respect of which the offence has been committed; or
- (b) a thing that may afford evidence about the commission of the offence; or
- (c) a thing that was used, or is intended to be used, for the purposes of committing the offence.

542 Offence-related searches and seizures

- (1) This section applies if an inspector suspects on reasonable grounds that there is on any land, or on or in any premises, vessel, aircraft or vehicle anything connected with a particular offence against Part 21.
- (2) The inspector may, with the consent of the owner or occupier of the land, premises, vessel, aircraft or vehicle, or in accordance with a warrant issued under Division 3:
 - (a) enter the land, premises, vessel, aircraft or vehicle; and
 - (b) search the land, premises, vessel, aircraft or vehicle; and
 - (c) break open and search a cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the inspector suspects on reasonable grounds there to be anything of a kind referred to in subsection (1); and
 - (d) examine and seize anything that the inspector suspects on reasonable grounds to be connected with the offence.
- (3) If an inspector may enter a vessel, aircraft or vehicle under subsection (2), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (2)(b), (c) or (d), stop and detain the vessel, aircraft or vehicle.

- (4) A reference in this section to an *offence against Part 21* includes a reference to an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to Part 21 of this Act.

543 Production of identity card etc.

- (1) An inspector (other than a member of a police force who is in uniform) who proposes to enter land or premises under section 542 must:
- (a) in the case of a member of a police force—produce, for inspection by the owner or occupier of the land or premises written evidence of the fact that the inspector is a member of a police force; or
 - (b) in any other case—produce the inspector's identity card for inspection by the owner or occupier;
- and, if the inspector fails to do so, he or she is not authorised to enter the land or premises.
- (2) If the entry is in accordance with a warrant issued under Division 3, the inspector is taken not to have complied with subsection (1) unless he or she also produces the warrant for inspection by the owner or occupier.

544 Evidence of commission of other offences

- (1) If:
- (a) in the course of searching, in accordance with a warrant issued under Division 3, for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes on reasonable grounds to be:
 - (i) a thing that is connected with the offence, although not the thing specified in the warrant; or
 - (ii) a thing that is connected with another offence against Part 21; and
 - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence;
- the warrant is taken to authorise the inspector to seize that thing.
- (2) A reference in this section to an *offence against Part 21* includes a reference to an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to Part 21 of this Act.

545 Emergency entry, search and seizure

- (1) If an inspector has reasonable grounds to believe:
- (a) that a person is carrying anything that is connected with an offence against Part 21; and
 - (b) that the exercise of the powers under this section is necessary to prevent the concealment, loss or destruction of a thing connected with a particular offence;
- the inspector may:
- (c) search the person, the person's clothing and any property in the person's immediate control; and
 - (d) seize any thing found in the course of the search;

so long as those powers are exercised in circumstances of such seriousness and urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under Division 3.

- (2) If an inspector has reasonable grounds to believe:
 - (a) that there is on any land or on or in any premises, vessel, aircraft or vehicle any thing that is connected with a particular offence against Part 21; and
 - (b) that the exercise of powers conferred under this section is necessary to prevent the concealment, loss or destruction of the thing;the inspector may, with such assistance as the inspector thinks fit, and if necessary by force:
 - (c) enter the land, premises, vessel, aircraft or vehicle; and
 - (d) search for the thing; and
 - (e) seize any such thing found in the course of the search;so long as those powers are exercised in circumstances of such seriousness and urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under Division 3.
- (3) If an inspector may enter a vessel, aircraft or vehicle under subsection (2), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (2)(d) or (e), stop and detain the vessel, aircraft or vehicle.
- (4) A reference in this section to an *offence against Part 21* includes a reference to an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to Part 21 of this Act.

546 Retention of things seized

- (1) If an inspector seizes a thing under this Division, the inspector or the ACA may retain it until:
 - (a) the end of the period of 60 days after the seizure; or
 - (b) if proceedings for an offence against, or arising out of, this Act in respect of which the thing may afford evidence are instituted within that period—the proceedings (including any appeal to a court in relation to those proceedings) are completed.
- (2) The ACA may, by written instrument, authorise a thing seized under this Division to be released to the owner, or to the person from whom it was seized, either:
 - (a) unconditionally; or
 - (b) on such conditions as the ACA thinks fit, including conditions as to giving security for payment of its value if it is forfeited under section 551.

Division 5—Searches to monitor compliance with Part 21

547 Searches to monitor compliance with Part 21

- (1) An inspector may, to the extent that it is reasonably necessary for the purpose of ascertaining whether Part 21 has been complied with, enter, at any time during the day or night, any premises that the inspector has reasonable cause to believe are premises to which this section applies and:
 - (a) search the premises; or

- (b) inspect and take photographs, or make sketches, of the premises or any substance or thing at the premises; or
- (c) inspect any document kept at the premises; or
- (d) remove, or make copies of, any such document.

This section has effect subject to subsections (2) and (3).

- (2) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.
- (3) An inspector is not entitled to exercise any powers under subsection (1) in relation to premises if:
 - (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
 - (b) the inspector fails to comply with the requirement.
- (4) This section applies to premises at which:
 - (a) activities that are the subject of regulation under Part 21 are engaged in; or
 - (b) records relating to any such activities are kept.

Division 6—Other powers of inspectors

548 General powers of inspectors

- (1) An inspector may:
 - (a) require a person whom he or she suspects on reasonable grounds of having done an act in respect of which the person is required to hold:
 - (i) a carrier licence; or
 - (ii) a connection permit; or
 - (iii) a cabling licence;to produce the licence or permit (as the case may be), or evidence of its existence and contents; and
 - (b) require a person to produce evidence of having applied a label in accordance with an obligation imposed on the person under section 407; and
 - (c) require a person who has been required under paragraph 408(5)(a) or (d) to:
 - (i) obtain a written statement from a certification body certifying that customer equipment or customer cabling complies with a specified section 376 standard; or
 - (ii) obtain a written statement from a competent body stating that reasonable efforts have been made to avoid a contravention of a specified section 376 standard;to produce the statement, or evidence of its existence and contents; and
 - (d) require a person who has been required under paragraph 408(5)(b) to have customer equipment or customer cabling tested by a recognised testing authority to produce evidence of the testing; and
 - (e) require a person who has been required under subsection 408(6) to retain:
 - (i) records; or
 - (ii) a declaration; or
 - (iii) a copy of a declaration;

for a particular period to produce those records, that declaration or that copy, so long as the inspector does not require the production of those records, that declaration or that copy after the end of that period.

- (2) A person must not, without reasonable excuse, intentionally or recklessly contravene a requirement under this section.

Penalty: 20 penalty units

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

- (3) In this section:

application, in relation to a label, has the same meaning as in Division 7 of Part 21.

certification body has the same meaning as in Division 7 of Part 21.

competent body has the same meaning as in Division 7 of Part 21.

recognised testing authority has the same meaning as in Division 7 of Part 21.

549 Power to require information etc.

- (1) An inspector who has entered land, premises, a vessel, an aircraft or a vehicle under Division 4 or 5 may, to the extent that is reasonably necessary for the purpose of ascertaining whether Part 21 has been complied with, require the person to:
- (a) answer any questions put by the inspector; and
 - (b) produce any documents requested by the inspector.
- (2) An inspector is not entitled to make a requirement of a person under subsection (1) unless:
- (a) the inspector produces his or her identity card for inspection by the person; or
 - (b) the inspector is a member of a police force and is wearing the uniform of that police force.
- (3) A person must not, without reasonable excuse, intentionally or recklessly contravene a requirement made of the person under subsection (1).

Penalty: 20 penalty units.

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

- (4) An individual is excused from giving information or producing a document under this section if the information or the production of the document might tend to incriminate the individual or expose the individual to a penalty.

550 Retention of documents

If:

- (a) an inspector removes a document from any land, premises, vessel, aircraft or vehicle under section 542 or 547; or
- (b) a person produces a document to an inspector in accordance with a requirement under subsection 549(1);

then:

- (c) the inspector may retain possession of the document for such period as is necessary and reasonable for the purpose of ascertaining whether Part 21 has been complied with; and
- (d) during that period, the inspector must permit a person who would be entitled to inspect the document if it were not in the inspector's possession to inspect the document at all reasonable times.

Division 7—Forfeiture

551 Court may order forfeiture

- (1) If a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of anything used or otherwise involved in the commission of the offence.
- (2) A reference in this section to an *offence against this Act* includes a reference to an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to this Act.

552 Forfeited goods may be sold

A thing forfeited under section 551:

- (a) may be sold or otherwise disposed of in accordance with the directions of the ACA; and
- (b) pending such directions, must be kept in such custody as the ACA directs.

Division 8—Future offences

553 Offences that are going to be committed

- (1) If:
 - (a) there are reasonable grounds for suspecting that an offence against this Act is going to be committed; and
 - (b) the commission of that offence would pose a threat to the safety of human life or cause substantial loss or damage;this Part applies in relation to the offence as if there were reasonable grounds for suspecting that it had been committed.
- (2) A reference in this section to an *offence against this Act* includes a reference to an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to this Act.

Part 29—Review of decisions

554 Simplified outline

The following is a simplified outline of this Part:

- Certain decisions of the ACA may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the ACA.

555 Decisions that may be subject to reconsideration by the ACA

An application may be made to the ACA for reconsideration of a decision of a kind specified in Part 1 of Schedule 4.

556 Deadlines for reaching certain decisions

- (1) This section applies to a decision of a kind referred to in section 555, other than a decision of a kind specified in Part 2 of Schedule 4.
- (2) If this Act provides for a person to make an application to the ACA for such a decision, the ACA must make the decision:
 - (a) within 90 days after receiving the application; or
 - (b) if the ACA has, within those 90 days, given the applicant a written request for further information about the application—within 90 days after receiving that further information.
- (3) The ACA is taken, for the purposes of this Part, to have made a decision to refuse the application if it has not informed the applicant of its decision before the end of the relevant period of 90 days.

557 Statements to accompany notification of decisions

- (1) If the ACA makes a decision of a kind referred to in section 555 and gives written notice of the decision to a person whose interests it affects, the notice must include:
 - (a) a statement to the effect that a person affected by the decision may, if he or she is dissatisfied with the decision, seek a reconsideration of the decision by the ACA under subsection 558(1); and
 - (b) a statement to the effect that, if a person who has applied for a reconsideration is dissatisfied with the ACA's decision on the reconsideration:
 - (i) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision on that reconsideration; and
 - (ii) the person may request a statement under section 28 of that Act in relation to the decision on that reconsideration.
- (2) Failure to comply with this section does not affect the validity of a decision.

558 Applications for reconsideration of decisions

- (1) A person affected by a decision of a kind referred to in section 555 who is dissatisfied with the decision may apply to the ACA for the ACA to reconsider the decision.
- (2) The application must:
 - (a) be in a form approved in writing by the ACA; and
 - (b) set out the reasons for the application.
- (3) The application must be made within:
 - (a) 28 days after the applicant is informed of the decision; or
 - (b) if, either before or after the end of that period of 28 days, the ACA extends the period within which the application may be made—the extended period for making the application.

- (4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

559 Reconsideration by the ACA

- (1) Upon receiving such an application, the ACA must:
 - (a) reconsider the decision; and
 - (b) affirm, vary or revoke the decision.
- (2) The ACA's decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.
- (3) The ACA must give to the applicant a notice stating its decision on the reconsideration together with a statement of its reasons for its decision.

560 Deadlines for reconsiderations

- (1) The ACA must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.
- (2) The ACA is taken, for the purposes of this Part, to have made a decision affirming the original decision if it has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

561 Statements to accompany notification of decisions on reconsideration

- (1) A notice under subsection 559(3) notifying the applicant that a decision has been affirmed or varied must include:
 - (a) a statement to the effect that a person affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision so affirmed or varied, apply to the Administrative Appeals Tribunal for review of the decision; and
 - (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision so affirmed or varied.
- (2) Failure to comply with this section does not affect the validity of a decision.

562 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal to review a decision of a kind referred to in section 555 if the ACA has affirmed or varied the decision under section 559.

Part 30—Injunctions

563 Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions in relation to contraventions of this Act.

564 Injunctions

Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of this Act, the Federal Court may, on the application of the Minister, the ACA or the ACCC, grant an injunction:
 - (a) restraining the person from engaging in the conduct; and
 - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

Performance injunctions

- (2) If:
 - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of this Act;the Federal Court may, on the application of the Minister, the ACA or the ACCC, grant an injunction requiring the person to do that act or thing.

Limit on standing of the ACA

- (3) Despite subsections (1) and (2), the ACA is not entitled to apply for an injunction in relation to a contravention of:
 - (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369; or
 - (b) a carrier licence condition set out in Part 3 or 4 of Schedule 1; or
 - (c) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369; or
 - (d) the carrier licence condition set out in section 152AZ of the *Trade Practices Act 1974*; or
 - (e) the service provider rule set out in subsection 152BA(2) of the *Trade Practices Act 1974*.

Note 1: Section 369 deals with Rules of Conduct under section 367.

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

Note 3: Section 152AZ of the *Trade Practices Act 1974* deals with standard access obligations.

Note 4: Subsection 152BA(2) of the *Trade Practices Act 1974* provides that a carriage service provider must comply with any standard access obligations that are applicable to the provider.

565 Interim injunctions

Grant of interim injunction

- (1) If an application is made to the court for an injunction under section 564, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

- (2) The court is not to require an applicant for an injunction under section 564, as a condition of granting an interim injunction, to give any undertakings as to damages.

566 Discharge etc. of injunctions

The court may discharge or vary an injunction granted under this Part.

567 Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of the court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
 - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

Performance injunctions

- (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised:
 - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

568 Other powers of the court unaffected

The powers conferred on the court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

Part 31—Civil penalties

569 Simplified outline

The following is a simplified outline of this Part:

- | |
|---|
| <ul style="list-style-type: none">• Pecuniary penalties are payable for contraventions of civil penalty provisions. |
|---|

570 Pecuniary penalties for contravention of civil penalty provisions

- (1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the Court determines to be appropriate.
- (2) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.
- (3) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed:
 - (a) in the case of a contravention of subsection 68(1) or (2) or 101(1) or (2)—\$10 million for each contravention; or
 - (b) in any other case—\$250,000 for each contravention.
- (4) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed \$50,000 for each contravention.
- (5) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct. This subsection has effect subject to subsection (6).
- (6) If conduct constitutes a contravention of:
 - (a) section 68 or 101; and
 - (b) one or more other civil penalty provisions;proceedings must not be instituted under this Act against the person in relation to the contravention of section 68 or 101, as the case may be.

