



# **Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997**

**Act No. 59 of 1997 as amended**

This compilation was prepared on 28 September 2011 taking into account amendments up to Act No. 100 of 2011

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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**An Act to enact transitional provisions, and to make consequential amendments, in connection with the enactment of the *Telecommunications Act 1997*, and for other purposes**

**Part 1—Preliminary**

**1 Short title** [see Note 1]

This Act may be cited as the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*.

**2 Commencement** [see Note 1]

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) The following provisions commence on 1 July 1997:
  - (a) Part 2;
  - (b) Part 3 (other than Divisions 1, 2, 3, 4, 13, 14, 15, 16 and 23);
  - (c) Part 4;
  - (d) Schedule 1;
  - (e) Schedule 2;
  - (f) Schedule 5.
- (3) Schedule 3 commences on the commencement of the *Commonwealth Authorities and Companies Act 1997*.
- (4) Schedule 4 commences on the commencement of the *Financial Management and Accountability Act 1997*.
- (5) If the *Broadcasting Services Amendment Act 1997* does not commence before 1 July 1997, the amendments of section 171 of the *Broadcasting Services Act 1992* made by this Act commence immediately after the commencement of the *Broadcasting Services Amendment Act 1997*.
- (6) If the *Legislative Instruments Act 1997* does not commence before 1 July 1997, the amendments of that Act made by this Act

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commence immediately after the commencement of the *Legislative Instruments Act 1997*.

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2        *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*

## **Part 2—Repeals**

### **3 Repeals**

Each Act that is specified in Schedule 5 to this Act is repealed.

### **4 Compensation—constitutional safety net**

- (1) If:
- (a) apart from this section, the operation of this Part 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.

*Federal Court* means the Federal Court of Australia.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**Part 3** Transitional

**Division 1** Transitional provisions relating to the merger of AUSTEL and the SMA

Section 5

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## **Part 3—Transitional**

### **Division 1—Transitional provisions relating to the merger of AUSTEL and the SMA**

#### **5 Definitions**

In this Division, unless the contrary intention appears:

*ACA* means the Australian Communications Authority.

*asset* means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

*AUSTEL* means the Australian Telecommunications Authority.

*instrument* includes a document.

*liability* means any liability, duty or obligation, whether actual, contingent or prospective.

*merging time* means the beginning of 1 July 1997.

*SMA* means the Spectrum Management Agency established under the *Radiocommunications Act 1992*, as in force immediately before the merging time.

#### **6 Transfer of assets to the ACA**

- (1) This section applies to an asset of the Commonwealth that is used, or proposed to be used, by the SMA.
- (2) The Minister may cause to be transferred to the ACA any asset that the Minister considers appropriate to be transferred to the ACA for the performance of its functions and the exercise of its powers.

- (3) Subsection (2) does not prevent the Commonwealth from transferring an asset to the ACA otherwise than under that subsection.
- (4) If an asset is transferred to the ACA under subsection (2), the Minister may, by writing, declare that a specified instrument relating to the asset continues to have effect after the transfer as if a reference in the instrument to the Commonwealth were a reference to the ACA.

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

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

### **7 Re-transfer of assets**

- (1) This section applies to an asset that was transferred to the ACA under subsection 6(2).
- (2) The Minister may, by writing, make any or all of the following declarations:
  - (a) a declaration that a specified asset vests in the Commonwealth at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in the Commonwealth as if a reference in the instrument to the ACA were a reference to the Commonwealth;
  - (c) a declaration that the Commonwealth becomes the ACA's successor in law in relation to a specified asset immediately after the asset vests in the Commonwealth.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (3) A declaration under subsection (2) has effect accordingly.
- (4) A time specified under subsection (2) must be before 1 January 1998.

### **8 Transfer of liabilities to the ACA**

- (1) This section applies to a liability of the Commonwealth that relates to the SMA.
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**Part 3** Transitional

**Division 1** Transitional provisions relating to the merger of AUSTEL and the SMA

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- (2) The Minister may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of the ACA at the merging time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the ACA as if a reference in the instrument to the Commonwealth were a reference to the ACA;
  - (c) a declaration that the ACA becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of the ACA.

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

- (3) A declaration under subsection (2) has effect accordingly.

**9 Re-transfer of liabilities**

- (1) This section applies to a liability that became a liability of the ACA under section 8.
- (2) The Minister may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified liability ceases to be a liability of the ACA and becomes a liability of the Commonwealth at a specified time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the Commonwealth as if a reference in the instrument to the ACA were a reference to the Commonwealth;
  - (c) a declaration that the Commonwealth becomes the ACA's successor in law in relation to a specified liability immediately after the liability becomes a liability of the Commonwealth.
- (3) A declaration under subsection (2) has effect accordingly.

- (4) A time specified under subsection (2) must be before 1 January 1998.

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

## **10 Transfers of land may be registered**

- (1) This section applies if:
- (a) any right, title or interest in particular land vests in the Commonwealth under section 7; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the land; and
    - (iii) states that the right, title or interest has become vested in the Commonwealth under section 7.
- (2) The land registration official may:
- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.
- (3) A document that appears to be a certificate under subsection (1) is to be taken to be such a certificate, and to have been properly given, unless the contrary is established.

## **11 This Division does not modify registers kept by land registration officials**

This Division, in so far as it provides for the interpretation of references in other instruments, does not modify any register kept by a land registration official under a law of a State or Territory.

## **12 Exemption from stamp duty and other taxes**

- (1) In this section:

*exempt matter* means the transfer of an asset or liability under this Division.

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**Division 1** Transitional provisions relating to the merger of AUSTEL and the SMA

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- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
  - (a) an exempt matter; or
  - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

**13 Lands Acquisition Act does not apply to this Division**

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Division.

**14 References in instruments to the SMA become references to the ACA**

- (1) For the purposes of this section, an *eligible instrument* is an instrument that:
  - (a) was in force immediately before the merging time; and
  - (b) contains a reference to the SMA or the Spectrum Manager.
- (2) The Minister may, by writing, declare that a specified eligible instrument has effect as if each reference in the instrument to the SMA, or to the Spectrum Manager, as the case may be, were a reference to the ACA, or to the Chairman of the ACA, as the case requires.

Note: An instrument may be specified by name, by inclusion in a specified class or in any other way.
- (3) A declaration under subsection (2) has effect accordingly.

**15 Transfer of SMA records to the ACA**

- (1) This section applies to any records or documents that were in the possession of the Spectrum Manager immediately before the merging time and that relate to the SMA.
- (2) The records and documents are to be transferred to the ACA after the merging time.



**16 Acts of the SMA to be attributed to the ACA etc.**

- (1) This section applies to anything done by, or in relation to, the SMA under the *Radiocommunications Act 1992* before the merging time.
- (2) The *Radiocommunications Act 1992* has effect, after the merging time, as if the thing had been done by, or in relation to, the ACA.
- (3) The following are examples of things done by the SMA:
  - (a) licences issued under the *Radiocommunications Act 1992*;
  - (b) permits issued under the *Radiocommunications Act 1992*.
- (4) The following are examples of things done in relation to the SMA:
  - (a) applications for licences under the *Radiocommunications Act 1992*;
  - (b) applications for permits under the *Radiocommunications Act 1992*.

**17 Pending proceedings—Commonwealth a party**

- (1) This section applies to proceedings to which the Commonwealth was a party and that:
  - (a) were pending in any court or tribunal immediately before the merging time; and
  - (b) related to the SMA.
- (2) After the merging time, the ACA is, by force of this section, substituted for the Commonwealth as a party to the proceedings.