571 Civil action for recovery of pecuniary penalties

- (1) The Minister, the ACA or the ACCC may institute a proceeding in the Federal Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in section 570.
- (2) A proceeding under subsection (1) may be commenced within 6 years after the contravention.
- (3) Despite subsection (1), the ACA is not entitled to institute a proceeding for the recovery of a pecuniary penalty in respect of a contravention of:
 - (a) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 369; or
 - (b) a carrier licence condition set out in Part 3 or 4 of Schedule 1; or
 - (c) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 369; or
 - (d) the carrier licence condition set out in section 152AZ of the *Trade Practices Act 1974*; or

(e) the service provider rule set out in subsection 152BA(2) of the *Trade Practices Act 1974*.

Note 1: Section 369 deals with Rules of Conduct under section 367.

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

Note 3: Section 152AZ of the *Trade Practices Act 1974* deals with standard access obligations.

Note 4: Subsection 152BA(2) of the *Trade Practices Act 1974* provides that a carriage service provider must comply with any standard access obligations that are applicable to the provider.

572 Criminal proceedings not to be brought for contravention of civil penalty provisions

Criminal proceedings do not lie against a person only because the person has contravened a civil penalty provision.

Part 32—Vicarious liability

573 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with the proof of matters that involve employees, agents etc.

574 Proceedings under this Act

A reference in this Part to a proceeding under this Act includes a reference to:

- (a) an action under this Act; and
- (b) a proceeding for an offence against:
 - (i) this Act; or
 - (ii) an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to this Act.

575 Liability of corporations

State of mind

- (1) If, in a proceeding under this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:
 - (a) a director, employee or agent of the corporation engaged in that conduct; and
 - (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
 - (c) the director, employee or agent had that state of mind.

Conduct

- (2) If:
 - (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
 - (b) the conduct is within the scope of his or her actual or apparent authority;

the conduct is taken, for the purposes of a proceeding under this Act, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

Extended meaning of state of mind

- (3) A reference in subsection (1) to the *state of mind* of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Extended meaning of director

- (4) A reference in this section to a *director* of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Extended meaning of engaging in conduct

- (5) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

576 Liability of persons other than corporations

This section does not apply to proceedings for certain offences

- (1) This section does not apply to proceedings for:
- (a) an offence against section 42; or
 - (b) an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to section 42 of this Act.

State of mind

- (2) If, in proceedings under this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:
- (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) the employee or agent had that state of mind.

Conduct

- (3) If:
- (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and
 - (b) the conduct is within the employee's or agent's actual or apparent authority;

the conduct is taken, for the purposes of a proceeding under this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

Limitation on imprisonment

- (4) Despite any other provision of this Act, if:
- (a) a person is convicted of an offence; and

- (b) the person would not have been convicted of the offence if subsections (2) and (3) had not been in force;
the person is not liable to be punished by imprisonment for that offence.

Extended meaning of state of mind

- (5) A reference in this section to the *state of mind* of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Extended meaning of engaging in conduct

- (6) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

Part 33—False or misleading statements

577 Simplified outline

The following is a simplified outline of this Part:

- It is an offence to make a false statement in connection with the operation of this Act.

578 False or misleading statements

- (1) A person who intentionally or recklessly:
- (a) makes a statement to a regulator that is false or misleading in a material particular; or
 - (b) omits from a statement made to a regulator any matter or thing without which the statement is misleading in a material particular;
- is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

- (2) In this section:

regulator means a person exercising powers or performing functions under or in relation to this Act (other than Part 27).

statement made to a regulator means a statement made to a regulator orally, in writing, in a data processing device or in any other form that includes (but is not limited to) a statement:

- (a) made in any information given, or purporting to be given, under this Act (other than Part 27); or
- (b) made in an application made, or purporting to be made, under this Act.

Part 34—Special provisions relating to the ACA’s telecommunications functions and powers

579 Simplified outline

The following is a simplified outline of this Part:

- The ACA is to have regard to certain international obligations when performing its telecommunications functions and exercising its telecommunications powers.
- The ACA may give directions to a carrier or a service provider in connection with the ACA’s performance of its telecommunications functions or the exercise of its telecommunications powers.

580 ACA must have regard to conventions

- (1) In performing its telecommunications functions and exercising its telecommunications powers, the ACA must have regard to Australia’s obligations under any convention of which the Minister has notified the ACA in writing.

- (2) In this section:

convention means:

- (a) a convention to which Australia is a party; or
 - (b) an agreement or arrangement between Australia and a foreign country;
- and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

581 Power to give directions to carriers and service providers

- (1) The ACA may give written directions to:
 - (a) a carrier; or
 - (b) a service provider;in connection with performing any of the ACA’s telecommunications functions or exercising any of the ACA’s telecommunications powers.
- (2) This section is not limited by any other provision of a law that:
 - (a) confers a function or power on the ACA; or
 - (b) prescribes the mode in which the ACA is to perform a function or exercise a power; or
 - (c) prescribes conditions or restrictions which must be observed in relation to the performance by the ACA of a function or the exercise by the ACA of a power.
- (3) A person must comply with a direction under subsection (1).

Part 35—Miscellaneous

582 Simplified outline

The following is a simplified outline of this Part:

- Provision is made in relation to continuing offences.
- Partnerships are to be treated as persons for the purposes of this Act.
- Provision is made in relation to the service of documents.
- Instruments under this Act may apply, adopt or incorporate certain other instruments.
- An arbitration under this Act must not result in the acquisition of property otherwise than on just terms.
- In order to provide a constitutional safety-net, compensation is payable in the event that the operation of this Act results in the acquisition of property otherwise than on just terms.
- This Act does not affect the performance of State or Territory functions.
- The Minister may make grants of financial assistance to consumer bodies for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues.
- The Minister may make grants of financial assistance for purposes in connection with research into the social, economic, environmental or technological implications of developments relating to telecommunications.
- The Governor-General may make regulations for the purposes of this Act.

583 Penalties for certain continuing offences

- (1) This section applies if an offence against this Act is a continuing offence (whether under this Act or because of section 4K of the *Crimes Act 1914*).
- (2) The maximum penalty for each day that the offence continues is 10% of the maximum penalty that could be imposed in respect of the principal offence.

584 Procedure relating to certain continuing offences

- (1) If section 43 applies to an offence against a provision of this Act, charges against the same person for any number of offences against that provision may be joined in the same information, complaint or summons if:
 - (a) those charges are founded on the same facts; or
 - (b) form, or are part of, a series of offences of the same or a similar character.

- (2) If a person is convicted of 2 or more offences against such a provision, the court may impose one penalty in respect of both or all of those offences, but that penalty must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each offence.

585 Treatment of partnerships

This Act applies to a partnership as if the partnership were a person, but it applies with the following changes:

- (a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;
- (b) any offence against this Act that would otherwise be committed by the partnership is taken to have been committed by each partner who:
 - (i) aided, abetted, counselled or procured the relevant act or omission; or
 - (ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

586 Giving of documents to partnerships

For the purposes of this Act, if a document is given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.

587 Nomination of address for service of documents

- (1) For the purposes of this Act, a person may nominate an address for service in:
 - (a) an application made by the person under this Act; or
 - (b) any other document given by the person to the ACCC or the ACA.The address must be in Australia.
- (2) For the purposes of this Act, a document may be given to the person by leaving it at, or by sending it by pre-paid post to, the nominated address for service.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

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

588 Service of summons or process on foreign corporations—criminal proceedings

- (1) This section applies to a summons or process in any criminal proceedings under this Act, where:
 - (a) the summons or process is required to be served on a body corporate incorporated outside Australia; and
 - (b) the body corporate does not have a registered office or a principal office in Australia; and
 - (c) the body corporate has an agent in Australia.
- (2) Service of the summons or process may be effected by serving it on the agent.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

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

(4) In this section:

criminal proceeding includes a proceeding to determine whether a person should be tried for an offence.

589 Instruments under this Act may provide for matters by reference to other instruments

(1) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act:

- (a) as in force at a particular time; or
- (b) as in force from time to time.

(2) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing whatever:

- (a) as in force or existing at a particular time; or
- (b) as in force or existing from time to time;

even if the other instrument or writing does not yet exist when the instrument under this Act is made.

(3) A reference in subsection (2) to any other instrument or writing includes a reference to an instrument or writing:

- (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory, an officer or authority of the Commonwealth or of a State or Territory or an overseas entity); and
- (b) whether of a legislative, administrative or other official nature or of any other nature; and
- (c) whether or not having any legal force or effect;

for example:

- (d) regulations or rules under an Act; or
- (e) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or
- (f) an international technical standard or performance indicator; or
- (g) a written agreement or arrangement or an instrument or writing made unilaterally.

(4) Nothing in this section limits the generality of anything else in it.

(5) Subsections (1) and (2) have effect despite anything in:

- (a) the *Acts Interpretation Act 1901*; or
- (b) the *Legislative Instruments Act 1997*.

(6) In this section:

instrument under this Act means:

- (a) the regulations; or
- (b) any other instrument made under this Act.

590 Arbitration—acquisition of property

(1) This section applies to a provision of this Act that authorises the conduct of an arbitration (whether by the ACCC or another person).

- (2) The provision has no effect to the extent (if any) to which it purports to authorise the acquisition of property if that acquisition:
 - (a) is otherwise than on just terms; and
 - (b) would be invalid because of paragraph 51(xxxi) of the Constitution.

- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

591 Compensation—constitutional safety net

- (1) If:
 - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

592 Act not to affect performance of State or Territory functions

A power conferred by this Act must not be exercised in such a way as to prevent the exercise of the powers, or the performance of the functions, of government of a State, the Northern Territory, the Australian Capital Territory or Norfolk Island.

593 Funding of consumer representation, and of research, in relation to telecommunications

- (1) The Minister may, on behalf of the Commonwealth, make a grant of financial assistance to a consumer body for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues.
- (2) The Minister may, on behalf of the Commonwealth, make a grant of financial assistance to a person or body for purposes in connection with research into the social, economic, environmental or technological implications of developments relating to telecommunications.
- (3) The terms and conditions on which financial assistance is to be granted under this section are to be set out in a written agreement between the Commonwealth and the person or body receiving the grant.

- (4) An agreement under subsection (3) may be entered into by the Minister on behalf of the Commonwealth.
- (5) The Minister must, as soon as practicable after the end of each financial year (and, in any event, within 6 months after the end of the financial year), cause to be prepared a report relating to the administration of this section during the financial year.
- (6) The Minister must cause copies of a report prepared under subsection (5) to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.
- (7) Grants under this section are to be paid out of money appropriated by the Parliament for the purposes of this section.
- (8) In this section:

consumer body means a body or association that represents the interests of consumers.

telecommunications means the carriage of communications by means of guided and/or unguided electromagnetic energy.

594 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties, not exceeding 10 penalty units, for offences against the regulations.

Schedule 1—Standard carrier licence conditions

Note: See section 61.

Part 1—Compliance with this Act

1 Compliance with this Act

A carrier must comply with this Act.

Part 2—Industry development plans

2 Simplified outline

The following is a simplified outline of this Part:

- A carrier must have an industry development plan.
- An industry development plan is a plan for the development in Australia, in connection with the carrier's business as a carrier, of:
 - (a) industries involved in the manufacture, development or supply of facilities; and
 - (b) research and development activities relating to an industry referred to in paragraph (a).
- An industry development plan must be given to the Industry Minister.
- A summary of an industry development plan must be made available to the public.

- A carrier must comply with its industry development plan, in so far as the plan relates to its research and development activities.

3 Definitions

In this Part:

current industry development plan has the meaning given by clause 7.

industry development plan has the meaning given by clause 6.

Industry Minister means the Minister for Industry, Science and Tourism.

4 Carriers must have a current industry development plan

The ACA must not grant a carrier licence unless the applicant has given a current industry development plan to the Industry Minister and the Industry Minister has approved the plan.

5 Exemptions from industry development plan requirements

- (1) The Industry Minister may, by written instrument, declare that this Part does not apply to a specified kind of carrier.
- (2) The declaration has effect accordingly.
- (3) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

6 Contents of industry development plan

- (1) For the purposes of this Part, an *industry development plan* for a carrier is a plan for the development in Australia, in connection with the carrier's business as a carrier, of:

- (a) industries involved in the manufacture, development or supply of facilities; and
 - (b) research and development activities relating to an industry referred to in paragraph (a).
- (2) The plan must include any relevant particulars of the carrier's strategic commercial relationships, including (but not limited to):
- (a) the carrier's relationships in connection with the production and supply of facilities; and
 - (b) the carrier's relationships in connection with investment in, and development of, Australian manufacturing and supply capabilities; and
 - (c) the carrier's strategic alliances with Australian companies; and
 - (d) the carrier's strategic alliances with multinational companies; and
 - (e) the carrier's relationships in connection with the production and supply of equipment for use by people with disabilities.
- (3) The plan must include any relevant particulars of the carrier's activities in relation to research and development, including (but not limited to) matters in connection with:
- (a) investment in research and development capabilities; and
 - (b) research into, and development of, new technologies; and
 - (c) arrangements for maintaining Australian ownership of intellectual property; and
 - (d) arrangements relating to technology transfers to Australian industry; and
 - (e) research and development to address the needs of people with disabilities.
- (4) The plan must include any relevant particulars of the carrier's export development plans, including (but not limited to) export development plans relating to equipment for use by people with disabilities.

- (5) The plan must include any relevant particulars of the carrier's arrangements aimed at encouraging employment in industries involved in the manufacture, development or supply of facilities, including (but not limited to) arrangements aimed at encouraging:
 - (a) employment opportunities relevant to those industries; and
 - (b) training relevant to those industries.
- (6) The plan must specify the period to which it relates. That period must run for at least 12 months.
- (7) In this clause:

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

facility includes any system (whether software-based or otherwise) used in connection with the supply of a carriage service or a content service.

7 Current industry development plan

For the purposes of this Part, an industry development plan is current at a particular time if, and only if, that time is included in the period to which the plan relates.

8 Publication of industry development plan

- (1) As soon as practicable after giving the Industry Minister an industry development plan, a carrier must make a summary of the plan available to the public.
- (2) However, the summary need not contain any commercially sensitive information.

9 Variation of industry development plan

- (1) As soon as practicable after varying an industry development plan, a carrier must:

- (a) give the Industry Minister a copy of the variation; and
 - (b) make a summary of the variation available to the public.
- (2) However, the summary need not contain any commercially sensitive information.

10 Requirements relating to research and development activities

- (1) The Industry Minister may, by written instrument, impose requirements that must be complied with by industry development plans in so far as those plans relate to the research and development activities of carriers.
- (2) An industry development plan must not be made or varied in contravention of that instrument.
- (3) If a purported plan or variation contravenes subclause (2), it is of no effect.
- (4) If an industry development plan is in existence at the time (the *imposition time*) when an instrument under subclause (1) imposes a requirement in relation to the plan:
 - (a) the requirement does not have any effect on the validity of the plan during the 180-day period beginning at the imposition time; and
 - (b) if, at the end of that 180-day period, the plan is current but contravenes the requirement—the period to which the plan relates terminates immediately after the end of that period.
- (5) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

11 Formulation of plan or variation—expression of views of the Commonwealth Government about industry development

If the Industry Minister has expressed any views of the Commonwealth Government about industry development, then, in

formulating an industry development plan, or a variation of such a plan, a carrier must have regard to those views.

12 Compliance with provisions of plan relating to research and development activities

If an industry development plan of a carrier is current, the carrier must comply with the plan in so far as the plan relates to the carrier's research and development activities.

13 Notification of matters that may affect the achievement of an industry development plan

If a carrier becomes aware that a particular matter may affect the achievement of its current industry development plan, the carrier must, as soon as practicable, give the Industry Minister a written notice:

- (a) setting out particulars of the matter; and
- (b) explaining the effect of the matter on the achievement of the plan.

14 Annual report on implementation of industry development plan

- (1) This clause applies if a carrier has a current industry development plan.
- (2) As soon as practicable, and in any event within 90 days, after the end of each financial year, the carrier must:
 - (a) give the Industry Minister a report setting out particulars of the progress made by the carrier in implementing the plan during that year; and
 - (b) make a summary of the report available to the public.
- (3) However, the summary need not contain any commercially sensitive information.

15 Annual report by Industry Minister

- (1) The Industry Minister must, as soon as practicable after the end of each financial year (and, in any event, within 6 months after the end of the financial year), cause to be prepared a report relating to the progress made by carriers in implementing current industry development plans during the financial year.
- (2) The Industry Minister must cause copies of a report prepared under subclause (1) to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Part 3—Access to supplementary facilities

16 Simplified outline

The following is a simplified outline of this Part:

- Carriers must provide other carriers with access to facilities for the purpose of enabling the other carriers to:
 - (a) provide competitive facilities and competitive carriage services; or
 - (b) establish their own facilities.

17 Access to supplementary facilities

- (1) A carrier (the *first carrier*) must, if requested to do so by another carrier (the *second carrier*) give the second carrier access to facilities owned or operated by the first carrier.
- (2) The first carrier is not required to comply with subclause (1) unless:

- (a) the access is provided for the sole purpose of enabling the second carrier:
 - (i) to provide competitive facilities and competitive carriage services; or
 - (ii) to establish its own facilities; and
 - (b) the second carrier's request is reasonable; and
 - (c) the second carrier gives the first carrier reasonable notice that the second carrier requires the access; and
 - (d) in a case where the facilities do not consist of customer cabling or customer equipment—the facilities:
 - (i) were in place on 30 June 1991; or
 - (ii) were not in place on 30 June 1991, and were not obtained after that date by the first carrier solely by means of commercial negotiation.
- (3) For the purposes of this clause, in determining whether the second carrier's request is reasonable, regard must be had to the question whether compliance with the request will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services. That question is to be determined in the same manner as it is determined for the purposes of Part XIC of the *Trade Practices Act 1974*.
- (4) Subclause (3) is intended to limit the matters to which regard may be had.
- (5) A reference in this clause to a *facility* is a reference to:
- (a) a facility as defined by section 7; or
 - (b) land on which a facility mentioned in paragraph (a) is located; or
 - (c) a building or structure on land referred to in paragraph (b); or
 - (d) customer equipment, or customer cabling, connected to a telecommunications network owned or operated by a carrier.

18 Terms and conditions of access

- (1) The first carrier (within the meaning of clause 17) must comply with subclause 17(1) on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the first carrier;
 - (ii) the second carrier (within the meaning of that clause); or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

- (2) The regulations may make provision for and in relation to the conduct of an arbitration under this clause.
- (3) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this clause, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (4) Subclause (3) does not, by implication, limit subclause (2).
- (5) A determination made in an arbitration under this clause must not be inconsistent with a Ministerial pricing determination in force under clause 19.

19 Ministerial pricing determinations

- (1) The Minister may make a written determination setting out principles dealing with price-related terms and conditions relating to the obligations imposed by subclause 17(1). The determination is to be known as a ***Ministerial pricing determination***.
- (2) A determination under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(3) In this clause:

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

Part 4—Access to network information

20 Simplified outline

The following is a simplified outline of this Part:

- Carriers must provide other carriers with access to certain information relating to the operation of telecommunications networks.

21 Access to network information

- (1) This clause applies to a carrier (the *first carrier*) if the first carrier supplies carriage services to another carrier (the *second carrier*).
- (2) The first carrier must, if requested to do so by the second carrier, provide the second carrier with reasonable access to:
 - (a) information from the first carrier's operations support systems; and
 - (b) traffic flow information.
- (3) The first carrier is not required to comply with subclause (2) unless the sole purpose of the access is to enable the second carrier to undertake planning, maintenance or reconfiguration of the second carrier's telecommunications network.
- (4) If information is requested by the second carrier under subclause (2), the first carrier must make the information available to the second carrier as soon as practicable after the request is made.

- (5) Clauses 22, 23, 24, 25 and 29 do not, by implication, limit this clause.

22 Access to information in databases

- (1) This clause applies to a carrier (the *first carrier*) if the first carrier supplies carriage services to another carrier (the *second carrier*).
- (2) The first carrier must, if requested to do so by the second carrier, provide the second carrier with reasonable access to information that:
 - (a) is contained in the first carrier's databases; and
 - (b) relates to the manner in which the first carrier's telecommunications network treats calls of a particular kind.
- (3) The first carrier is not required to comply with subclause (2) unless the sole purpose of the access is to enable the second carrier to undertake planning, maintenance or reconfiguration of the second carrier's telecommunications network.
- (4) If information is requested by the second carrier under subclause (2), the first carrier must make the information available to the second carrier as soon as practicable after the request is made.

23 Access to network planning information

- (1) This clause applies to a carrier (the *first carrier*) if the first carrier supplies carriage services to another carrier (the *second carrier*).
- (2) The first carrier must, if requested to do so by the second carrier, provide the second carrier with timely and detailed telecommunications network planning information that is sufficient to enable the second carrier to undertake planning for the second carrier's own telecommunications network.
- (3) The information is to include (but is not limited to) information relating to the following:

- (a) the volume or characteristics of traffic being offered by the first carrier to a telecommunications network of the second carrier;
 - (b) the telecommunications network performance standards (if any) that have been set by the first carrier.
- (4) The first carrier is not required to comply with subclause (2) unless the second carrier's request is reasonable.
- (5) If information is requested by the second carrier under subclause (2), the first carrier must make the information available to the second carrier as soon as practicable after the request is made.

**24 Access to information about likely changes to network facilities—
completion success rate of calls**

- (1) This clause applies to a carrier (the *first carrier*) if the first carrier supplies carriage services to another carrier (the *second carrier*).
- (2) The first carrier must, if requested to do so by the second carrier, provide the second carrier with timely and detailed information that:
 - (a) relates to likely changes to facilities on a telecommunications network of the first carrier; and
 - (b) will affect the completion success rate of calls offered by the second carrier.
- (3) The first carrier is not required to comply with subclause (2) unless the sole purpose of the provision of the information is to enable the second carrier to undertake forward planning for its own telecommunications network.
- (4) If information is requested by the second carrier under subclause (2), the first carrier must make the information available to the second carrier as soon as practicable after the request is made.

25 Access to quality of service information etc.

- (1) This clause applies to a carrier (the *first carrier*) if the first carrier supplies carriage services to another carrier (the *second carrier*).
 - (2) The first carrier must, if requested to do so by the second carrier, provide the second carrier with timely and detailed information relating to:
 - (a) conditions affecting the quality of service experienced by customers of the second carrier; and
 - (b) localisation of telecommunications network conditions affecting traffic offered by the second carrier to the first carrier's telecommunications network; and
 - (c) routing information allowing the second carrier to determine in which telecommunications network calls have failed; and
 - (d) identification of switching or other equipment or facilities in each of the first carrier's telecommunications networks which contribute to a level of uncompleted calls, affecting the second carrier's offered traffic, beyond the threshold agreed by the first carrier and the second carrier and consistent with terms used in the relevant ITU(T) Recommendations; and
 - (e) periodic summaries, in relation to the second carrier's traffic, of unsuccessful call ratios across the first carrier's telecommunications network, categorised by cause of call failure and including separate identification of telecommunications network difficulties and congestion; and
 - (f) telecommunications network control actions taken by the first carrier which would affect the completion success rate of calls offered to the first carrier by the second carrier; and
 - (g) such other matters (if any) as are specified in the regulations.
 - (3) The first carrier is not required to comply with subclause (2) unless the second carrier's request is reasonable.
 - (4) If information is requested by the second carrier under subclause (2), the first carrier must make the information available to the second carrier as soon as practicable after the request is made.
-

- (5) In this clause:

ITU(T) Recommendations means the E500, E600 and E700 series of recommendations dealing with quality of service, telecommunications network management and traffic engineering promulgated by the International Telecommunication Union, being recommendations in force on:

- (a) 1 July 1997; or
- (b) such later date (if any) as is specified in the regulations.

26 Security procedures

- (1) A carrier (the **first carrier**) is not required to give another carrier (the **second carrier**) information, or access to information, under clause 21, 22, 23, 24 or 25 unless the second carrier has in place security procedures:
 - (a) agreed between the first carrier and the second carrier; or
 - (b) failing agreement—determined in writing by the ACCC.
- (2) For the purposes of subclause (1), **security procedures** are procedures designed to protect the confidentiality of information.

27 Terms and conditions of compliance

- (1) The first carrier (within the meaning of clause 21, 22, 23, 24 or 25) must comply with a requirement imposed on the first carrier by that clause on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the first carrier;
 - (ii) the second carrier (within the meaning of that clause); or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

- (2) The regulations may make provision for and in relation to the conduct of an arbitration under this clause.
- (3) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this clause, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (4) Subclause (3) does not, by implication, limit subclause (2).
- (5) A determination made in an arbitration under this clause must not be inconsistent with a Ministerial pricing determination in force under clause 28.

28 Ministerial pricing determinations

- (1) The Minister may make a written determination setting out principles dealing with price-related terms and conditions relating to an obligation imposed by clause 21, 22, 23, 24 or 25. The determination is to be known as a ***Ministerial pricing determination***.
- (2) A determination under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) In this clause:

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

29 Consultation about reconfiguration etc.

- (1) This clause applies to a carrier (the ***first carrier***) if the first carrier supplies carriage services to another carrier (the ***second carrier***).

- (2) The first carrier must, if requested to do so by the second carrier, consult with the second carrier before modifying or reconfiguring the first carrier's telecommunications network.
- (3) The first carrier is not required to comply with subclause (2) unless the modification or reconfiguration has a bearing on the second carrier's:
 - (a) telecommunications network planning activities; or
 - (b) telecommunications network maintenance activities; or
 - (c) telecommunications network reconfiguration activities.
- (4) The first carrier must comply with the requirement set out in subclause (2) on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the first carrier;
 - (ii) the second carrier; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (5) The regulations may make provision for and in relation to the conduct of an arbitration under this clause.
- (6) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this clause, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (7) Subclause (6) does not, by implication, limit subclause (5).

Part 5—Access to telecommunications transmission towers and to underground facilities

30 Simplified outline

The following is a simplified outline of this Part:

- Carriers must provide other carriers with access to:
 - (a) telecommunications transmission towers; and
 - (b) the sites of telecommunications transmission towers; and
 - (c) underground facilities that are designed to hold lines.

31 Definitions

In this Part:

business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

eligible underground facility means an underground facility that is used, installed ready to be used, or intended to be used, to hold lines.

site means:

- (a) land; or
- (b) a building on land; or
- (c) a structure on land.

telecommunications transmission tower means:

- (a) a tower; or
 - (b) a pole; or
 - (c) a mast; or
 - (d) a similar structure;
- used to supply a carriage service by means of radiocommunications.

32 Extended meaning of *access*

- (1) For the purposes of this Part, *giving access* to a tower includes replacing the tower with another tower located on the same site and giving access to the replacement tower.
- (2) For the purposes of this Part, *giving access* to a site on which is situated a tower includes replacing the tower with another tower located on the site.

33 Access to telecommunications transmission towers

- (1) A carrier (the *first carrier*) must, if requested to do so by another carrier (the *second carrier*), give the second carrier access to a telecommunications transmission tower owned or operated by the first carrier.
- (2) The first carrier is not required to comply with subclause (1) unless:
 - (a) the access is provided for the sole purpose of enabling the second carrier to install a facility used, or for use, in connection with the supply of a carriage service by means of radiocommunications; and
 - (b) the second carrier gives the first carrier reasonable notice that the second carrier requires the access.
- (3) The first carrier is not required to comply with subclause (1) in relation to a particular telecommunications transmission tower if there is in force a written certificate issued by the ACA stating that,

in the ACA's opinion, compliance with subclause (1) in relation to that tower is not technically feasible.

- (4) In determining whether compliance with subclause (1) in relation to a tower is technically feasible, the ACA must have regard to:
 - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
 - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the tower; and
 - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
 - (i) changing the configuration or operating parameters of a facility situated on the tower; and
 - (ii) making alterations to the tower; and
 - (d) such other matters (if any) as the ACA considers relevant.
- (5) If the ACA receives a request to make a decision about the issue of a certificate under subclause (3), the ACA must use its best endeavours to make that decision within 10 business days after the request was made.

34 Access to sites of telecommunications transmission towers

- (1) A carrier (the *first carrier*) must, if requested to do so by another carrier (the *second carrier*), give the second carrier access to a site if:
 - (a) either:
 - (i) the site is owned, occupied or controlled by the first carrier; or
 - (ii) the first carrier has a right (whether conditional or unconditional) to use the site; and
 - (b) there is situated on the site a telecommunications transmission tower owned or operated by the first carrier.

- (2) The first carrier is not required to comply with subclause (1) unless:
 - (a) the access is provided for the sole purpose of enabling the second carrier to install a facility used, or for use, in connection with the supply of a carriage service by means of radiocommunications; and
 - (b) the second carrier gives the first carrier reasonable notice that the second carrier requires the access.
- (3) The first carrier is not required to comply with subclause (1) in relation to a particular site if there is in force a written certificate issued by the ACA stating that, in the ACA's opinion, compliance with subclause (1) in relation to that site is not technically feasible.
- (4) In determining whether compliance with subclause (1) in relation to a site is technically feasible, the ACA must have regard to:
 - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
 - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, a facility situated on the site; and
 - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
 - (i) changing the configuration or operating parameters of a facility situated on the site; and
 - (ii) making alterations to a facility situated on the site; and
 - (d) such other matters (if any) as the ACA considers relevant.
- (5) If the ACA receives a request to make a decision about the issue of a certificate under subclause (3), the ACA must use its best endeavours to make that decision within 10 business days after the request was made.