**18 Pending proceedings—Spectrum Manager a party**

- (1) This section applies to proceedings to which the Spectrum Manager was a party and that were pending in any court or tribunal immediately before the merging time.
- (2) If the proceedings relate to a thing done by the Spectrum Manager in the name of, or on behalf of, the SMA, then, after the merging time, the ACA is, by force of this section, substituted for the Spectrum Manager as a party to the proceedings.
- (3) If the proceedings do not relate to a thing done by the Spectrum Manager in the name of, or on behalf of, the SMA, then, after the

**Part 3** Transitional

**Division 1** Transitional provisions relating to the merger of AUSTEL and the SMA

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merging time, the Chairman of the ACA is, by force of this section, substituted for the Spectrum Manager as a party to the proceedings.

**19 Investigations**

Despite the repeal of Part 15 of the *Telecommunications Act 1991* (the *1991 Act*) by this Act, Part 15 continues to apply, after the merging time, in relation to a matter:

- (a) of a kind referred to in section 333 of the 1991 Act; and
- (b) that arose before the merging time;

as if:

- (c) that Part had not been repealed; and
- (d) each reference in that Part to AUSTEL were a reference to the ACA; and
- (e) sections 343 and 344 of the 1991 Act had not been enacted.

**20 Public inquiries**

Despite the repeal of Part 14 of the *Telecommunications Act 1991* (the *1991 Act*) by this Act, if, before the merging time:

- (a) a requirement arose for AUSTEL to hold a public inquiry under that Part, but that inquiry had not begun; or
- (b) AUSTEL began to hold a public inquiry under that Part, but that inquiry had not been completed;

that Part continues to apply, after the merging time, in relation to that inquiry, as if:

- (c) that Part had not been repealed; and
- (d) each reference in that Part to AUSTEL were a reference to the ACA; and
- (e) each reference in that Part to the Chairperson were a reference to the Chairman of the ACA.

**21 Transfer of Ombudsman investigations**

If:

- (a) before the merging time, a complaint was made to the Ombudsman, or the Ombudsman began an investigation, under the *Ombudsman Act 1976* in relation to action taken by the SMA; and

- (b) immediately before the merging time, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;  
the *Ombudsman Act 1976* applies after the merging time as if that action had been taken by the ACA.

## 22 Committees

- (1) This section applies to a committee (an *old committee*) that was:
- (a) established under section 53 of the *Telecommunications Act 1991* (the *1991 Act*); or
  - (b) established under section 240 of the *Radiocommunications Act 1992* (the *1992 Act*);
- and that was in existence immediately before the merging time.
- (2) The *Australian Communications Authority Act 1997* (the *ACA Act*) has effect, after the merging time, as if:
- (a) each old committee had been established by the ACA under section 51 of the ACA Act immediately after the merging time; and
  - (b) each appointment that was in force under:
    - (i) section 53 of the 1991 Act; or
    - (ii) section 240 of the 1992 Act;as the case may be, immediately before the merging time, had been made under section 51 of the ACA Act immediately after the merging time; and
  - (c) each direction that was in force under:
    - (i) section 53 of the 1991 Act; or
    - (ii) section 240 of the 1992 Act;as the case may be, immediately before the merging time had been given under section 51 of the ACA Act immediately after the merging time.
- (3) If an old committee was established under section 53 of the 1991 Act, then, after the merging time, a reference in the instrument establishing the committee to AUSTEL is taken to be a reference to the ACA.
- (4) If an old committee was established under section 240 of the 1992 Act, then, after the merging time, a reference in the instrument

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**Division 1** Transitional provisions relating to the merger of AUSTEL and the SMA

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establishing the committee to the SMA is taken to be a reference to the ACA.

- (5) Before 30 June 1998, the ACA must review the continued existence of each old committee.

**23 Protected name and protected symbol**

- (1) Despite the repeal of the *Telecommunications Act 1991* (the **1991 Act**) by this Act, section 402A of that Act continues to apply, after the merging time, in relation to a protected name and the protected symbol, until the end of:
- (a) 12 months after the merging time; or
  - (b) if a longer period is specified in the regulations—that longer period;
- as if:
- (c) the 1991 Act had not been repealed; and
  - (d) the reference in subsection 402A(1) of that Act to AUSTEL were a reference to the ACA.
- (2) The Governor-General may make regulations for the purposes of paragraph (1)(b).

**24 Annual report**

- (1) The ACA must, as soon as practicable after the merging time, prepare and give to the Minister a report of the SMA's operations during the financial year ending on 30 June 1997.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sittings days of the House after the Minister received the report.

**25 Delegation**

- (1) The Minister may, by writing, delegate to:
- (a) the Secretary to the Department; or
  - (b) an SES employee, or acting SES employee, in the Department;
- all or any of the powers conferred on the Minister by this Division.

- (2) The delegate is, in the exercise of the power delegated under subsection (1), subject to the directions of the Minister.

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**Division 2** Transitional provisions relating to the transfer of competition policy resources from AUSTEL to the ACCC

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**Division 2—Transitional provisions relating to the transfer of competition policy resources from AUSTEL to the ACCC**

**26 Definitions**

In this Division, unless the contrary intention appears:

*ACA* means the Australian Communications Authority.

*ACCC* means the Australian Competition and Consumer Commission.

*asset* means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

*AUSTEL* means the Australian Telecommunications Authority.

*instrument* includes a document.

*liability* means any liability, duty or obligation, whether actual, contingent or prospective.

*merging time* means the beginning of 1 July 1997.

**27 Transfer of AUSTEL assets**

- (1) This section applies to an asset of AUSTEL.
- (2) The Minister may cause to be transferred to the Commonwealth any asset that the Minister considers appropriate to be transferred to the Commonwealth for purposes in connection with the performance of the ACCC's telecommunications functions and the exercise of the ACCC's telecommunications powers.
- (3) Subsection (2) does not prevent AUSTEL from transferring an asset to the Commonwealth otherwise than under that subsection.

- (4) If an asset is transferred to the Commonwealth under subsection (2), the Minister may, by writing, declare that a specified instrument relating to the asset continues to have effect after the transfer as if a reference in the instrument to AUSTEL were a reference to the Commonwealth.

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

- (5) A declaration under subsection (4) has effect accordingly.
- (6) In this section:

*ACCC's telecommunications functions and powers* has the same meaning as in the *Telecommunications Act 1997*.

## 28 Re-transfer of assets

- (1) This section applies to an asset that was transferred to the Commonwealth under subsection 27(2).
- (2) The Minister may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified asset vests in the ACA at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in the ACA as if a reference in the instrument to the Commonwealth were a reference to the ACA;
  - (c) a declaration that the ACA becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in the ACA.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (3) A declaration under subsection (2) has effect accordingly.
- (4) A time specified under subsection (2) must be before 1 January 1998.

## 29 Transfer of AUSTEL liabilities

- (1) This section applies to a liability of AUSTEL.
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**Division 2** Transitional provisions relating to the transfer of competition policy resources from AUSTEL to the ACCC

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- (2) The Minister may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified liability ceases to be a liability of AUSTEL and becomes a liability of the Commonwealth at the merging time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the Commonwealth as if a reference in the instrument to AUSTEL were a reference to the Commonwealth;
  - (c) a declaration that the Commonwealth becomes AUSTEL's successor in law in relation to a specified liability immediately after the liability becomes a liability of the Commonwealth.

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

- (3) A declaration under subsection (2) has effect accordingly.

**30 Re-transfer of liabilities**

- (1) This section applies to a liability that became a liability of the Commonwealth under section 29.
- (2) The Minister may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of the ACA at a specified time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the ACA as if a reference in the instrument to the Commonwealth were a reference to the ACA;
  - (c) a declaration that the ACA becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of the ACA.

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



- (3) A declaration under subsection (2) has effect accordingly.
- (4) A time specified under subsection (2) must be before 1 January 1998.

### **31 Transfers of land may be registered**

- (1) This section applies if:
  - (a) any right, title or interest in particular land vests in the ACA under section 28; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the land; and
    - (iii) states that the right, title or interest has become vested in the ACA under section 28.
- (2) The land registration official may:
  - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.
- (3) A document that appears to be a certificate under subsection (1) is to be taken to be such a certificate, and to have been properly given, unless the contrary is established.