35 Access to eligible underground facilities

- (1) A carrier (the *first carrier*) must, if requested to do so by another carrier (the *second carrier*), give the second carrier access to an eligible underground facility owned or operated by the first carrier.
- (2) The first carrier is not required to comply with subclause (1) unless:
 - (a) the access is provided for the sole purpose of enabling the second carrier to install a line used, or for use, in connection with the supply of a carriage service; and
 - (b) the second carrier gives the first carrier reasonable notice that the second carrier requires the access.
- (3) The first carrier is not required to comply with subclause (1) in relation to a particular eligible underground facility if there is in force a written certificate issued by the ACA stating that, in the ACA's opinion, compliance with subclause (1) in relation to that facility is not technically feasible.
- (4) In determining whether compliance with subclause (1) in relation to an eligible underground facility is technically feasible, the ACA must have regard to:
 - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
 - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the eligible underground facility; and
 - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
 - (i) changing the configuration or operating parameters of the eligible underground facility; and
 - (ii) making alterations to the eligible underground facility; and
 - (d) such other matters (if any) as the ACA considers relevant.

- (5) If the ACA receives a request to make a decision about the issue of a certificate under subclause (3), the ACA must use its best endeavours to make that decision within 10 business days after the request was made.

36 Terms and conditions of access

- (1) The first carrier (within the meaning of clause 33) must comply with subclause 33(1) on such terms and conditions as are:
- (a) agreed between the following parties:
 - (i) the first carrier;
 - (ii) the second carrier (within the meaning of that clause); or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

- (2) The first carrier (within the meaning of clause 34) must comply with subclause 34(1) on such terms and conditions as are:
- (a) agreed between the following parties:
 - (i) the first carrier;
 - (ii) the second carrier (within the meaning of that clause); or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

- (3) The first carrier (within the meaning of clause 35) must comply with subclause 35(1) on such terms and conditions as are:
- (a) agreed between the following parties:
 - (i) the first carrier;
 - (ii) the second carrier (within the meaning of that clause); or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

- (4) The regulations may make provision for and in relation to the conduct of an arbitration under this clause.
- (5) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this clause, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (6) Subclause (5) does not, by implication, limit subclause (4).

37 Code relating to access

- (1) The ACCC may, by written instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Part.
- (2) A carrier must comply with the Code.
- (3) This clause does not, by implication, limit a power conferred by or under this Act to make an instrument.
- (4) This clause does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.
- (5) Subclauses (3) and (4) do not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.
- (6) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

38 Industry co-operation about sharing of sites and eligible underground facilities

A carrier, in planning the provision of future carriage services, must co-operate with other carriers to share sites and eligible underground facilities.

39 This Part does not limit Part 3 of this Schedule

This Part does not, by implication, limit Part 3 of this Schedule.

Part 6—Inspection of facilities etc.

40 Simplified outline

The following is a simplified outline of this Part:

- Carriers must keep records about their designated overhead lines, telecommunications transmission towers and underground facilities.
- Carriers must inspect their facilities regularly.
- Carriers must investigate their facilities if there are reasonable grounds to suspect that the facilities are likely to endanger:
 - (a) the health or safety of persons; or
 - (b) property.
- Carriers must take any remedial action that is reasonably required following such an inspection or investigation.

41 Records relating to underground facilities

- (1) If a carrier owns or operates designated overhead lines, the carrier must keep and maintain records of the kind and location of those lines.
- (2) If a carrier owns or operates telecommunications transmission towers, the carrier must keep and maintain records of the kind and location of those towers.
- (3) If a carrier owns or operates underground facilities, the carrier must keep and maintain records of:
 - (a) the kind and location of those facilities; and
 - (b) if any of those facilities is an eligible underground facility—the capacity of that facility to hold further lines.
- (4) A carrier must not, in purported compliance with subclause (1), (2) or (3), make a record of any matter or thing in such a way that it does not correctly record the matter or thing.
- (5) In this clause:

designated overhead line has the same meaning as in Schedule 3.

eligible underground facility means an underground facility that is used, installed ready to be used, or intended to be used, to hold lines.

telecommunications transmission tower means:

- (a) a tower; or
 - (b) a pole; or
 - (c) a mast; or
 - (d) a similar structure;
- used to supply a carriage service by means of radiocommunications.

42 Regular inspection of facilities

- (1) If a facility is owned or operated by a carrier, the carrier must inspect that facility regularly.
- (2) In determining the regularity of inspections required by subclause (1), regard must be had to good engineering practice.

43 Prompt investigation of dangerous facilities

If:

- (a) a facility is owned or operated by a carrier; and
 - (b) the carrier has reasonable grounds to suspect that the condition of the facility is likely to endanger:
 - (i) the health or safety of persons; or
 - (ii) property;
- the carrier must investigate promptly the condition of the facility.

44 Remedial action

- (1) A carrier must take any remedial action that is reasonably required following an inspection under clause 42.
- (2) A carrier must take any remedial action that is reasonably required following an investigation under clause 43.
- (3) A carrier must comply with subclause (1) or (2) as soon as practicable after the carrier becomes aware of the need to take the remedial action concerned.

Schedule 2—Standard service provider rules

Note: See section 98.

Part 1—Compliance with this Act

1 Compliance with this Act

A service provider must comply with this Act.

Part 2—Operator services

2 Simplified outline

The following is a simplified outline of this Part:

- Certain operator services must be provided to end-users of standard telephone services.

3 Scope of Part

This Part applies to the following operator services:

- (a) services for dealing with faults and service difficulties;
- (b) services of a kind specified in the regulations.

4 Operator services must be provided to end-users of a standard telephone service

- (1) A carriage service provider who supplies a standard telephone service must make operator services available to each end-user of that standard telephone service.
- (2) The provider may do this by:
 - (a) providing the operator services itself; or
 - (b) arranging with another person for the provision of the operator services.

5 Access to end-users of other carriage service providers

- (1) If:
 - (a) a carriage service provider (the *first provider*) who supplies a standard telephone service itself provides a particular kind of operator services to end-users of its standard telephone service; and
 - (b) another carriage service provider (the *second provider*) who supplies a standard telephone service does not itself provide that kind of operator services to particular end-users of its standard telephone service; and
 - (c) the second provider requests the first provider to enter into an agreement for the first provider to provide that kind of operator services to those end-users of the second provider's standard telephone service;the first provider must comply with the request.
- (2) The operator services are to be provided to the end-users of the second provider's standard telephone service in accordance with the request and on such terms and conditions as are:
 - (a) agreed between the first provider and the second provider; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this clause.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this clause, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subclause (4) does not, by implication, limit subclause (3).

Part 3—Directory assistance services

6 Simplified outline

The following is a simplified outline of this Part:

- Directory assistance services must be made available to end-users of standard telephone services.

7 Directory assistance services must be provided to end-users

- (1) A carriage service provider who supplies a standard telephone service must make directory assistance services available to each end-user of the service.
- (2) The provider may do this by:
 - (a) providing the directory assistance services itself; or
 - (b) arranging with another person for the provision of the directory assistance services.

8 Access by end-users of other carriage service providers

- (1) If:
 - (a) a carriage service provider (the *first provider*) who supplies a standard telephone service itself provides directory assistance services to end-users of its standard telephone service; and
 - (b) another carriage service provider (the *second provider*) who supplies a standard telephone service does not itself provide directory assistance services to particular end-users of its standard telephone service; and
 - (c) the second provider requests the first provider to enter into an agreement for the first provider to provide directory assistance services to those end-users of the second provider's standard telephone service;the first provider must comply with the request.

- (2) The directory assistance services are to be provided to the end-users of the second provider's standard telephone service in accordance with the request and on such terms and conditions as are:
- (a) agreed between the first provider and the second provider; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.
- If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this clause.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this clause, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subclause (4) does not, by implication, limit subclause (3).

Part 4—Integrated public number database

9 Simplified outline

The following is a simplified outline of this Part:

- If a person or association is under an obligation to provide and maintain an integrated public number database, carriage service providers must give the person or association information in connection with the fulfilment of that obligation.

10 Carriage service providers must give information to Telstra

- (1) This clause applies if Telstra is obliged by a condition of a carrier licence to provide and maintain an integrated public number database.
- (2) If:
 - (a) a carriage service provider supplies a carriage service to an end-user; and
 - (b) the end-user has a public number;the carriage service provider must give Telstra such information as Telstra reasonably requires in connection with Telstra's fulfilment of that obligation.
- (3) In this clause:

number has the same meaning as in Division 2 of Part 22.

public number means a number specified in the numbering plan as mentioned in subsection 455(3).

11 Carriage service providers must give information to another person or association

- (1) This clause applies if a person or association is obliged by section 472 to provide and maintain an integrated public number database.
- (2) If:
 - (a) a carriage service provider supplies a carriage service to an end-user; and
 - (b) the end-user has a public number;the carriage service provider must give the person or association such information as the person or association reasonably requires in connection with the person's or association's fulfilment of that obligation.
- (3) In this clause:

number has the same meaning as in Division 2 of Part 22.

public number means a number specified in the numbering plan as mentioned in subsection 455(3).

Part 5—Itemised billing

12 Simplified outline

The following is a simplified outline of this Part:

- A carriage service provider who supplies a standard telephone service must provide itemised billing for each of its customers of such a service.

13 Itemised billing

- (1) This clause applies to a carriage service provider who supplies a standard telephone service.
- (2) The provider must provide itemised billing for calls made using such a service. The provider may do this by:
 - (a) providing the itemised billing itself; or
 - (b) arranging with another person for the provision of the itemised billing.
- (3) The rule set out in subclause (2) does not apply in relation to calls made using a particular service if the customer chooses not to have itemised billing for calls made using that service.
- (4) The rule set out in subclause (2) does not apply to designated local calls unless the customer requests the provider to provide itemised billing in relation to those calls.
- (5) For the purposes of the application of this clause to a carriage service provider who supplies a standard telephone service to a customer, a *designated local call* is a call that:

- (a) is made using that service; and
 - (b) is made between points in the applicable zone in relation to the provider and in relation to the customer; and
 - (c) is not an exempt call (as defined by subclause (6)).
- (6) For the purposes of subclause (5), a call is an *exempt call* if:
- (a) the call involves the use of a public mobile telecommunications service (whether by the party who originated the call or by any other party to the call); or
 - (b) the call involves the use of a satellite service.
- (7) A reference in this clause to the *applicable zone* is a reference to the applicable zone for the purposes of Part 8.
- (8) For the purposes of this clause, a call is regarded as an untimed local call if, and only if, the call is an eligible local call for the purposes of Part 8.
- (9) In this clause:

itemised billing, in relation to calls of a particular kind, means the provision to a customer of a bill that:

- (a) if there is in force a written determination made by the ACA relating to that kind of service—shows such details as are specified in the determination; or
- (b) in any other case—shows, for each call of that kind that is not regarded as an untimed local call, the following details:
 - (i) the date on which the call was made;
 - (ii) the number to which the call was made;
 - (iii) the duration of the call;
 - (iv) the charge applicable to the call;

and complies with a determination in force under clause 15.

satellite service means a carriage service, where customer equipment used in connection with the supply of the service communicates directly with a satellite-based facility.

- (10) A determination under paragraph (a) of the definition of *itemised billing* in subclause (9) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

14 Exemptions from itemised billing requirements

- (1) The ACA may, by notice in the *Gazette*, declare that a specified carriage service provider is exempt from the requirement set out in subclause 13(2) in so far as that requirement applies in relation to specified customers. The declaration has effect accordingly.

Note: Providers or customers may be specified by name, by inclusion in a particular class or in any other way.

- (2) In deciding whether a provider should be exempt from the requirement set out in subclause 13(2), the ACA must have regard to:
- (a) the technical feasibility of complying with the requirement set out in that subclause; and
 - (b) any plans by the provider to install a capability to provide itemised billing to those customers.
- (3) Subclause (2) does not, by implication, limit the matters to which the ACA may have regard.

15 Details that are not to be specified in an itemised bill

- (1) The ACA may, by written instrument, determine that specified details must not be shown in an itemised bill provided by a carriage service provider to a customer.
- (2) In making a determination under subclause (1), the ACA must have regard to the Information Privacy Principles set out in section 14 of the *Privacy Act 1988*. This subclause does not, by implication, limit the matters to which the ACA is to have regard.
- (3) A carriage service provider must comply with a determination under subclause (1).

Schedule 3—Carriers’ powers and immunities

Note: See section 484.

Part 1—General provisions

Division 1—Simplified outline and definitions

1 Simplified outline

The following is a simplified outline of this Part:

- A carrier may enter on land and exercise any of the following powers:
 - (a) the power to inspect the land to determine whether the land is suitable for the carrier’s purposes;
 - (b) the power to install a facility on the land;
 - (c) the power to maintain a facility that is situated on the land.
- The power to install a facility may only be exercised if:
 - (a) the carrier holds a facility installation permit; or
 - (b) the facility is a low-impact facility; or
 - (c) the facility is a temporary facility for use by, or on behalf of, a defence organisation for defence purposes; or
 - (d) the installation is carried out before 1 July 2000 for the sole purpose of connecting a building to a network that was in existence on 30 June 1997.

- A facility installation permit will only be issued in relation to a facility if:
 - (a) the carrier has made reasonable efforts to negotiate in good faith with the relevant proprietors and administrative authorities; and
 - (b) in a case where the facility is a designated overhead line—each relevant administrative authority has approved the installation of the line; and
 - (c) the telecommunications network to which the facility relates is or will be of national significance; and
 - (d) the facility is an important part of the telecommunications network to which the facility relates; and
 - (e) either the greater part of the infrastructure of the telecommunications network to which the facility relates has already been installed or relevant administrative authorities are reasonably likely to approve the installation of the greater part of the infrastructure of the telecommunications network to which the facility relates; and
 - (f) the advantages that are likely to be derived from the operation of the facility in the context of the telecommunications network to which the facility relates outweigh any form of degradation of the environment that is likely to result from the installation of the facility.

- In exercising powers under this Part, a carrier must comply with certain conditions, including:
 - (a) doing as little damage as practicable;
 - (b) acting in accordance with good engineering practice;
 - (c) complying with recognised industry standards;
 - (d) complying with conditions specified in the regulations;
 - (e) complying with conditions specified in a Ministerial Code of Practice;
 - (f) complying with conditions specified in a facility installation permit;
 - (g) giving notice to the owner of land.

2 Definitions

In this Part:

Aboriginal person means a person of the Aboriginal race of Australia.

business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

defence organisation means:

- (a) the Department of Defence; 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 Department of Defence 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.

designated overhead line has the meaning given by clause 3.

ecological community has the same meaning as in the *Endangered Species Protection Act 1992*.

endangered ecological community has the same meaning as in the *Endangered Species Protection Act 1992*.

enter on land includes enter on a public place.

environment includes all aspects of the surroundings of human beings, whether affecting human beings as individuals or in social groupings.

Environment Secretary means the Secretary to the Department responsible for the administration of the *Environment Protection (Impact of Proposals) Act 1974*.

facility installation permit means a permit issued under clause 25.

installation, in relation to a facility, includes:

- (a) the construction of the facility on, over or under any land; and
- (b) the attachment of the facility to any building or other structure; and
- (c) any activity that is ancillary or incidental to the installation of the facility (for this purpose, ***installation*** includes an activity covered by paragraph (a) or (b)).

international agreement means:

- (a) a convention to which Australia is a party; or

(b) an agreement or arrangement between Australia and a foreign country;

and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

land includes submerged land.

listed international agreement means an international agreement specified in the regulations.

public inquiry, in relation to a facility installation permit, means a public inquiry under Part 25 about whether the permit should be issued and, if so, the conditions (if any) that should be specified in the permit.

public place includes a place to which members of the public have ready access.

public utility means a body that provides to the public:

- (a) reticulated products or services, such as electricity, gas, water, sewerage or drainage; or
- (b) carriage services (other than carriage services supplied by a carriage service provider); or
- (c) transport services; or
- (d) a product or service of a kind that is similar to a product or service covered by paragraph (a), (b) or (c).

threatened species means:

- (a) an endangered species (within the meaning of the *Endangered Species Protection Act 1992*); or
- (b) a vulnerable species (within the meaning of that Act).

Torres Strait Islander means a descendant of an indigenous inhabitant of the Torres Strait Islands.

3 Designated overhead line

A reference in this Part to a *designated overhead line* is a reference to a line:

- (a) that is suspended above the surface of:
 - (i) land (other than submerged land); or
 - (ii) a river, lake, tidal inlet, bay, estuary, harbour or other body of water; and
- (b) the maximum external cross-section of any part of which exceeds:
 - (i) 13 mm; or
 - (ii) if another distance is specified in the regulations—that other distance.

4 Extension to a tower to be treated as the installation of a facility

- (1) For the purposes of the application of this Part to the installation of facilities, if:
 - (a) a tower is a facility; and
 - (b) the tower is, or is to be, extended;then:
 - (c) the carrying out of the extension is to be treated as the carrying out of the installation of the facility; and
 - (d) the extension is to be treated as a facility in its own right.
- (2) To avoid doubt, a reference in this clause to a *tower* does not include a reference to an antenna.
- (3) In this clause:

tower means a tower, pole or mast.

Division 2—Inspection of land

5 Inspection of land

- (1) A carrier may, for the purposes of determining whether any land is suitable for its purposes:
 - (a) enter on, and inspect, the land; and
 - (b) do anything on the land that is necessary or desirable for that purpose, including, for example, making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil.
- (2) A carrier may, for the purpose of surveying or obtaining information in relation to any land that, in the carrier's opinion, is or may be suitable for its purposes:
 - (a) enter on any land; and
 - (b) do anything on the entered land that is necessary or desirable for that purpose, including, for example, making surveys and taking levels.
- (3) A reference in this Part to engaging in activities under this Division includes a reference to exercising powers under this Division.

Division 3—Installation of facilities

6 Installation of facilities

- (1) A carrier may, for purposes connected with the supply of a carriage service, carry out the installation of a facility if:
 - (a) the carrier is authorised to do so by a facility installation permit; or
 - (b) the facility is a low-impact facility (as defined by subclause (3)); or
 - (c) the facility is a temporary facility for use by, or on behalf of, a defence organisation for defence purposes; or

- (d) all of the following conditions are satisfied in relation to the installation concerned:
- (i) the installation occurs before 1 July 2000;
 - (ii) the installation is carried out for the sole purpose of connecting a building, structure, caravan or mobile home to a line that forms part of a telecommunications network;
 - (iii) the whole or a part of the network was in existence at the end of 30 June 1997.

Note: If the installation of a facility is not authorised by this clause, the installation may require the approval of an administrative authority under a law of a State or Territory.

- (2) If subclause (1) authorises a carrier to carry out a particular activity, the carrier may, for purposes in connection with the carrying out of that activity:
- (a) enter on, and occupy, any land; and
 - (b) on, over or under the land, do anything necessary or desirable for those purposes, including, for example:
 - (i) constructing, erecting and placing any plant, machinery, equipment and goods; and
 - (ii) felling and lopping trees and clearing and removing other vegetation and undergrowth; and
 - (iii) making cuttings and excavations; and
 - (iv) restoring the surface of the land and, for that purpose, removing and disposing of soil, vegetation and other material; and
 - (v) erecting temporary workshops, sheds and other buildings; and
 - (vi) levelling the surface of the land and making roads.
- (3) The Minister may, by written instrument, determine that a specified facility is a low-impact facility for the purposes of this clause. The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (4) A designated overhead line must not be specified in an instrument under subclause (3).
- (5) A tower must not be specified in an instrument under subclause (3) unless:
 - (a) the tower is attached to a building; and
 - (b) the height of the tower does not exceed 5 metres.
- (6) To avoid doubt, a reference in subclause (5) to a *tower* does not include a reference to an antenna.
- (7) An extension to a tower must not be specified in an instrument under subclause (3) unless:
 - (a) the height of the extension does not exceed 5 metres; and
 - (b) there have been no previous extensions to the tower.For this purpose, *tower* has the same meaning as in clause 4.
- (8) Paragraphs (1)(a), (c) and (d) do not, by implication, limit subclause (3).
- (9) A reference in this Part to engaging in activities under this Division includes a reference to exercising powers under this Division.
- (10) A determination under subclause (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 4—Maintenance of facilities

7 Maintenance of facilities

- (1) A carrier may, at any time, maintain a facility.
- (2) A carrier may do anything necessary or desirable for the purpose of exercising powers under subclause (1), including (but not limited to):
 - (a) entering on, and occupying, land; and
 - (b) removing, or erecting a gate in, any fence.

- (3) A reference in this clause to the *maintenance* of a facility (the *original facility*) includes a reference to:
- (a) the alteration, removal or repair of the original facility; and
 - (b) the provisioning of the original facility with material or with information (whether in electronic form or otherwise); and
 - (c) ensuring the proper functioning of the original facility; and
 - (d) the replacement of the whole or a part of the original facility in its original location, where the conditions specified in subclause (5) are satisfied; and
 - (e) the installation of an additional facility in the same location as the original facility, where the conditions specified in subclause (6) are satisfied; and
 - (f) in a case where any tree, undergrowth or vegetation obstructs, or is likely to obstruct, the operation of the original facility—the cutting down or lopping of the tree, or the clearing or removal of the undergrowth or vegetation, as the case requires.
- (4) A reference in this clause to the *maintenance* of a facility does not include a reference to the extension of a tower. For this purpose, *tower* has the same meaning as in clause 4.
- (5) For the purposes of paragraph (3)(d), the following conditions are specified:
- (a) the levels of noise that are likely to result from the operation of the replacement facility are less than or equal to the levels of noise that resulted from the operation of the original facility;
 - (b) in a case where the original facility is a tower:
 - (i) the height of the replacement facility does not exceed the height of the original facility; and
 - (ii) the volume of the replacement facility does not exceed the volume of the original facility;
 - (c) in a case where the facility is not a tower:

- (i) the volume of the replacement facility does not exceed the volume of the original facility; or
 - (ii) the replacement facility is located inside a fully-enclosed building, the original facility was located inside the building and the building is not modified externally as a result of the replacement of the original facility; or
 - (iii) the replacement facility is located inside a duct, pit, hole, tunnel or underground conduit;
 - (d) such other conditions (if any) as are specified in the regulations.
- (6) For the purposes of paragraph (3)(e), the following conditions are specified:
- (a) the combined levels of noise that are likely to result from the operation of the additional facility and the original facility are less than or equal to the levels of noise that resulted from the operation of the original facility;
 - (b) either:
 - (i) the additional facility is located inside a fully-enclosed building, the original facility is located inside the building and the building is not modified externally as a result of the installation of the additional facility; or
 - (ii) the additional facility is located inside a duct, pit, hole, tunnel or underground conduit;
 - (c) such other conditions (if any) as are specified in the regulations.
- (7) For the purposes of paragraphs (5)(a), (b) and (c) and (6)(a), (b) and (c), trivial variations are to be disregarded.
- (8) For the purposes of subclauses (5) and (6):
- (a) the measurement of the height of a tower is not to include any antenna extending from the top of the tower; and
 - (b) the volume of a facility is the apparent volume of the materials that:

- (i) constitute the facility; and
 - (ii) are visible from a point outside the facility; and
 - (c) a structure that makes a facility inside the structure unable to be seen from any point outside the structure is to be treated as if it were a fully-enclosed building.
- (9) A reference in this Part to engaging in activities under this Division includes a reference to exercising powers under this Division.
- (10) In this clause (other than subclause (4)):
tower means a tower, pole or mast.

Division 5—Conditions relating to the carrying out of authorised activities

8 Carrier to do as little damage as practicable

In engaging in an activity under Division 2, 3 or 4, a carrier must take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as is practicable.

9 Carrier to restore land

- (1) If a carrier engages in an activity under Division 2, 3 or 4 in relation to any land, the carrier must take all reasonable steps to ensure that the land is restored to a condition that is similar to its condition before the activity began.
- (2) The carrier must take all reasonable steps to ensure that the restoration begins within 10 business days after the completion of the first-mentioned activity.
- (3) The rule in subclause (2) does not apply if the carrier agrees with:
 - (a) the owner of the land; and

- (b) if the land is occupied by a person other than the owner—the occupier;
- to commence restoration at a time after the end of that period of 10 business days.

10 Management of activities

A carrier must, in connection with carrying out an activity covered by Division 2, 3 or 4, take all reasonable steps:

- (a) to act in accordance with good engineering practice; and
- (b) to protect the safety of persons and property; and
- (c) to ensure that the activity interferes as little as practicable with:
 - (i) the operations of a public utility; and
 - (ii) public roads and paths; and
 - (iii) the movement of traffic; and
 - (iv) the use of land; and
- (d) to protect the environment.

11 Agreements with public utilities

- (1) A carrier must make reasonable efforts to enter into an agreement with a public utility that makes provision for the manner in which the carrier will engage in an activity that is:
 - (a) covered by Division 2, 3 or 4; and
 - (b) likely to affect the operations of the utility.
- (2) A carrier must comply with an agreement in force under subclause (1).

12 Compliance with industry standards

If a carrier engages in an activity covered by Division 2, 3 or 4, the carrier must do so in accordance with any standard that:

- (a) relates to the activity; and

- (b) is recognised by the ACA as a standard for use in that industry; and
- (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard.

13 Compliance with international agreements

If a carrier engages in an activity covered by Division 2, 3 or 4, the carrier must do so in a manner that is consistent with Australia's obligations under a listed international agreement that is relevant to the activity.

14 Conditions specified in the regulations

If a carrier engages, or proposes to engage, in an activity covered by Division 2, 3 or 4, the carrier must comply with any conditions that are specified in the regulations.

15 Conditions specified in a Ministerial Code of Practice

- (1) The Minister may, by written instrument, make a Code of Practice setting out conditions that are to be complied with by carriers in relation to any or all of the activities covered by Division 2, 3 or 4 (other than activities covered by a facility installation permit).
- (2) A carrier must comply with the Code of Practice.
- (3) The following are examples of conditions that may be set out in the Code of Practice:
 - (a) a condition requiring carriers to undertake assessments, or further assessments, of the environmental impact of the activity concerned;
 - (b) a condition requiring carriers to consult a particular person or body in relation to the activity concerned;
 - (c) a condition requiring carriers to obtain the approval of a particular person or body in relation to the activity concerned.

- (4) This clause does not, by implication, limit a power conferred by or under this Act to make an instrument.
- (5) This clause does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.
- (6) Subclauses (4) and (5) do not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.
- (7) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

16 Conditions to which a facility installation permit is subject

If:

- (a) a carrier engages, or proposes to engage, in an activity covered by Division 3; and
- (b) that activity is or will be authorised by a facility installation permit; and
- (c) the facility installation permit is subject to one or more conditions;

the carrier must comply with those conditions.

17 Notice to owner of land—general

- (1) Before engaging in an activity under Division 2, 3 or 4 in relation to any land, a carrier must give written notice of its intention to do so to:
 - (a) the owner of the land; and
 - (b) if the land is occupied by a person other than the owner—the occupier.
- (2) The notice must specify the purpose for which the carrier intends to engage in the activity.
- (3) The notice under subclause (1) must contain a statement to the effect that, if a person suffers financial loss or damage in relation to

property because of anything done by a carrier in engaging in the activity, compensation may be payable under clause 42.

- (4) The notice under subclause (1) must be given at least 10 business days before the carrier begins to engage in the activity. However, if:
- (a) no part of the land is, or is included in, a sensitive area (as defined by subclause (8)); and
 - (b) the notice relates to an activity under Division 2 (which deals with inspection); and
 - (c) engaging in the activity does not involve any material disturbance to the land;
- the notice must be given at least 2 business days before the carrier begins to engage in the activity.
- (5) A person may waive the person's right to be given a notice under subclause (1).
- (6) Subclause (1) does not apply if:
- (a) the carrier intends to engage in activities under Division 4 (which deals with maintenance); and
 - (b) those activities need to be carried out without delay in order to protect:
 - (i) the integrity of a telecommunications network or a facility; or
 - (ii) the health or safety of persons; or
 - (iii) the environment; or
 - (iv) property; or
 - (v) the maintenance of an adequate level of service.
- (7) Subclause (1) does not apply if:
- (a) the carrier intends to engage in activities under Division 2 (which deals with inspection); and
 - (b) engaging in those activities does not involve any material disturbance to the land; and
 - (c) the land is a public place; and

- (d) no part of the land is, or is included in, a sensitive area (as defined by subclause (8)).
- (8) For the purposes of this clause, each of the following areas is a *sensitive area*:
 - (a) an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*);
 - (b) a place that Australia is required to protect by the terms of a listed international agreement;
 - (c) an area that, under a law of the Commonwealth, a State or a Territory, is reserved wholly or principally for nature conservation purposes (however described);
 - (d) an area that, under a law of the Commonwealth, a State or a Territory, is protected from significant environmental disturbance;
 - (e) an area that is:
 - (i) entered in the Register of the National Estate; or
 - (ii) entered in the Interim List for that Register; or
 - (iii) registered under a law of a State or Territory relating to heritage conservation; or
 - (iv) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions.

18 Notice to owner of land—lopping of trees etc.

- (1) At least 10 business days before engaging in any of the following activities under Division 3 or 4:
 - (a) cutting down or lopping a tree on private land;
 - (b) clearing or removing undergrowth or vegetation on private land;a carrier must give:
 - (c) the owner of the land; and
 - (d) if the land is occupied by a person other than the owner—the occupier;

a written notice requesting that the tree be cut down or lopped, or that the undergrowth or vegetation be cleared, as the case may be, in the manner, and within the period, specified in the notice.

- (2) The carrier may only engage in those activities if the request is not complied with.
- (3) A person may waive the person's right to be given a notice under subclause (1).
- (4) Subclauses (1) and (2) do not apply if:
 - (a) the carrier intends to engage in activities under Division 4 (which deals with maintenance); and
 - (b) those activities need to be carried out without delay in order to protect:
 - (i) the integrity of a telecommunications network or a facility; or
 - (ii) the health or safety of persons; or
 - (iii) the environment; or
 - (iv) property; or
 - (v) the maintenance of an adequate level of service.