### **32 This Division does not modify registers kept by land registration officials**

This Division, in so far as it provides for the interpretation of references in other instruments, does not modify any register kept by a land registration official under a law of a State or Territory.

### **33 Exemption from stamp duty and other taxes**

- (1) In this section:  
  
*exempt matter* means the transfer of an asset or liability under this Division.

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- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
  - (a) an exempt matter; or
  - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

**34 Lands Acquisition Act does not apply to this Division**

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Division.

**35 Delegation**

- (1) The Minister may, by writing, delegate to:
  - (a) the Secretary to the Department; or
  - (b) an SES employee, or acting SES employee, in the Department;all or any of the powers conferred on the Minister by this Division.
- (2) The delegate is, in the exercise of the power delegated under subsection (1), subject to the directions of the Minister.

### **Division 3—Transitional provisions relating to the telecommunications access regime**

#### **36 Modified application of Part XIC of the *Trade Practices Act 1974* before 1 July 1997**

Before 1 July 1997, Part XIC of the *Trade Practices Act 1974* has effect as if:

- (a) a reference in that Part to a carrier were a reference to a carrier (within the meaning of the *Telecommunications Act 1991*); and
- (b) a reference in section 87 of the *Telecommunications Act 1997* to a carrier were a reference to a carrier (within the meaning of the *Telecommunications Act 1991*).

#### **37 Phase-out of arbitrations under section 154 of the *Telecommunications Act 1991***

- (1) This section applies to a matter submitted under section 154 of the *Telecommunications Act 1991* to AUSTEL for arbitration (whether submitted before or after the commencement of this section).
- (2) If AUSTEL is satisfied that a matter corresponding to the first-mentioned matter could be the subject of a notification under section 152CM of the *Trade Practices Act 1974*, AUSTEL may terminate, or refuse to conduct, the arbitration.
- (3) Subsection (2) has effect despite anything in the *Telecommunications Act 1991*.
- (4) In this section:

*AUSTEL* means the Australian Telecommunications Authority.

#### **38 Recognition of pre-1 July 1997 consultations by the Telecommunications Access Forum**

- (1) If:
  - (a) within 28 days after the commencement of this section, a body or association is declared under section 152AI of the

*Trade Practices Act 1974* to be the Telecommunications Access Forum for the purposes of Part XIC of that Act; and

- (b) before the declaration was made, the body or association carried out a process of consultation on a draft code; and
- (c) the process may reasonably be regarded as equivalent to the process set out in paragraph 152BF(a) of that Act that would otherwise have applied in relation to that code;

the body or association is taken to have complied with that paragraph in relation to that code.

(2) If:

- (a) within 28 days after the commencement of this section, a body or association is declared under section 152AI of the *Trade Practices Act 1974* to be the Telecommunications Access Forum for the purposes of Part XIC of that Act; and
- (b) before the declaration was made, the body or association carried out a process of consultation on a draft code; and
- (c) the process may reasonably be regarded as equivalent to the process set out in paragraph 152BF(b) of that Act that would otherwise have applied in relation to that code;

the body or association is taken to have complied with that paragraph in relation to that code.

### **39 Services covered by pre-commencement access agreements etc.**

- (1) As soon as practicable after this section commences, but, in any event, before 1 July 1997, the ACCC must prepare a written statement specifying each eligible service that was covered by an access agreement registered under section 144 of the *Telecommunications Act 1991* as at the beginning of 13 September 1996.
- (2) Despite subsection (1), the ACCC is not required by that subsection to specify a particular service in the statement if the ACCC is satisfied that specifying the service would not promote the long-term interests of end-users of the service or of services supplied by means of the service.
- (3) For the purposes of subsection (2), the question whether a particular thing promotes the long-term interests of end-users of

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*.

- (4) Despite subsection (1), the ACCC must not specify a service if:
  - (a) the service is supplied using an AMPS network; and
  - (b) the ACCC is satisfied that the specification of the service would be inconsistent with the policies embodied in Part 19 of the *Telecommunications Act 1997*.
- (5) The ACCC must also specify in the statement an eligible service that is:
  - (a) necessary for the purposes of enabling the supply of a broadcasting service by means of line links that deliver signals to end-users; and
  - (b) of a kind that was used for those purposes on 13 September 1996.
- (6) If the registration of an access agreement, or a variation of an access agreement, under section 144 of the *Telecommunications Act 1997* occurs during the period:
  - (a) beginning on 13 September 1996; and
  - (b) ending at the end of 30 June 1997;the ACCC may also specify in the statement an eligible service that was covered by the access agreement or by the variation, as the case requires.
- (7) The ACCC must consult AUSTEL about the preparation or variation of the statement.
- (8) The ACCC must not prepare or vary the statement unless the ACCC has first:
  - (a) published a draft of the statement or variation and invited people to make submissions to the ACCC on the draft; and
  - (b) considered any submissions that were received within the time limit specified by the ACCC when it published the draft.
- (9) A copy of the statement, and of any variation of the statement, is to be published in the *Gazette*.
- (10) Part XIC of the *Trade Practices Act 1974* has effect, in relation to an eligible service specified in the statement, as if the ACCC had:

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- (a) made an instrument under subsection 152AL(3) of that Act declaring the service to be a declared service; and
  - (b) complied with the requirements set out in subsection 152AL(3) of that Act in relation to the instrument.
- (11) This section does not prevent the instrument referred to in paragraph (10)(a) from being varied or revoked by the ACCC in accordance with section 152AO of the *Trade Practices Act 1974*.
- (12) Despite anything in the *Telecommunications Act 1991*, the ACCC is entitled to inspect, make copies of, or take extracts from, any part of the register referred to in section 144 of that Act for a purpose relating to the exercise of the ACCC's powers under this section.
- (13) For the purposes of this section, it is to be assumed that Part 19 of the *Telecommunications Act 1997* had commenced at the commencement of this section.
- (14) An express reference in subsection (6) to a variation of an access agreement does not imply that references in other provisions of this Part to access agreements do not include references to access agreements as varied by variations of those agreements.
- (15) In this section:

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

**access agreement** has the same meaning as in the *Telecommunications Act 1991*.

**AMPS** means the Advanced Mobile Phone System.

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

**AUSTEL** means the Australian Telecommunications Authority.

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

**eligible service** has the same meaning as in section 152AL of the *Trade Practices Act 1974*.

*line link* has the same meaning as in the *Telecommunications Act 1997*.

#### **40 Certain mobile services supplied by Telstra**

- (1) This section applies to an eligible service if, immediately before 1 July 1997, Telstra was obliged, by clause 4.1 of its public mobile licence, to supply the service on request.
- (2) In determining, for the purposes of Part XIC of the *Trade Practices Act 1974*, whether a standard access obligation is imposed on Telstra before 1 January 2000 in relation to the service in a case where the access seeker is an existing mobile licensee, that Part has effect as if the service were a declared service.
- (3) This section does not prevent the service from being declared by the ACCC under section 152AL of the *Trade Practices Act 1974* to be a declared service.
- (4) In this section:

*ACCC* means the Australian Competition and Consumer Commission.

*access seeker* has the same meaning as in Part XIC of the *Trade Practices Act 1974*.

*eligible service* has the same meaning as in section 152AL of the *Trade Practices Act 1974*.

*existing mobile licensee* means a person who held a public mobile licence immediately before 1 July 1997.

*public mobile licence* has the same meaning as in the *Telecommunications Act 1991*.

*standard access obligation* has the same meaning as in Part XIC of the *Trade Practices Act 1974*.