19 Notice to roads authorities, utilities etc.

- (1) At least 10 business days before engaging in any of the following activities under Division 3 or 4:
 - (a) closing, diverting or narrowing a road or bridge;
 - (b) installing a facility on, over or under a road or bridge;
 - (c) altering the position of a water, sewerage or gas main or pipe;
 - (d) altering the position of an electricity cable or wire;a carrier must give written notice of its intention to do so to the person or authority responsible for the care and management of the road, bridge, main, pipe, cable or wire.
- (2) A person or authority may waive the person's or authority's right to be given a notice under subclause (1).

- (3) Subclause (1) does not apply if:
- (a) the carrier intends to engage in activities under Division 4 (which deals with maintenance); and
 - (b) those activities need to be carried out without delay in order to protect:
 - (i) the integrity of a telecommunications network or a facility; or
 - (ii) the health or safety of persons; or
 - (iii) the environment; or
 - (iv) property; or
 - (v) the maintenance of an adequate level of service.

20 Roads etc. to remain open for passage

If a carrier engages in an activity covered by Division 3, the carrier must ensure that a facility installed over a road, bridge, path or navigable water is installed in a way that will allow reasonable passage by persons, vehicles and vessels.

Division 6—Facility installation permits

21 Application for facility installation permit

- (1) A carrier may apply to the ACA for a permit authorising the carrier to carry out the installation of one or more facilities.
- (2) The permit is called a *facility installation permit*.

22 Form of application

An application must be:

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

23 Application to be accompanied by charge

An application for a facility installation permit must be accompanied by the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997* in relation to so much of the ACA's expenses in connection with dealing with the application as do not relate to the conduct of a public inquiry in relation to the permit.

24 Withdrawal of application

This Division does not prevent the withdrawal of an application and the submission of a fresh application.

25 Issue of facility installation permit

- (1) After considering the application, the ACA may issue a facility installation permit authorising the applicant to carry out the installation of any or all of the facilities specified in the application.
- (2) The ACA must not issue a facility installation permit unless the ACA has held a public inquiry in relation to the permit.
- (3) The ACA may decide to refuse to issue a facility installation permit without holding a public inquiry in relation to the permit.

Note: An example of the operation of this subclause would be a case where the application does not disclose grounds on which the ACA could issue the permit.
- (4) If the ACA decides to refuse to issue a facility installation permit, it must give the applicant a written notice setting out the decision.
- (5) Clause 23 does not prevent a charge from being fixed by a determination under section 53 of the *Australian Communications Authority Act 1997* in relation to the holding of a public inquiry in relation to a permit.

26 Deemed refusal of facility installation permit

- (1) If:
 - (a) the ACA receives an application for a facility installation permit; and
 - (b) 10 business days pass and the ACA has neither:
 - (i) notified the applicant in writing that the ACA has decided to refuse to issue the permit; nor
 - (ii) notified the applicant in writing that the ACA has decided to hold a public inquiry in relation to the permit;the ACA is taken, at the end of that period of 10 business days, to have decided to refuse to issue the permit.
- (2) If:
 - (a) the ACA receives an application for a facility installation permit; and
 - (b) 65 business days pass and the ACA has neither:
 - (i) notified the applicant in writing that the ACA has decided to refuse to issue the permit; nor
 - (ii) notified the applicant in writing that the ACA has decided to issue the permit;the ACA is taken, at the end of that period of 65 business days, to have decided to refuse to issue the permit.
- (3) The ACA may, by written instrument, determine that subclause (2) has effect, in relation to a specified application for a facility installation permit, as if a reference in that subclause to 65 business days were a reference to such greater number of business days, not exceeding 85 business days, as is specified in the determination. The determination has effect accordingly.
- (4) In determining the validity of any action taken by the ACA under Part 25 in relation to the holding of a public inquiry in relation to in a permit, regard must be had to the ACA's need to act with sufficient speed to meet the time limit imposed by subclause (2).

27 Criteria for issue of facility installation permit

Criteria

- (1) The ACA must not issue a facility installation permit that authorises a carrier to carry out the installation of one or more facilities unless the carrier satisfies the ACA that:
 - (a) both of the following conditions are satisfied:
 - (i) the carrier has made reasonable efforts to negotiate in good faith with each proprietor whose approval is required or would, apart from Division 3, be required, for carrying out the installation;
 - (ii) at least one of those approvals has not been obtained within 20 business days after the beginning of the negotiations concerned; and
 - (b) in a case where none of the facilities consist of a designated overhead line—either of the conditions set out in subsection (2) is satisfied; and
 - (c) in a case where any of the facilities consist of a designated overhead line—each administrative authority whose approval is required or would, apart from Division 3, be required, for the installation of the line has given such an approval; and
 - (d) the telecommunications network to which the facilities relate is, or is likely to be, of national significance; and
 - (e) the facilities are, or are likely to be, an important part of the telecommunications network to which the facilities relate; and
 - (f) any of the following conditions is satisfied:
 - (i) the greater part of the infrastructure of the telecommunications network to which the facilities relate has already been installed;
 - (ii) the greater part of the infrastructure of the telecommunications network to which the facilities relate has not been installed, but each administrative authority whose approval was required or would, apart

- from Division 3, be required, for the installation of the greater part of the infrastructure of the network has given, or is reasonably likely to give, such an approval;
- (iii) no part of the infrastructure of the telecommunications network to which the facilities relate has been installed, but each administrative authority whose approval was required or would, apart from Division 3, be required, for the installation of the greater part of the infrastructure of the network has given, or is reasonably likely to give, such an approval; and
 - (g) the advantages that are likely to be derived from the operation of the facilities in the context of the telecommunications network to which the facilities relate outweigh any form of degradation of the environment that is likely to result from the installation of the facilities.

Conditions relating to facilities other than designated overhead lines

- (2) For the purposes of paragraph (1)(b), the following conditions are specified:
 - (a) both:
 - (i) the carrier has made reasonable efforts to negotiate in good faith with each administrative authority whose approval is required or would, apart from Division 3, be required, for carrying out the installation; and
 - (ii) at least one of those approvals has not been obtained within 6 months after the beginning of the negotiations concerned;
 - (b) all of the following subparagraphs apply:
 - (i) the carrier has made reasonable efforts to negotiate in good faith with each administrative authority whose approval is required or would, apart from Division 3, be required, for carrying out the installation;
 - (ii) at least one of those approvals has been refused.

Networks of national significance

- (3) In determining the matter set out in paragraph (1)(d), the ACA must have regard to the following:
- (a) the geographical reach of the network;
 - (b) the number of customers connected, or likely to be connected, to the network;
 - (c) the importance of the network to the national economy;
 - (d) such other matters (if any) as the ACA considers relevant.

When facilities are an important part of a network

- (4) In determining the matter set out in paragraph (1)(e), the ACA must have regard to at least one of the following:
- (a) the technical importance of the facilities in the context of the telecommunications network to which the facilities relate;
 - (b) the economic importance of the facilities in the context of the telecommunications network to which the facilities relate;
 - (c) the social importance of the facilities in the context of the telecommunications network to which the facilities relate.

When advantages of facilities outweigh degradation of the environment

- (5) In determining the matter set out in paragraph (1)(g), the ACA must have regard to the following:
- (a) the extent to which the installation of the facilities is likely to promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services;
 - (b) the impact of the installation, maintenance or operation of the facilities on the environment;
 - (c) the objective of facilitating the timely supply of efficient, modern and cost-effective carriage services to the public;
 - (d) any relevant technical and/or economic aspects of the installation, maintenance or operation of the facilities in the

context of the telecommunications network to which the facilities relate;

- (e) whether the installation of the facilities contributes to the fulfilment by the applicant of the universal service obligation;
- (f) whether the installation of the facilities involves co-location with one or more other facilities;
- (g) whether the installation of the facilities facilitates co-location, or future co-location, with one or more other facilities;
- (h) such other matters (if any) as the ACA considers relevant.

Long-term interests of end-users

- (6) For the purposes of this clause, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as that question is determined for the purposes of Part XIC of the *Trade Practices Act 1974*.

Environmental impact

- (7) In determining the matter set out in paragraph (5)(b), the ACA must have regard to the following:
 - (a) whether the installation, maintenance or operation of the facilities:
 - (i) is inconsistent with Australia's obligations under a listed international agreement; or
 - (ii) could threaten with extinction, or significantly impede the recovery of, a threatened species; or
 - (iii) could put a species of flora or fauna at risk of becoming a threatened species; or
 - (iv) could have an adverse effect on a threatened species of flora or fauna; or
 - (v) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or

- (vi) could damage the whole or a part of a place, or an ecological community, that is essential to the continuing existence of a threatened species of flora or fauna; or
 - (vii) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or
 - (viii) could have an adverse effect on an endangered ecological community; or
 - (ix) could damage the whole or a part of the habitat of an endangered ecological community;
- (b) the visual effect of the facilities on streetscapes and other landscapes;
- (c) whether the facilities are to be installed at any of the following places:
- (i) an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*);
 - (ii) a place that Australia is required to protect by the terms of a listed international agreement;
 - (iii) an area that, under a law of the Commonwealth, a State or a Territory, is reserved wholly or principally for nature conservation purposes (however described);
 - (iv) an area that, under a law of the Commonwealth, a State or a Territory, is protected from significant environmental disturbance;
- (d) whether the facilities are to be installed at or near an area or thing that is:
- (i) entered in the Register of the National Estate; or
 - (ii) entered in the Interim List for that Register; or
 - (iii) registered under a law of a State or Territory relating to heritage conservation; or
 - (iv) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions;

(e) such other matters (if any) as the ACA considers relevant.

Deemed approvals by administrative authorities

- (8) The ACA may, by written instrument, determine that this clause has the effect it would have if it were assumed that a specified administrative authority had given a specified approval for the installation of one or more specified facilities. The determination has effect accordingly.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

Definitions

- (9) In this clause:

administrative authority means:

- (a) the holder of an office; or
- (b) an authority of a State or a Territory; or
- (c) a local government body;

performing administrative functions under a law of a State or a Territory.

approval means an approval or permission (however described).

negotiations includes:

- (a) the submission of an application for approval; and
- (b) pursuing an application for approval.

proprietor means an owner or occupier of land.

review, in relation to a refusal to give an approval, means a review on the merits (in other words, a review that is not based on the grounds that the refusal is contrary to law).

telecommunications network includes a proposed telecommunications network.

28 Special provisions relating to environmental matters

- (1) In performing a function, or exercising a power, conferred on the ACA by this Division, the ACA is exempt from any administrative procedures in force under section 6 of the *Environment Protection (Impact of Proposals) Act 1974*.
- (2) Before issuing a facility installation permit, the ACA must consult the Environment Secretary.
- (3) Before issuing a facility installation permit that:
 - (a) in the ACA's opinion:
 - (i) may be inconsistent with Australia's obligations under a listed international agreement; or
 - (ii) could threaten with extinction, or significantly impede the recovery of, a threatened species; or
 - (iii) could put a species of flora or fauna at risk of becoming a threatened species; or
 - (iv) could have an adverse effect on a threatened species of flora or fauna; or
 - (v) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or
 - (vi) could damage the whole or a part of a place, or an ecological community, that is essential to the continuing existence of a threatened species of flora or fauna; or
 - (vii) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or
 - (viii) could have an adverse effect on an endangered ecological community; or
 - (ix) could damage the whole or a part of the habitat of an endangered ecological community; or
 - (b) relates to the installation of a facility at a place mentioned in paragraph 27(7)(c) of this Schedule;the ACA must consult the Director of National Parks and Wildlife.

(4) Before issuing a facility installation permit that relates to the installation of a facility at or near an area or thing mentioned in paragraph 27(7)(d) of this Schedule, the ACA must consult the Australian Heritage Commission.

(5) In this clause:

this Division includes:

- (a) Part 25, to the extent that that Part relates to the holding of a public inquiry in relation to a permit; and
- (b) Part 29, to the extent that that Part relates to this Division.

29 Consultation with the ACCC

Before making a decision to issue, or to refuse to issue, a facility installation permit, the ACA must consult the ACCC.

30 Facility installation permit has effect subject to this Act

A facility installation permit has effect subject to this Act.

31 Duration of facility installation permit

- (1) A facility installation permit comes into force when it is issued and remains in force until the end of the period specified in the permit.
- (2) However, the ACA may, by written notice given to the holder of a facility installation permit, extend the period specified in the permit if the ACA is satisfied that the extension is warranted because of special circumstances.

32 Conditions of facility installation permit

- (1) A facility installation permit is subject to such conditions as are specified in the permit.

- (2) A condition of a facility installation permit may restrict, limit or prevent the carrying out of, an activity under Division 3. This subclause does not, by implication, limit subclause (1).
- (3) The following are examples of conditions to which a facility installation permit may be subject:
 - (a) a condition requiring the holder to undertake an assessment, or a further assessment, of the environmental impact of the installation of the facility concerned;
 - (b) a condition requiring the holder to consult a particular person or body in relation to the installation of the facility concerned;
 - (c) a condition requiring the holder to obtain the approval of a particular person or body in relation to the installation of the facility concerned.

33 Surrender of facility installation permit

The holder of a facility installation permit may, at any time, surrender the permit by written notice given to the ACA.

34 Cancellation of facility installation permit

- (1) The ACA may, by written notice given to the holder of a facility installation permit, cancel the permit.
- (2) In deciding whether to cancel the permit, the ACA may have regard to:
 - (a) any contravention of Division 5; and
 - (b) any matter which the ACA was entitled to have regard in deciding whether to issue a permit.
- (3) Subclause (2) does not, by implication, limit the matters to which the ACA may have regard.

35 Review of decisions by Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the ACA under clause 25 or 26 to refuse to issue a facility installation permit if the ACA has not held a public inquiry in relation to the permit.
- (2) If the ACA:
 - (a) makes a decision of a kind covered by subclause (1); and
 - (b) gives to the person or persons whose interests are affected by the decision written notice of the making of the decision; that notice is to include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.
- (3) A failure to comply with subclause (2) does not affect the validity of a decision.
- (4) In this clause:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Division 7—Exemptions from State and Territory laws

36 Activities not generally exempt from State and Territory laws

- (1) Divisions 2, 3 and 4 do not operate so as to authorise an activity to the extent that the carrying out of the activity would be inconsistent with the provisions of a law of a State or Territory.
- (2) The rule set out in subclause (1) has effect subject to any exemptions that are applicable under clause 37.