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

#### **41 Certain connection obligations to continue in force**

- (1) If:
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- (a) immediately before 17 March 1997, an eligible service was connected to a telecommunications network operated by an existing carrier; and
  - (b) the connection was in fulfilment of the carrier's obligations under section 234 of the *Telecommunications Act 1991*; and
  - (c) during the transitional period, a service provider who wishes to supply an eligible service (the *eligible carriage service*) gives the existing carrier a request to connect the eligible carriage service to the network; and
  - (d) the network will need to be used in the supply of the eligible carriage service; and
  - (e) at the time of the request, the existing carrier is a carrier (within the meaning of the *Telecommunications Act 1997*);  
the carrier must connect the eligible carriage service.
- (2) The carrier must comply with subsection (1) on such terms and conditions as are specified in a written determination made by the ACCC.
- (3) The first determination under subsection (2) must be made before 1 July 1997.
- (4) The terms and conditions specified in a determination under subsection (2) must be reasonable.
- (5) Section 152AH of the *Trade Practices Act 1974* applies for the purposes of this section in a corresponding way to the way in which it applies for the purposes of Part XIC of that Act.
- (6) The carrier does not contravene its obligation under subsection (1) to connect a service to a network if the connection is delayed:
- (a) for a period that:
    - (i) is reasonable in the circumstances; and
    - (ii) is not substantially longer than the delay normally experienced for connection of a service of that type, and in that locality, to the network; or
  - (b) because a connection of the eligible carriage service is not technically feasible; or
  - (c) for reasons beyond the carrier's control.
- (7) This section does not impose an obligation on the carrier if there are reasonable grounds to believe that the service provider would
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fail, to a material extent, to comply with the terms and conditions on which the carrier complies, or on which the carrier is reasonably likely to comply, with that obligation.

- (8) Examples of grounds for believing as mentioned in subsection (7) include:
- (a) evidence that the service provider is not creditworthy; and
  - (b) repeated failures by the service provider to comply with the terms and conditions on which the same or a similar connection has been provided (whether or not by the carrier).
- (9) This section does not impose an obligation on a carrier after the end of the transitional period.
- (10) Part 1 of Schedule 1 to the *Telecommunications Act 1997* has effect as if subsection (1) of this section were a section of the *Telecommunications Act 1997*.
- (11) A reference in this section to **connecting a service to a network** includes a reference to connecting to the network a facility used in connection with the supply of the service.
- (12) In this section, unless the contrary intention appears:

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

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

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

**connect** means:

- (a) the act of connection; or
- (b) if the connection is already established—continue the connection in existence.

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

**eligible service** has the same meaning as in section 18 of the *Telecommunications Act 1991*, as in force before 1 July 1997.

**existing carrier** means a person who held a general telecommunications licence, or a public mobile licence, that was in force under the *Telecommunications Act 1991* immediately before 1 July 1997.

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

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

**transitional period** means the period:

- (a) beginning on 1 July 1997; and
- (b) ending at the end of 31 December 1997 or such later date as the ACCC determines in writing.

#### 42 Compensation—constitutional safety-net

(1) If:

- (a) apart from this section, the operation of section 41 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 of Australia 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.

#### **43 Selection—transitional arrangements**

- (1) A person is not entitled to make a request under section 41 unless the person has given the ACCC, before 1 July 1997, a written notice reserving the person's right to make such a request.
- (2) If a person gives the ACCC, before 1 July 1997, a written notice reserving the person's right to make a request under section 41, section 46 does not apply to the person in the person's capacity as an access seeker referred to in section 46.
- (3) In this section:

*ACCC* means the Australian Competition and Consumer Commission.

#### **44 Registration of pre-commencement access agreements**

- (1) This section applies to an access agreement that was registered under section 144 of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) Division 9 of Part XIC of the *Trade Practices Act 1974* has effect, on and after 1 July 1997, as if:
  - (a) the agreement were an agreement to which that Division applies; and
  - (b) the ACCC had registered the agreement under that Division at the beginning of 1 July 1997; and
  - (c) the ACCC had complied with the requirements set out in subsections 152ED(1) and (2) of the *Trade Practices Act 1974* in relation to the registration.
- (3) The repeal of the *Telecommunications Act 1991* does not affect the continuity of the agreement.
- (4) This section does not prevent the parties to the agreement from varying or terminating the agreement.
- (5) Despite the repeal of the *Telecommunications Act 1991* by this Act, paragraph 236(1)(c) and section 238 of that Act continue to apply in relation to the agreement, until the end of the period ending at the end of 31 December 1997, as if that repeal had not been made.

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- (6) The ACCC may, by written instrument, extend the period mentioned in subsection (5) for the purposes of the application of subsection (5) to a specified agreement, so long as the extension is not longer than 90 days. This rule does not prevent the ACCC from making 2 or more successive extensions, so long as each extension is not longer than 90 days.
- (7) The ACCC must not make an instrument under subsection (6) in relation to a particular agreement unless:
- (a) a party to the agreement has notified a dispute under section 152CM of the *Trade Practices Act 1974* and:
    - (i) the matter in dispute is relevant to the agreement; and
    - (ii) the dispute (including any review in relation to a determination of the ACCC) has not been finally determined; or
  - (b) the ACCC is satisfied that the parties to the agreement are engaging in negotiations in good faith with the objective of removing any inconsistencies between the terms of the agreement and Part IV of the *Trade Practices Act 1974*.

- (8) In this section:

*ACCC* means the Australian Competition and Consumer Commission.

*access agreement* has the same meaning as in the *Telecommunications Act 1991*.

**45 Pre-1 July 1997 operation of the telecommunications access regime—references to the ACA to be read as references to AUSTEL**

- (1) Before 1 July 1997, Part XIC of the *Trade Practices Act 1974* has effect as if a reference in that Part to the ACA were a reference to AUSTEL.
- (2) Anything done by, or in relation to, AUSTEL under Part XIC of the *Trade Practices Act 1974* before 1 July 1997 has effect, on and after 1 July 1997, as if it had been done by, or in relation to, the ACA.
- (3) In this section:

*ACA* means the Australian Communications Authority.

*AUSTEL* means the Australian Telecommunications Authority.

**46 Deemed agreements with existing carriers—terms and conditions relating to standard access obligations**

(1) If:

- (a) at a time (the *determination time*) on or after 1 July 1997, a determination made by the ACCC under Division 8 of Part XIC of the *Trade Practices Act 1974* takes effect; and
- (b) the determination specifies the terms and conditions on which a carrier is to comply with a standard access obligation applicable to the carrier; and
- (c) the determination was made as a result of a dispute notified to the ACCC under subsection 152CM(1) of the *Trade Practices Act 1974* before 1 January 1998 by the carrier or by an access seeker; and
- (d) the determination was not made by way of the variation or replacement of a previous determination; and
- (e) the standard access obligation relates to the supply of a declared service specified in an instrument that the ACCC is taken to have made because of subsection 39(10); and
- (f) the carrier is a person who held a general telecommunications licence, or a public mobile licence, that was in force under the *Telecommunications Act 1991* immediately before 1 July 1997; and
- (g) the access seeker was the supplier of an eligible service (within the meaning of section 18 of the *Telecommunications Act 1991*) immediately before 19 February 1997; and
- (h) the declared service was supplied by the carrier to the access seeker, in fulfilment of the standard access obligation, at any time during the period (the *interim period*):
  - (i) beginning on 1 July 1997; and
  - (ii) ending at the determination time;

then, except for the purposes of Division 8 of Part XIC of the *Trade Practices Act 1974*:

- (i) the carrier and the access seeker are taken to have entered into an agreement about the terms and conditions on which

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the carrier is to comply with the standard access obligation in relation to the supply of the declared service; and

- (j) those terms and conditions are taken to be identical to the terms and conditions specified in the determination; and
  - (k) the carrier and the access seeker are taken to have entered into that agreement immediately before the earliest time during the interim period when the declared service was supplied as mentioned in paragraph (h); and
  - (l) that agreement is taken to expire at the determination time.
- (2) Subsection (1) has effect despite any agreement actually entered into by the carrier and the access seeker.
  - (3) A reference in subsection (1) to a *declared service* does not include a reference to a service of a kind referred to in subsection 39(5).
  - (4) If, as a result of the operation of subsection (1), any money paid by the access seeker to the carrier has been overpaid, the carrier is liable to refund the overpayment.
  - (5) An amount payable under subsection (4) is a debt due to the access seeker and may be recovered by action in a court of competent jurisdiction.
  - (6) Subsection 152DO(7) of the *Trade Practices Act 1974* has effect as if this section were a provision of Part XIC of the *Trade Practices Act 1974*.
  - (7) In this section:

*ACCC* means the Australian Competition and Consumer Commission.

*access seeker* has the same meaning as in Part XIC of the *Trade Practices Act 1974*.

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

*declared service* has the same meaning as in Part XIC of the *Trade Practices Act 1974*.

*standard access obligation* has the same meaning as in Part XIC of the *Trade Practices Act 1974*.

#### **47 Compensation—constitutional safety-net**

- (1) If:
  - (a) apart from this section, the operation of section 46 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 of Australia 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.

## Division 4—Transitional provisions relating to carrier licences

### 48 Definitions

In this Division:

*ACA* means the Australian Communications Authority.

*AUSTEL* means the Australian Telecommunications Authority.

### 49 Replacement of existing carrier licences

- (1) For the purposes of this section, an *existing carrier* is a person who held a general telecommunications licence, or a public mobile licence, that was in force under the *Telecommunications Act 1991* immediately before 5 June 1997.
- (2) The *Telecommunications Act 1997* has effect as if the ACA had granted each existing carrier a carrier licence under that Act at the beginning of 1 July 1997.
- (3) Subsection (2) does not prevent the carrier licence referred to in that subsection from being cancelled in accordance with section 72 of the *Telecommunications Act 1997*.
- (4) Section 63 of the *Telecommunications Act 1997* has effect, in relation to a carrier licence referred to in subsection (2) of this section, as if that section had commenced on 5 June 1997.
- (5) Throughout the period beginning on 5 June 1997 and ending at the end of 30 June 1997, subsection 63(8) of the *Telecommunications Act 1997* has effect, in relation to a carrier licence referred to in subsection (2) of this section, as if a reference in the first-mentioned subsection to the applicant for the licence were a reference to the existing carrier concerned.
- (6) To avoid doubt, section 64 of the *Telecommunications Act 1997* does not apply to an instrument made before 1 July 1997 under subsection 63(3) of that Act in relation to a carrier licence referred to in subsection (2) of this section.



- (7) Division 4 of Part 3 of the *Telecommunications Act 1997* has effect, in relation to an existing carrier, as if that Division had commenced on 5 June 1997.
- (8) Throughout the period beginning on 5 June 1997 and ending at the end of 30 June 1997, Division 4 of Part 3 of the *Telecommunications Act 1997* has effect as if:
  - (a) a reference in that Division to a carrier were a reference to an existing carrier; and
  - (b) a reference in that Division to the ACA were a reference to AUSTEL; and
  - (c) paragraph 78(a) of that Act had not been enacted.

### **50 AUSTEL may receive applications for carrier licences before 1 July 1997**

Throughout the period beginning on 5 June 1997 and ending at the end of 30 June 1997, a reference in sections 52 to 55 (inclusive) of the *Telecommunications Act 1997* to the ACA is to be read as a reference to AUSTEL.

Note: Sections 52 to 55 (inclusive) of the *Telecommunications Act 1997* commence on 5 June 1997—see section 2 of that Act.

### **51 Acts of AUSTEL to be attributed to ACA**

- (1) This section applies to anything done by, or in relation to, AUSTEL under the *Telecommunications Act 1997* before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect, on and after 1 July 1997, as if the thing had been done by, or in relation to, the ACA.

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**Division 5** Transitional provisions relating to technical standards under section 244 of the Telecommunications Act 1991

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**Division 5—Transitional provisions relating to technical standards under section 244 of the Telecommunications Act 1991**

**52 Technical standards to continue in force as industry standards**

- (1) This section applies to a technical standard in force under section 244 of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
  - (a) the standard had been determined by the ACA under section 123 of the *Telecommunications Act 1997* at the beginning of 1 July 1997; and
  - (b) the requirements set out in subsections 123(1) and (3) and sections 132, 133 and 134 of that Act had been satisfied in relation to the determination of the standard.
- (3) Subsection (2) does not prevent the standard referred to in that subsection from being varied or revoked in accordance with section 130 or 131, as the case may be, of the *Telecommunications Act 1997*.

## **Division 6—Transitional provisions relating to indicative performance standards**

### **53 Indicative performance standards to continue in force**

- (1) This section applies to an indicative performance standard that was in force under paragraph 38(2)(b) of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) Despite the repeal of the *Telecommunications Act 1991* by this Act, paragraph 38(2)(c) of that Act continues to apply, in relation to the standard, as if:
  - (a) a reference in section 38 of that Act to AUSTEL were a reference to the ACA; and
  - (b) that repeal had not been made.
- (3) However, the rule in subsection (2) ceases to apply to the standard if:
  - (a) a code is registered under Part 6 of the *Telecommunications Act 1997* and that code is expressed to replace the standard; or
  - (b) a standard is determined under Part 6 of the *Telecommunications Act 1997* and that Part 6 standard is expressed to replace the first-mentioned standard.

## **Division 7—Transitional provisions relating to the universal service regime**

### **Subdivision A—Certain instruments to continue in force**

#### **54 Universal service obligation—payphones at specified locations**

- (1) This section applies to a determination in force under subsection 288(2) of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
  - (a) the determination had been made under subsection 149(3) of that Act at the beginning of 1 July 1997; and
  - (b) the requirement set out in subsection 149(4) of that Act had been complied with in relation to the making of the determination.

#### **55 National universal service provider**

- (1) This section applies to a declaration that:
  - (a) was in force under subsection 290(1) of the *Telecommunications Act 1991* immediately before 1 July 1997; and
  - (b) declared a person to be the universal service carrier for Australia.
- (2) The *Telecommunications Act 1997* has effect as if:
  - (a) the declaration were a declaration under subsection 150(1) of that Act stating that the person is the national universal service provider; and
  - (b) the declaration had been made immediately before 1 July 1997.
- (3) For the purposes of this section, it is to be assumed that section 150 of the *Telecommunications Act 1997* had commenced immediately before 1 July 1997.

## **56 Regional universal service provider**

- (1) This section applies to a declaration that:
  - (a) was in force under subsection 290(2) of the *Telecommunications Act 1991* immediately before 1 July 1997; and
  - (b) declared a person to be the universal service carrier for a particular area.
- (2) The *Telecommunications Act 1997* has effect as if:
  - (a) the declaration were a declaration under subsection 150(2) of that Act stating that the person is the regional universal service provider for that area; and
  - (b) the declaration had been made immediately before 1 July 1997.
- (3) For the purposes of this section, it is to be assumed that section 150 of the *Telecommunications Act 1997* had commenced immediately before 1 July 1997.

## **57 Directions about declaring net cost areas**

- (1) This section applies to a direction in force under section 295 of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if the direction had been given to the ACA under section 182 of that Act at the beginning of 1 July 1997.

## **58 Determinations about working out net universal service costs**

- (1) This section applies to a determination in force under section 302 of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
  - (a) the determination had been made under section 189 of that Act at the beginning of 1 July 1997; and
  - (b) each reference in the determination to subsection 301(2) of the *Telecommunications Act 1991* were a reference to subsection 186(2) of the *Telecommunications Act 1997*; and

- (c) the requirements of subsections 189(2) and (3) of the *Telecommunications Act 1997* had been satisfied in relation to the making of the determination.

### **59 Revocation and variation of instruments**

This Subdivision does not prevent the revocation or variation of an instrument.