37 Exemption from State and Territory laws

- (1) This clause applies to an activity carried on by a carrier if the activity is authorised by Division 2, 3 or 4.
- (2) The carrier may engage in the activity despite a law of a State or Territory about:
 - (a) the assessment of the environmental effects of engaging in the activity; or
 - (b) the protection of places or items of significance to Australia's natural or cultural heritage; or
 - (c) town planning; or
 - (d) the planning, design, siting, construction, alteration or removal of a structure; or
 - (e) the powers and functions of a local government body; or
 - (f) the use of land; or
 - (g) tenancy; or
 - (h) the supply of fuel or power, including the supply and distribution of extra-low voltage power systems; or
 - (i) a matter specified in the regulations.
- (3) Paragraph (2)(b) does not apply to a law in so far as the law provides for the protection of places or items of significance to the cultural heritage of Aboriginal persons or Torres Strait Islanders.
- (4) Paragraph (2)(h) does not apply to a law in so far as the law deals with the supply of electricity at a voltage that exceeds that used for ordinary commercial or domestic requirements.

38 Concurrent operation of State and Territory laws

It is the intention of the Parliament that, if clause 37 entitles a carrier to engage in activities despite particular laws of a State or Territory, nothing in this Division is to affect the operation of any other law of a State or Territory, so far as that other law is capable of operating concurrently with this Act.

39 Liability to taxation not affected

This Division does not affect the liability of a carrier to taxation under a law of a State or Territory.

Division 8—Miscellaneous

40 Constitution of the ACA—performance of functions under this Part

- (1) For the purposes of the performance of the functions, and the exercise of the powers, conferred on the ACA by this Part, the ACA is to be constituted by:
 - (a) the Chairman of the ACA; and
 - (b) not fewer than 2, and not more than 4, eligible associate members of the ACA.
- (2) For the purposes of subclause (1), an *eligible associate member* of the ACA is an associate member of the ACA whose instrument of appointment contains a statement to the effect that the member's appointment relates to the performance of the ACA's functions, and the exercise of the ACA's powers, under this Part.
- (3) This clause has effect despite anything in section 491 (which deals with hearings for the purposes of a public inquiry).
- (4) In this clause:

this Part includes:

 - (a) Part 25, to the extent that that Part relates to the holding of a public inquiry in relation to a permit; and
 - (b) Part 29, to the extent that that Part relates to this Part.

41 Guidelines

- (1) In performing a function, or exercising a power, conferred on the ACA by this Part, the ACA must have regard to:

- (a) any guidelines in force under subclause (2); and
 - (b) such other matters as the ACA considers relevant.
- (2) The ACA may, by written instrument, formulate guidelines for the purposes of subclause (1).

42 Compensation

- (1) If a person suffers financial loss or damage because of anything done by a carrier under Division 2, 3 or 4 in relation to:
- (a) any property owned by the person; or
 - (b) any property in which the person has an interest;
- there is payable to the person by the carrier such reasonable amount of compensation:
- (c) as is agreed between them; or
 - (d) failing agreement—as is determined by a court of competent jurisdiction.
- (2) Compensation payable under subclause (1) includes, without limitation, compensation in relation to:
- (a) damage of a temporary character as well as of a permanent character; and
 - (b) the taking of sand, soil, stone, gravel, timber, water and other things.
- (3) In this clause:
- court of competent jurisdiction***, in relation to property, means:
- (a) the Federal Court; or
 - (b) the Supreme Court of the State or Territory in which the property is situated or was situated at the time of the relevant loss or damage; or
 - (c) an inferior court that has jurisdiction:
 - (i) for the recovery of debts up to an amount not less than the amount of compensation claimed by the person; and

- (ii) in relation to the locality in which the property, or part of the property, is situated or was situated at the time of the relevant loss or damage.

inferior court means:

- (a) a County Court, District Court or local Court of a State or Territory; or
- (b) a court of summary jurisdiction exercising civil jurisdiction.

43 Power extends to carrier's employees etc.

If, under a provision of Division 2, 3 or 4, a carrier is empowered to:

- (a) enter on land; or
- (b) inspect land; or
- (c) occupy land; or
- (d) do anything else on, over or under land;

the provision also empowers:

- (e) an employee of the carrier; or
 - (f) a person acting for the carrier under a contract; or
 - (g) an employee of a person referred to in paragraph (f);
- to do that thing.

44 State and Territory laws that discriminate against carriers and users of carriage services

- (1) The following provisions have effect:
 - (a) a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;
 - (b) without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to

which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;

(c) without limiting paragraph (a), a person is not required to comply with a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally.

(2) The following provisions have effect:

(a) a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular eligible user, against a particular class of eligible users, or against eligible users generally;

(b) without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular eligible user, against a particular class of eligible users, or against eligible users generally;

(c) without limiting paragraph (a), a person is not required to comply with a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular eligible user, against a particular class of eligible users, or against eligible users generally.

(3) For the purposes of this clause, if a carriage service is, or is proposed to be, supplied to a person by means of a controlled network, or a controlled facility, of a carrier, the person is an *eligible user*.

- (4) The Minister may, by written instrument, exempt a specified law of a State or Territory from subclause (1).

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (5) The Minister may, by written instrument, exempt a specified law of a State or Territory from subclause (2).

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (6) An exemption under subclause (4) or (5) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

- (7) An instrument under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: The following are examples of a law of a State or Territory:

- (a) a provision of a State or Territory Act;
- (b) a provision of a legislative instrument made under a State or Territory Act.

45 State and Territory laws may confer powers and immunities on carriers

It is the intention of the Parliament that this Part is not to be construed as preventing a law of a State or Territory from conferring powers or immunities on carriers, so long as that law is capable of operating concurrently with this Act.

46 ACA may limit tort liability in relation to the supply of certain carriage services

- (1) The ACA may, by written instrument, impose limits on amounts recoverable in tort in relation to acts done, or omissions made, in relation to the supply of specified carriage services.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) An instrument under subclause (1) has effect accordingly.
- (3) A limit imposed by an instrument under subclause (1) may be expressed to apply in relation to:
 - (a) the total of the amounts that can be recovered in relation to a single event; or
 - (b) the total of the amounts that can be recovered by a particular plaintiff in relation to a single event.
- (4) An instrument under subclause (1) may impose a limit expressed as:
 - (a) a dollar amount; or
 - (b) a method of calculating an amount.
- (5) Subclauses (3) and (4) do not, by implication, limit subclause (1).
- (6) This clause does not apply to a cause of action under Part 9 (which deals with the customer service guarantee).
- (7) This clause does not apply to a cause of action under clause 42 (which deals with compensation for loss or damage resulting from a carrier's activities under Division 2, 3 or 4).
- (8) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

47 Ownership of facilities

Unless the circumstances indicate otherwise, a facility, or a part of a facility, that is supplied, installed, maintained or operated by a carrier remains the property of its owner:

- (a) in any case—whether or not it has become (either in whole or in part), a fixture; and
- (b) in the case of a network unit—whether or not a nominated carrier declaration is in force in relation to the network unit.

48 ACA may inform the public about designated overhead lines, telecommunications transmission towers and underground facilities

- (1) The ACA may inform members of the public about the kinds and location of:
 - (a) designated overhead lines; and
 - (b) telecommunications transmission towers; and
 - (c) underground facilities.
- (2) In performing the function conferred on the ACA by subclause (1), the ACA must have regard to the following matters:
 - (a) if:
 - (i) the ACA is satisfied that a body or association represents carriers; and
 - (ii) the body or association has given the ACA a written statement setting out the body's or association's views about how the ACA should perform that function; the views set out in the statement;
 - (b) the legitimate business interests of carriers;
 - (c) the objective of safeguarding national security;
 - (d) the privacy of end-users of carriage services supplied by means of the lines, towers or facilities concerned.
- (3) Subclause (2) does not, by implication, limit the matters to which the ACA may have regard.
- (4) Clauses 40 and 41 do not apply to the function conferred on the ACA by subclause (1).
- (5) In this clause:

telecommunications transmission tower means:

 - (a) a tower; or
 - (b) a pole; or
 - (c) a mast; or

(d) a similar structure;
used to supply a carriage service by means of
radiocommunications.

49 Review of options for placing facilities underground

- (1) Before 1 July 1998, the Minister must cause to be conducted a review of the options for placing facilities underground.
- (2) Those options are to include options for placing facilities underground as part of a co-ordinated program of placing other infrastructure underground (for example, electricity transmission and distribution infrastructure).
- (3) The Minister must cause to be prepared a report of the review.
- (4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

50 Monitoring of progress in relation to placing facilities underground

The ACA is to monitor, and report to the Minister on, progress in relation to the implementation of efforts to place facilities underground.

51 Removal of certain overhead lines

- (1) If:
 - (a) an overhead line (the *eligible overhead line*) is attached to a pole (the *first pole*); and
 - (b) the eligible overhead line, or a portion of the eligible overhead line, is suspended between the first pole and another pole (the *second pole*); and
 - (c) the installation of the eligible overhead line was or is authorised by:

- (i) this Act; or
 - (ii) section 116 of the *Telecommunications Act 1991*; or
 - (iii) Division 3 of Part 7 of the *Telecommunications Act 1991*; or
 - (iv) a repealed law of the Commonwealth; and
- (d) there is also attached to the first pole one or more other overhead cables, where at least one of the other overhead cables is a non-communications cable; and
- (e) each of the non-communications cables is permanently removed (either simultaneously or over a period) and is not replaced;

the owner of the eligible overhead line must, within 6 months after the completion of the last of the removals referred to in paragraph (e), permanently remove so much of the eligible overhead line as is suspended between the first pole and the second pole.

(2) If:

- (a) there is a local government body for the area in which the first pole is situated; and
- (b) there is no prescribed administrative authority for the State or Territory in which the first pole is situated;

the local government body may, by writing:

- (c) exempt the owner of the eligible overhead line from compliance with subclause (1) in relation to the first pole; or
- (d) extend the period of 6 months mentioned in subclause (1) for the purposes of the application of subclause (1) to the owner of the eligible overhead line and to the first pole.

(3) If there is a prescribed administrative authority for the State or Territory in which the first pole is situated, the prescribed administrative authority may, by writing:

- (a) exempt the owner of the eligible overhead line from compliance with subclause (1) in relation to the first pole; or

- (b) extend the period of 6 months mentioned in subclause (1) for the purposes of the application of subclause (1) to the owner of the eligible overhead line and to the first pole.
- (4) If:
- (a) there is no local government body for the area in which the first pole is situated; and
 - (b) there is no prescribed administrative authority for the State or Territory in which the first pole is situated;
- the regulations may make provision for and in relation to:
- (c) the exemption of the owner of the eligible overhead line from compliance with subclause (1) in relation to the first pole; and
 - (d) the extension of the period of 6 months mentioned in subclause (1) for the purposes of the application of subclause (1) to the owner of the eligible overhead line and to the first pole.
- (5) Regulations made for the purposes of subclause (4) may make provision with respect to a matter by conferring a power on the ACA.
- (6) This clause does not prevent 2 or more instruments under subclause (2) or (3) from being combined in the same document.
- (7) In this clause:
- administrative authority** means:
- (a) the holder of an office; or
 - (b) an authority of a State or a Territory;
- that performs administrative functions under a law of a State or a Territory.
- line** includes a disused line.
- non-communications cable** means an overhead cable (other than a line).

overhead cable means a wire or cable that is suspended above the surface of:

- (a) land (other than submerged land); or
- (b) a river, lake, tidal inlet, bay, estuary, harbour or other body of water.

overhead line means a line that is suspended above the surface of:

- (a) land (other than submerged land); or
- (b) a river, lake, tidal inlet, bay, estuary, harbour or other body of water.

prescribed administrative authority, in relation to a State or a Territory, means an administrative authority that:

- (a) performs administrative functions under a law of the State or the Territory; and
- (b) is specified in the regulations.

52 Commonwealth laws not displaced

Divisions 2, 3 and 4 do not authorise a carrier to engage in an activity contrary to the requirements of another law of the Commonwealth.

53 Subdivider to pay for necessary alterations

If:

- (a) it becomes necessary, in the opinion of a carrier, because of the subdivision of any land, to remove, or alter the position of, a facility on, over or under the land; and
- (b) the carrier incurs costs in connection with anything reasonably done in connection with the removal or alteration;

the person who subdivided the land is liable to pay to the carrier so much of those costs as is reasonable, and that amount may be recovered in a court of competent jurisdiction as a debt due to the carrier.

54 Service of notices

- (1) If:
 - (a) a carrier is unable, after diligent inquiry, to find out who owns particular land; or
 - (b) a carrier is unable to serve a notice under this Part on the owner of land either personally or by post;
the carrier may serve a notice under this Part on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
 - (c) if the land is occupied—serving a copy of the notice on the occupier; or
 - (d) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.
- (2) If a carrier is unable, after diligent inquiry, to find out:
 - (a) whether particular land is occupied; or
 - (b) who occupies particular land;the carrier may treat the land as unoccupied land.
- (3) If a carrier is unable to serve a notice under this Part on the occupier of land either personally or by post, the carrier may serve a notice under this Part on the occupier by:
 - (a) publishing a copy of the notice in a newspaper circulating in a district in which the land is situated; and
 - (b) attaching, if practicable, a copy of the notice to a conspicuous part of the land.
- (4) This clause does not affect the operation of any other law of the Commonwealth, or of any law of a State or Territory, that authorises the service of a document otherwise than as provided in this clause.

55 Facilities installed before 1 January 1999 otherwise than in reliance on Commonwealth laws—environmental impact

- (1) This clause applies if:
- (a) a carrier, for purposes connected with the supply of a carriage service, proposes to commence to carry out the installation of a facility before 1 January 1999; and
 - (b) neither Division 3 of this Part, nor Part 7 of the *Telecommunications Act 1991*, will operate so as to authorise the carrying out of the installation; and
 - (c) any of the conditions set out in subclause (2) is satisfied.
- (2) For the purposes of paragraph (1)(c), the following conditions are specified:
- (a) the carrying out of the installation:
 - (i) is, or is likely to be, inconsistent with Australia's obligations under a listed international agreement; or
 - (ii) could threaten with extinction, or significantly impede the recovery of, a threatened species; or
 - (iii) could put a species of flora or fauna at risk of becoming a threatened species; or
 - (iv) could have an adverse effect on a threatened species of flora or fauna; or
 - (v) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or
 - (vi) could damage the whole or a part of a place, or an ecological community, that is essential to the continuing existence of a threatened species of flora or fauna; or
 - (vii) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or
 - (viii) could have an adverse effect on an endangered ecological community; or
 - (ix) could damage the whole or a part of the habitat of an endangered ecological community;

- (b) the installation is to be carried out at any of the following places:
 - (i) an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*);
 - (ii) a place that Australia is required to protect by the terms of a listed international agreement;
 - (iii) an area that, under a law of the Commonwealth, is reserved wholly or principally for nature conservation purposes (however described);
 - (iv) an area that, under a law of the Commonwealth, is protected from significant environmental disturbance;
 - (c) the installation is to be carried out at or near an area or thing that is:
 - (i) entered in the Register of the National Estate; or
 - (ii) entered in the Interim List for that Register; or
 - (iii) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions.
- (3) At least 25 business days before commencing to carry out the installation, the carrier must give the Environment Secretary written notice of the carrier's intention to do so.
- (4) The notice must be accompanied by a written statement setting out such information about the environmental impact of:
 - (a) the carrying out of the installation; and
 - (b) the facility;as is specified in the regulations.
- (5) Within 25 business days after the notice was given, the ACA may give the carrier a written direction requiring the carrier to do, or to refrain from doing, a specified act or thing in relation to:
 - (a) the carrying out of the installation; or
 - (b) the facility;

or both.