## **Subdivision B—Phase-out of former universal service regime**

### **60 Phase-out of former universal service regime**

- (1) Despite the repeal of the *Telecommunications Act 1991* by this Act, Part 13 of that Act continues to apply, on and after 1 July 1997, in relation to:
  - (a) levy, and levy debit balances, in relation to a financial year ending on or before 30 June 1997; and
  - (b) payments under section 325 of that Act, and levy credit balances, in relation to a financial year ending on or before 30 June 1997;as if:
  - (c) that repeal had not been made; and
  - (d) each reference in that Part to AUSTEL were a reference to the ACA; and
  - (e) a general telecommunications licence, or a public mobile licence, in force under that Act as at the end of 30 June 1997 had remained in force after 30 June 1997.
- (2) The repeal of the *Telecommunications (Universal Service Levy) Act 1991* by this Act does not affect the application of that Act to:
  - (a) levy, and levy debit balances, in relation to a financial year that ended on or before 30 June 1997; and
  - (b) a declaration under subsection 4(1) of that Act that was in force at any time before 1 July 1997.

## **Division 8—Transitional provisions relating to the chart of accounts and the cost allocation manual**

### **63 Chart of accounts and cost allocation manual to remain binding until record-keeping rules made**

- (1) This section applies to a person if:
  - (a) the person was a carrier (within the meaning of the *Telecommunications Act 1991* (the **1991 Act**)) immediately before 1 July 1997; and
  - (b) a chart of accounts or cost allocation manual was binding on the person under the 1991 Act immediately before 1 July 1997.
- (2) Despite the repeal of the 1991 Act by this Act, the COACAM provisions of the 1991 Act continue to apply, in relation to the person, during the interim period, as if:
  - (a) the COACAM provisions had not been repealed; and
  - (b) each reference in the COACAM provisions to AUSTEL were a reference to the ACCC; and
  - (c) each reference in the COACAM provisions to a carrier (within the meaning of the 1991 Act) were a reference to a carrier (within the meaning of the *Telecommunications Act 1997*).
- (3) Anything done by AUSTEL in relation to the person under the COACAM provisions before the interim period, has effect, during the interim period, as if the thing had been done by the ACCC.
- (4) Part 1 of Schedule 1 to the *Telecommunications Act 1997* has effect, in relation to the person, during the interim period, as if the COACAM provisions were sections of the *Telecommunications Act 1997*.
- (5) The powers conferred by subsection 80(2) and section 82 of the 1991 Act must not be exercised in relation to the person during the interim period.
- (6) In this section:

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*ACCC* means the Australian Competition and Consumer Commission.

*AUSTEL* means the Australian Telecommunications Authority.

*COACAM provisions* means:

- (a) sections 80, 81, 82 and 83 of the 1991 Act; and
- (b) sections 85 and 87 of the 1991 Act, in so far as they relate to section 83 of the 1991 Act.

*interim period* means the period:

- (a) beginning on 1 July 1997; and
- (b) ending on the first occasion when rules are made by the ACCC under section 151BU of the *Trade Practices Act 1974*.



## **Division 9—Transitional provisions relating to the international aspects of carriers' activities**

### **64 INTELSAT and Inmarsat—policy notifications and directions to continue in force**

- (1) This section applies to a person if:
  - (a) the person was a carrier (within the meaning of the *Telecommunications Act 1991* (the **1991 Act**)) immediately before 1 July 1997; and
  - (b) a notification or direction was in force in relation to the person under section 74 of the 1991 Act immediately before 1 July 1997.
  
- (2) Despite the repeal of the 1991 Act by this Act, section 74 of the 1991 Act continues to apply, in relation to the person, during the interim period, as if:
  - (a) section 74 of the 1991 Act had not been repealed; and
  - (b) each reference in that section to a carrier (within the meaning of the 1991 Act) were a reference to a carrier (within the meaning of the *Telecommunications Act 1997*); and
  - (c) a reference in that section to a licence were a reference to a carrier licence (within the meaning of the *Telecommunications Act 1997*).
  
- (3) In this section:

***interim period*** means the period:

  - (a) beginning on 1 July 1997; and
  - (b) ending on the first occasion when a direction is given under section 365 of the *Telecommunications Act 1997*.

## **Division 10—Transitional provisions relating to cabling and customer equipment**

### **65 Continued effect of orders relating to the connection of customer cabling and customer equipment**

- (1) This section applies to a person if:
  - (a) the person was a carrier (within the meaning of the *Telecommunications Act 1991* (the **1991 Act**)) immediately before 1 July 1997; and
  - (b) the person was the subject of an order under subsection 281(6) of the 1991 Act, or of a direction under subsection 282(1) of the 1991 Act, that was in force immediately before 1 July 1997; and
  - (c) in the case of a direction given to the person under subsection 282(1) of the 1991 Act—the person has not complied with the direction before 1 July 1997.
- (2) Despite the repeal of the 1991 Act by this Act, the order and the direction continue to apply, in relation to the person, on and after 1 July 1997, as if subsection 281(6) and section 282 of the 1991 Act had not been repealed.
- (3) After 30 June 1997, the person must comply with the order or direction, as the case may be.
- (4) Part 1 of Schedule 1 to the *Telecommunications Act 1997* has effect as if subsection (3) of this section were a section of the *Telecommunications Act 1997*.
- (5) After 30 June 1997, the ACA may revoke or vary the order or direction in accordance with section 33 of the *Acts Interpretation Act 1901*.
- (6) In this section:

*ACA* means the Australian Communications Authority.

### **66 Continued effect of cabling licences**

- (1) This section applies to a licence that:
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- (a) was issued under section 271 of the *Telecommunications Act 1991*; and
  - (b) was in force immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
- (a) the licence were granted by the ACA under section 427 of the *Telecommunications Act 1997* at the beginning of 1 July 1997; and
  - (b) if a kind of cabling work to which the licence relates is a type of cabling work for the purposes of Division 9 of Part 21 of the *Telecommunications Act 1997*—the licence were a licence authorising that type of cabling work; and
  - (c) each condition of the licence included under subsection 286(2) of the *Telecommunications Act 1991* (other than a condition relating to the duration of the licence) had been specified under section 432 of the *Telecommunications Act 1997*; and
  - (d) section 427 of the *Telecommunications Act 1997* had been complied with in relation to the grant of the licence.
- (3) Subsection (2) does not prevent:
- (a) the suspension of the licence in accordance with section 437 of the *Telecommunications Act 1997*; or
  - (b) the cancellation of the licence in accordance with section 438 of the *Telecommunications Act 1997*; or
  - (c) the exercise of the powers conferred by section 432 of the *Telecommunications Act 1997* in relation to the licence.
- (4) If a period is specified in the licence as the duration of the licence, section 431 of the *Telecommunications Act 1997* has effect as if the licence had specified the last day of that period as the day of expiration of the licence.
- (5) In this section:

*ACA* means the Australian Communications Authority.

## **67 Declarations about application of cabling provisions**

- (1) This section applies to a declaration that:

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- (a) was in force under subsection 280(1) of the *Telecommunications Act 1991* immediately before 1 July 1997; and
  - (b) relates to the whole of Division 7 of Part 12 of the *Telecommunications Act 1991*.
- (2) The *Telecommunications Act 1997* has effect as if:
- (a) the declaration had been made by the ACA under subsection 439(1) of the *Telecommunications Act 1997* at the beginning of 1 July 1997; and
  - (b) a reference in the declaration to Division 7 of Part 12 of the *Telecommunications Act 1991* were a reference to Division 9 of Part 21 of the *Telecommunications Act 1997*; and
  - (c) a reference in the declaration to customer cabling (within the meaning of the *Telecommunications Act 1991*) were a reference to customer cabling (within the meaning of the *Telecommunications Act 1997*).
- (3) This section does not prevent the variation or revocation of a declaration in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (4) In this section:
- ACA** means the Australian Communications Authority.

## **Division 11—Transitional provisions relating to the protection of the confidentiality of communications**

### **68 Confidentiality of communications carried before 1 July 1997**

- (1) This section applies to information or a document that comes to a person's knowledge, or into a person's possession, if:
  - (a) the information or document relates to:
    - (i) the contents or substance of a communication that was carried before 1 July 1997; or
    - (ii) a communication in the course of telecommunications carriage, where the communication began before 1 July 1997; or
    - (iii) telecommunications services supplied, or intended to be supplied, before 1 July 1997; or
  - (b) both:
    - (i) the information or document relates to the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
    - (ii) the information or document came to the first-mentioned person's knowledge, or into the first-mentioned person's possession, before 1 July 1997.
- (2) Despite the repeal of the *Telecommunications Act 1991* by this Act, section 88 of the *Telecommunications Act 1991* continues to apply to the person, on and after 1 July 1997, in relation to the information or document.
- (3) An expression used in this section and in section 88 of the *Telecommunications Act 1991* has the same meaning in this section as it has in section 88 of the *Telecommunications Act 1991*.

### **69 Confidentiality of communications carried on or after 1 July 1997**

- (1) Part 13 of the *Telecommunications Act 1997* does not apply to information or a document that comes to a person's knowledge, or into a person's possession, unless:
    - (a) the information or document relates to:
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- (i) the contents or substance of a communication that has been carried on or after 1 July 1997; or
  - (ii) the contents or substance of a communication that is being carried on or after 1 July 1997 (including a communication that has been collected or received but has not been delivered); or
  - (iii) carriage services supplied, or intended to be supplied, on or after 1 July 1997; or
- (b) both:
- (i) the information or document relates to the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
  - (ii) the information or document came to the first-mentioned person's knowledge, or into the first-mentioned person's possession, on or after 1 July 1997.
- (2) An expression used in this section and in Part 13 of the *Telecommunications Act 1997* has the same meaning in this section as it has in Part 13 of the *Telecommunications Act 1997*.

## **Division 12—Transitional provisions relating to reviews and reports about the telecommunications industry**

### **70 Reviews and reports for the year ending on 30 June 1997**

- (1) This section applies to a review, or a report, that relates to a matter that occurred during the financial year ending on 30 June 1997.
- (2) Despite the repeal of the *Telecommunications Act 1991* by this Act, section 399 of the *Telecommunications Act 1991* continues to apply, on and after 1 July 1997, in relation to the review or report, as if:
  - (a) that repeal had not been made; and
  - (b) a reference in subsection 399(1) of the *Telecommunications Act 1991* to AUSTEL were a reference to the ACCC; and
  - (c) a reference in subsections 399(2) and (3) of the *Telecommunications Act 1991* to AUSTEL were a reference to the ACA; and
  - (d) a reference in subsection 399(4) of the *Telecommunications Act 1991* to AUSTEL, in so far as the reference relates to a report under subsection 399(1) of that Act, were a reference to the ACCC; and
  - (e) a reference in subsection 399(4) of the *Telecommunications Act 1991* to AUSTEL, in so far as the reference relates to a report under subsection 399(2) of that Act, were a reference to the ACA.

- (3) In this section:

*ACA* means the Australian Communications Authority.

*ACCC* means the Australian Competition and Consumer Commission.

*AUSTEL* means the Australian Telecommunications Authority.

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**Division 13** Transitional provisions relating to anti-competitive conduct in the telecommunications industry

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**Division 13—Transitional provisions relating to anti-competitive conduct in the telecommunications industry**

**71 Modified application of Part XIB of the *Trade Practices Act 1974* before 1 July 1997**

Before 1 July 1997, Part XIB of the *Trade Practices Act 1974* has effect as if:

- (a) a reference in that Part to a carrier were a reference to a carrier (within the meaning of the *Telecommunications Act 1991*); and
- (b) a reference in section 87 of the *Telecommunications Act 1997* to a carrier were a reference to a carrier (within the meaning of the *Telecommunications Act 1991*).



## **Division 14—Transitional provisions relating to the numbering plan**

### **72 Termination time**

For the purposes of this Division, the *termination time* is whichever is the earlier of:

- (a) the time when the first numbering plan made under section 455 of the *Telecommunications Act 1997* comes into effect; or
- (b) the beginning of 1 January 1998.

### **73 Existing numbering provisions to continue in force for a limited period**

- (1) Despite the repeal of the *Telecommunications Act 1991* by this Act, the existing numbering provisions continue to apply, until the termination time, as if:
  - (a) the existing numbering provisions had not been repealed; and
  - (b) each reference in the existing numbering provisions to a carrier (within the meaning of the *Telecommunications Act 1991*) were a reference to a carrier (within the meaning of the *Telecommunications Act 1997*); and
  - (c) each reference in the existing numbering provisions to AUSTEL were a reference to the ACA; and
  - (d) each reference in the existing numbering provisions to a telecommunications service (within the meaning of the *Telecommunications Act 1991*) were a reference to a carriage service (within the meaning of the *Telecommunications Act 1997*); and
  - (e) each reference in the existing numbering provisions to the *Telecommunications Act 1991* were a reference to the *Telecommunications Act 1997*; and
  - (f) each reference in the existing numbering provisions to a public telecommunications network (within the meaning of the *Telecommunications Act 1991*) were a reference to a telecommunications network operated by a carrier (within the meaning of the *Telecommunications Act 1997*); and

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- (g) the national numbering plan prepared under section 239 of the *Telecommunications Act 1991* were modified as set out in a determination under subsection (2) of this section.
- (2) The ACA may make a written determination for the purposes of paragraph (1)(g).
- (3) Anything done by, or in relation to, AUSTEL under the existing numbering provisions before 1 July 1997, has effect, on and after 1 July 1997, as if it had been done by, or in relation to, the ACA.
- (4) In this section:

*ACA* means the Australian Communications Authority.

*AUSTEL* means the Australian Telecommunications Authority.

*existing numbering provisions* means the following provisions of the *Telecommunications Act 1991*:

- (a) the definitions of *allocation* and *public telecommunications network* in section 5;
- (b) section 39;
- (c) section 46, to the extent to which that section relates to section 39;
- (d) Division 2 of Part 11.

*modifications* includes additions, omissions and substitutions.

**74 Modification of certain references to the numbering plan**

- (1) Until the termination time, the following provisions of the *Telecommunications Act 1997* have effect as if a reference in those provisions to the numbering plan were a reference to a determination under subsection (2) of this section:
  - (a) the definition of *emergency call service* in section 7;
  - (b) the definition of *emergency service organisation* in section 265;
  - (c) section 286.
- (2) The ACA may, by notice published in the *Gazette*, make a determination for the purposes of subsection (1).

- (3) Until the termination time, the following provisions of the *Telecommunications Act 1997* have effect as if a reference in those provisions to a number specified in the numbering plan as mentioned in subsection 455(3) of that Act were a reference to a number specified in a determination under subsection (4) of this section:
- (a) section 285;
  - (b) clause 10 of Schedule 2;
  - (c) clause 11 of Schedule 2.
- (4) The ACA may, by notice published in the *Gazette*, make a determination for the purposes of subsection (3).

### **75 Numbers taken to be allocated at the termination time**

- (1) The numbering plan may contain a declaration that a specified number is taken to have been allocated to a specified person at the termination time.

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

- (2) The declaration has effect accordingly. However, the declaration is to be disregarded for the purposes of Part 2 of the *Telecommunications (Numbering Charges) Act 1997*.
- (3) If a number is taken to have been allocated because of the declaration, this section does not prevent:
- (a) the subsequent transfer of the number; or
  - (b) the subsequent surrender of the number; or
  - (c) the subsequent withdrawal of the number;
- in accordance with the numbering plan.
- (4) In this section:

**allocation**, in relation to a number, means the allocation of the number under the authority of the numbering plan.

**number** has the same meaning as in Division 2 of Part 22 of the *Telecommunications Act 1997*.

**numbering plan** has the same meaning as in the *Telecommunications Act 1997*.

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**Division 14** Transitional provisions relating to the numbering plan

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**76 Modified procedural requirements for first numbering plan**

Section 460 of the *Telecommunications Act 1997* applies to the first instrument made under section 455 of that Act as if each reference in section 460 of that Act to 90 days were a reference to 30 days.