- (6) A carrier must comply with a direction under subclause (5).
- (7) A direction under subclause (5) may only be given for purposes relating to the environmental impact of:
 - (a) the carrying out of the installation; or
 - (b) the facility;or both.
- (8) The ACA must not give a direction under subclause (5) unless the Environment Secretary has given the ACA a recommendation under subclause (9).
- (9) The Environment Secretary may give the ACA a written recommendation to give a direction under subclause (5).
- (10) In giving a direction under subclause (5), the ACA:
 - (a) is not required to give a direction in the same terms as the Environment Secretary's recommendation; and
 - (b) may have regard to matters other than the Environment Secretary's recommendation.
- (11) Before giving a direction under subclause (5), the ACA must consult:
 - (a) if the condition specified in paragraph (2)(c) is satisfied—the Australian Heritage Commission; and
 - (b) in any case—the Director of National Parks and Wildlife.
- (12) In this clause:

environmental impact includes impact on heritage values.

Part 2—Transitional provisions

56 Continued application of sections 116, 117, 118 and 119 of the *Telecommunications Act 1991*—general

- (1) This clause applies to a particular exempt activity if:
 - (a) before 1 July 1997, a proposal to engage in the activity was notified by a carrier (within the meaning of the *Telecommunications Act 1991*) under a Telecommunications National Code; and
 - (b) the activity commenced on or before 30 June 1997.
- (2) Despite the repeal of the *Telecommunications Act 1991* by the *Telecommunications (Transitional and Consequential Amendments) Act 1997*, sections 116, 117, 118 and 119 of the *Telecommunications Act 1991* continue to apply, in relation to the activity, during:
 - (a) if the activity consists of an installation of a designated overhead line—the period:
 - (i) beginning on 1 July 1997; and
 - (ii) ending at the end of 30 September 1997; or
 - (b) if the activity does not consist of the installation of a designated overhead line—the period:
 - (i) beginning on 1 July 1997; and
 - (ii) ending at the end of 31 December 1997;as if:
 - (c) a reference in those sections to a carrier (within the meaning of the *Telecommunications Act 1991*) were a reference to a carrier (within the meaning of this Act); and
 - (d) a reference in those sections to AUSTEL were a reference to the ACA; and
 - (e) a reference in section 117 of the *Telecommunications Act 1991* to paragraph 327(b) of that Act were a reference to section 486 of this Act; and

- (f) a reference in section 117 of the *Telecommunications Act 1991* to Part 14 of that Act were a reference to Part 25 of this Act; and
 - (g) that repeal had not been made.
- (3) Divisions 2, 3 and 4 of Part 1 of this Schedule do not apply to the carrying out of the activity.
 - (4) Part 1 of Schedule 1 to this Act has effect as if sections 116, 117, 118 and 119 of the *Telecommunications Act 1991* were provisions of this Act.
 - (5) In this clause:

AUSTEL means the Australian Telecommunications Authority.

designated overhead line has the same meaning as in Part 1 of this Schedule.

exempt activity has the same meaning as in the *Telecommunications Act 1991*, as in force before 1 July 1997.

Telecommunications National Code means a National Code determined under section 117 of the *Telecommunications Act 1991*.

57 Continued application of Division 3 of Part 7 of the *Telecommunications Act 1991*—general

- (1) This clause applies to an activity if:
 - (a) before 1 July 1997, a carrier (within the meaning of the *Telecommunications Act 1991*) notified under Division 3 of Part 7 of the *Telecommunications Act 1991* the carrier's intention to carry out the activity; and
 - (b) the activity commenced on or before 30 June 1997.
- (2) Despite the repeal of the *Telecommunications Act 1991* by the *Telecommunications (Transitional and Consequential Amendments) Act 1997*, Division 3 of Part 7 of the

Telecommunications Act 1991 continues to apply, in relation to the activity, during:

- (a) if the activity consists of the installation of a designated overhead line—the period:
 - (i) beginning on 1 July 1997; and
 - (ii) ending at the end of 30 September 1997; or
- (b) if the activity does not consist of the installation of a designated overhead line—the period:
 - (i) beginning on 1 July 1997; and
 - (ii) ending at the end of 31 December 1997;

as if:

- (c) a reference in that Division to a carrier (within the meaning of the *Telecommunications Act 1991*) were a reference to a carrier (within the meaning of this Act); and
 - (d) a reference in that Division to AUSTEL were a reference to the ACA; and
 - (e) that repeal had not been made.
- (3) Divisions 2, 3 and 4 of Part 1 of this Schedule do not apply to the carrying out of the activity.
- (4) Part 1 of Schedule 1 to this Act has effect as if the provisions of Division 3 of Part 7 of the *Telecommunications Act 1991* were provisions of this Act.
- (5) In this clause:

AUSTEL means the Australian Telecommunications Authority.

designated overhead line has the same meaning as in Part 1 of this Schedule.

58 Continued application of sections 116, 117, 118 and 119 of the *Telecommunications Act 1991*—special rule where injunction restrains activity

- (1) This clause applies to a particular exempt activity if:
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- (a) before 1 July 1997, a proposal to engage in the activity was notified by a carrier (within the meaning of the *Telecommunications Act 1991*) under a Telecommunications National Code; and
 - (b) in a case where the activity consists of the installation of a designated overhead line—either:
 - (i) the activity did not commence on or before 30 June 1997 and the failure to commence the activity is attributable to a restraining injunction granted on or after 5 December 1996; or
 - (ii) the activity commenced on or before 30 June 1997, the activity was not completed on or before 30 September 1997 and the failure to complete the activity is attributable to a restraining injunction granted on or after 5 December 1996; and
 - (c) in a case where the activity does not consist of the installation of a designated overhead line—either:
 - (i) the activity did not commence on or before 30 June 1997 and the failure to commence the activity is attributable to a restraining injunction granted on or after 5 December 1996; or
 - (ii) the activity commenced on or before 30 June 1997, the activity was not completed on or before 31 December 1997 and the failure to complete the activity is attributable to a restraining injunction granted on or after 5 December 1996.
- (2) Despite the repeal of the *Telecommunications Act 1991* by the *Telecommunications (Transitional and Consequential Amendments) Act 1997*, sections 116, 117, 118 and 119 of the *Telecommunications Act 1991* continue to apply in relation to the activity, during the transitional period, as if:
- (a) a reference in those sections to a carrier (within the meaning of the *Telecommunications Act 1991*) were a reference to a carrier (within the meaning of this Act); and

- (b) a reference in those sections to AUSTEL were a reference to the ACA; and
 - (c) a reference in section 117 of the *Telecommunications Act 1991* to paragraph 327(b) of that Act were a reference to section 486 of this Act; and
 - (d) a reference in section 117 of the *Telecommunications Act 1991* to Part 14 of that Act were a reference to Part 25 of this Act; and
 - (e) that repeal had not been made.
- (3) Divisions 2, 3 and 4 of Part 1 of this Schedule do not apply to the carrying out of the activity.
- (4) Part 1 of Schedule 1 to this Act has effect as if sections 116, 117, 118 and 119 of the *Telecommunications Act 1991* were provisions of this Act.
- (5) For the purposes of the application of this clause to a particular activity, the ***transitional period*** is:
- (a) if the activity consists of the installation of a designated overhead line—the 3-month period beginning on 1 July 1997; or
 - (b) if the activity does not consist of the installation of a designated overhead line—the 6-month period beginning on 1 July 1997.

The period referred to in paragraph (a) or (b) is extended by one day for each day on or after 1 July 1997 during the whole or part of which the activity is the subject of a restraining injunction granted on or after 5 December 1996.

- (6) In this clause:

AUSTEL means the Australian Telecommunications Authority.

designated overhead line has the same meaning as in Part 1 of this Schedule.

exempt activity has the same meaning as in the *Telecommunications Act 1991*, as in force before 1 July 1997.

injunction includes an order (however described) of a court.

Telecommunications National Code means a National Code determined under section 117 of the *Telecommunications Act 1991*.

59 Continued application of Division 3 of Part 7 of the *Telecommunications Act 1991*—special rule where injunction restrains activity

- (1) This clause applies to an activity if:
 - (a) before 1 July 1997, a carrier (within the meaning of the *Telecommunications Act 1991*) notified under Division 3 of Part 7 of the *Telecommunications Act 1991* the carrier's intention to carry out the activity; and
 - (b) in a case where the activity consists of the installation of a designated overhead line—either:
 - (i) the activity did not commence on or before 30 June 1997 and the failure to commence the activity is attributable to a restraining injunction granted on or after 5 December 1996; or
 - (ii) the activity commenced on or before 30 June 1997, the activity was not completed on or before 30 September 1997 and the failure to complete the activity is attributable to a restraining injunction granted on or after 5 December 1996; and
 - (c) in a case where the activity does not consist of the installation of a designated overhead line—either:
 - (i) the activity did not commence on or before 30 June 1997 and the failure to commence the activity is attributable to a restraining injunction granted on or after 5 December 1996; or
 - (ii) the activity commenced on or before 30 June 1997, the activity was not completed on or before 31 December

1997 and the failure to complete the activity is attributable to a restraining injunction granted on or after 5 December 1996.

- (2) Despite the repeal of the *Telecommunications Act 1991* by the *Telecommunications (Transitional and Consequential Amendments) Act 1997*, Division 3 of Part 7 of the *Telecommunications Act 1991* continues to apply in relation to the activity, during the transitional period, as if:
 - (a) a reference in that Division to a carrier (within the meaning of the *Telecommunications Act 1991*) were a reference to a carrier (within the meaning of this Act); and
 - (b) a reference in that Division to AUSTEL were a reference to the ACA; and
 - (c) that repeal had not been made.
- (3) Divisions 2, 3 and 4 of Part 1 of this Schedule do not apply to the carrying out of the activity.
- (4) Part 1 of Schedule 1 to this Act has effect as if the provisions of Division 3 of Part 7 of the *Telecommunications Act 1991* were provisions of this Act.
- (5) For the purposes of the application of this clause to a particular activity, the ***transitional period*** is:
 - (a) if the activity consists of the installation of a designated overhead line—the 3-month period beginning on 1 July 1997; or
 - (b) if the activity does not consist of the installation of a designated overhead line—the 6-month period beginning on 1 July 1997.The period referred to in paragraph (a) or (b) is extended by one day for each day on or after 1 July 1997 during the whole or part of which the activity is the subject of a restraining injunction granted on or after 5 December 1996.
- (6) In this clause:

AUSTEL means the Australian Telecommunications Authority.

designated overhead line has the same meaning as in Part 1 of this Schedule.

injunction includes an order (however described) of a court.

60 Existing buildings, structures and facilities—application of State and Territory laws

A law of a State or Territory that relates to:

(a) the standards applicable to:

(i) the design; or

(ii) the manner of the construction;
of a building, structure or facility; or

(b) the approval of the construction of a building, structure or facility; or

(c) the occupancy, or use, of a building, structure or facility; or

(d) the alteration or demolition of a building, structure or facility;
does not apply to a building, structure or facility that is owned or operated by a carrier to the extent that the construction, alteration or demolition of the building, structure or facility was or is authorised by:

(e) section 116 of the *Telecommunications Act 1991*; or

(f) Division 3 of Part 7 of the *Telecommunications Act 1991*; or

(g) a repealed law of the Commonwealth.

61 Existing buildings, structures and facilities—application of the common law

A rule of the common law that relates to trespass does not apply to the continued existence of a building, structure or facility that is owned or operated by a carrier to the extent that the construction or alteration of the building, structure or facility was or is authorised by:

- (a) section 116 of the *Telecommunications Act 1991*; or
- (b) Division 3 of Part 7 of the *Telecommunications Act 1991*; or
- (c) a repealed law of the Commonwealth.

Schedule 4—Reviewable decisions of the ACA

Note: See sections 555 and 556.

Part 1—Decisions that may be subject to reconsideration by the ACA

1 Reviewable decisions of the ACA

The following kinds of decisions are specified for the purposes of section 555:

- (a) a decision under section 56, 58 or 59 to refuse to grant a carrier licence;
- (b) a decision under section 69 to:
 - (i) give or vary a direction; or
 - (ii) refuse to revoke a direction;
- (c) a decision under section 72 to cancel a carrier licence;
- (d) a decision of a kind referred to in subsection 73(6) (which deals with remission of late payment penalty);
- (e) a decision under section 81 to refuse to make a nominated carrier declaration;
- (f) a decision under section 83 to revoke a nominated carrier declaration;
- (g) a decision of a kind referred to in subsection 99(5) (which deals with decisions under service provider determinations);
- (h) a decision under section 102 to:
 - (i) give or vary a direction; or
 - (ii) refuse to revoke a direction;
- (i) a decision under section 117 to refuse to register a code;

- (j) a decision under section 121 to:
 - (i) give or vary a direction; or
 - (ii) refuse to revoke a direction;
- (k) a decision under section 247 to refuse to make a declaration;
- (l) a decision under section 248 to give a direction;
- (m) a decision under section 253 to refuse to make a declaration;
- (n) a decision under section 352 to refuse to make a declaration;
- (o) a decision under section 356 to refuse to make a declaration;
- (p) a decision under section 394 to refuse to issue a connection permit;
- (q) a decision to make a declaration under section 397 (which deals with duration of connection permits);
- (r) a decision under paragraph 398(1)(c) or subsection 398(3) to specify, impose, vary or revoke a condition of a connection permit;
- (s) a decision under section 402 to cancel a connection permit;
- (t) a decision under section 427 to refuse to grant a cabling licence;
- (u) a decision under section 432 to specify, impose, vary or revoke a condition of a cabling licence;
- (v) a decision under section 438 to cancel a cabling licence;
- (w) a decision of a kind referred to in subsection 468(6) (which deals with remission of late payment penalty);
- (x) a decision under subsection 468(10) (which deals with the withdrawal of numbers);
- (y) a decision under clause 34 of Schedule 3 to cancel a facility installation permit;
- (z) a decision under clause 55 of Schedule 3 to:
 - (i) give or vary a direction; or
 - (ii) refuse to revoke a direction.

Part 2—Decisions to which section 556 does not apply

2 Decisions to which section 556 does not apply

The following kinds of decisions are specified for the purposes of subsection 556(1):

- (a) a decision under section 56 or 58 to refuse to grant a carrier licence;
- (b) a decision under section 427 to refuse to grant a cabling licence;
- (c) a decision under subsection 432(3) to impose, vary or revoke a condition of a cabling licence, being a decision on an application made under paragraph 433(1)(b).