## **Division 15—Exercise of powers by AUSTEL before relevant commencement dates**

### **77 Exercise of powers by AUSTEL before 1 July 1997—general**

- (1) This section applies if:
  - (a) an eligible provision confers, or will confer, a power on the ACA; and
  - (b) assuming that Part 3 of *Australian Communications Authority Act 1997* had commenced at the commencement of this section, section 4 of the *Acts Interpretation Act 1901* would have authorised the ACA to:
    - (i) exercise that power; or
    - (ii) do a particular thing in relation to the exercise of that power;before 1 July 1997.
- (2) Section 4 of the *Acts Interpretation Act 1901* is taken to authorise AUSTEL to exercise that power, or do that thing, before 1 July 1997 as if a reference in that eligible provision to the ACA were a reference to AUSTEL.
- (3) Anything done by AUSTEL in accordance with this section before 1 July 1997 has effect, on and after 1 July 1997, as if it had been done by the ACA.

### **78 Definitions**

In this Division:

**ACA** means the Australian Communications Authority.

**AUSTEL** means the Australian Telecommunications Authority.

**eligible provision** means:

- (a) a provision of the *Telecommunications Act 1997* (other than section 56); or
- (b) a provision of Division 5 of Part 5 of the *Australian Communications Authority Act 1997*; or

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(c) a provision of Part 7 of the *Australian Communications Authority Act 1997*.

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## **Division 16—Transitional provisions relating to eligible combined areas**

### **79 Eligible combined areas**

- (1) This section applies to a determination in force under subsection 16(1) of the *Telecommunications Act 1991* immediately before the commencement of Part 2 of the *Telecommunications Act 1997*.
- (2) The *Telecommunications Act 1997* has effect as if:
  - (a) the determination had been made by the Minister under subsection 40(1) of the *Telecommunications Act 1997* immediately after the commencement of that subsection; and
  - (b) a reference in the determination to the *Telecommunications Act 1991* were a reference to the *Telecommunications Act 1997*; and
  - (c) a reference in the determination to section 13 of the *Telecommunications Act 1991* were a reference to section 37 of the *Telecommunications Act 1997*; and
  - (d) a reference in the determination to paragraph 12(3)(b) of the *Telecommunications Act 1991* were a reference to paragraph 36(3)(b) of the *Telecommunications Act 1997*.
- (3) Subsection (2) does not prevent the determination referred to in that subsection from being varied or revoked in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

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**Division 17** Transitional provisions relating to actions under sections 95 and 186 of the Telecommunications Act 1991

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**Division 17—Transitional provisions relating to actions under sections 95 and 186 of the Telecommunications Act 1991**

**80 Actions under sections 95 and 186 of the *Telecommunications Act 1991***

- (1) Despite the repeal of the *Telecommunications Act 1991* by this Act, sections 95 and 186 of that Act continue to apply, on and after 1 July 1997, in relation to a contravention that occurred before that date, as if:
  - (a) those sections of that Act had not been repealed; and
  - (b) a person who was a carrier immediately before 1 July 1997 had remained a carrier on and after that date; and
  - (c) in the case of section 95 of that Act—a reference in that section to AUSTEL included a reference to the ACA.
- (2) A reference in this section to section 95 of the *Telecommunications Act 1991* includes a reference to section 395 of that Act, in so far as section 395 of that Act applies to section 95 of that Act.
- (3) A reference in this section to section 186 of the *Telecommunications Act 1991* includes a reference to section 395 of that Act, in so far as section 395 of that Act applies to section 186 of that Act.

- (4) In this section:

*ACA* means the Australian Communications Authority.

*AUSTEL* means the Australian Telecommunications Authority.



## **Division 18—Transitional provisions relating to interception capabilities**

### **81 Interception capabilities**

- (1) This section applies to a notice in force under subsection 73A(3) of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if the notice had been given under section 322 of the *Telecommunications Act 1997* at the beginning of 1 July 1997.
- (3) Subsection (2) does not apply to the notice unless the notice would have been authorised by section 322 of the *Telecommunications Act 1997* if it had been given under that section at the beginning of 1 July 1997.
- (4) Subsection (2) does not prevent the notice referred to in that subsection from being varied or revoked in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

## **Division 19—Transitional provisions relating to the AMPS plan**

### **82 AMPS plan**

- (1) This section applies to a plan in force under clause 2.2 of the 1992 Public Mobile Licences Declaration immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if the plan had been determined by the Minister under subsection 361(2) of the *Telecommunications Act 1997* at the beginning of 1 July 1997.
- (3) Subsection (3) does not prevent the plan referred to in that subsection from being varied or revoked in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (4) In this section:

*1992 Public Mobile Licences Declaration* means the Telecommunications (Public Mobile Licences) Declaration (No. 1) of 1992 made under section 64 of the *Telecommunications Act 1991*.

## **Division 20—Transitional provisions relating to technical standards about customer equipment and customer cabling**

### **83 Technical standards about customer equipment and customer cabling**

- (1) This section applies to a technical standard in force under section 246 of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect, until the termination time for the standard, as if:
  - (a) the standard had been determined by the ACA under section 376 of the *Telecommunications Act 1997* at the beginning of 1 July 1997; and
  - (b) the standard had taken effect at the beginning of 1 July 1997; and
  - (c) a reference in the standard to customer equipment (within the meaning of the *Telecommunications Act 1991*) were a reference to customer equipment (within the meaning of the *Telecommunications Act 1997*); and
  - (d) a reference in the standard to customer cabling (within the meaning of the *Telecommunications Act 1991*) were a reference to customer cabling (within the meaning of the *Telecommunications Act 1997*); and
  - (e) the ACA had complied with the requirements of section 378 of the *Telecommunications Act 1997* in relation to the making of the standard; and
  - (f) subsections 376(2) and (3) of the *Telecommunications Act 1997* were not applicable to the standard.
- (3) This section does not prevent the variation or revocation of a standard in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (4) In this section:

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**Division 20** Transitional provisions relating to technical standards about customer equipment and customer cabling

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*termination time*, in relation to a standard, means the earlier of:

- (a) the time when another standard that:
  - (i) is made under section 376 of the *Telecommunications Act 1997*; and
  - (ii) contains a declaration that it replaces the first-mentioned standard;  
takes effect; or
- (b) the beginning of 1 January 1998.

## Division 21—Transitional provisions relating to tariffs for the supply of carriage services

### 84 BCS tariff to continue to apply

- (1) This section applies to a BCS tariff of a person that was in force immediately before 1 July 1997.
- (2) Part 23 of the *Telecommunications Act 1997* has effect, during the transitional period, as if:
  - (a) the BCS tariff were a standard form of agreement that had been formulated by the person for the purposes of section 479 of that Act at the beginning of 1 July 1997; and
  - (b) a reference in subsection 479(1) of that Act to a standard telephone service included a reference to each of the goods and services that were dealt with, or purportedly dealt with, in the BCS tariff.
- (3) Part 23 of the *Telecommunications Act 1997* has effect in relation to Telstra, during the transitional period, as if a reference in subsection 479(1) of that Act to a standard telephone service included a reference to:
  - (a) a carriage service that Telstra began to supply during the transitional period; and
  - (b) ancillary goods that Telstra began to supply during the transitional period; and
  - (c) an ancillary service that Telstra began to supply during the transitional period.
- (4) Subsection (3) does not limit the application of subsection (2) to Telstra.
- (5) Subsection (2) does not prevent the standard form of agreement referred to in that subsection from being varied or revoked.
- (6) The person is not required by section 481 of the *Telecommunications Act 1997* to give the ACA a copy of the agreement referred to in subsection (2).
- (7) For the purposes of the application of this section to a particular BCS tariff, the ***transitional period*** is the period:

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- (a) beginning on 1 July 1997; and
  - (b) ending at the earlier of the following times:
    - (i) the end of 31 December 1997;
    - (ii) the time when the standard form of agreement corresponding to the tariff is revoked.
- (8) In this section:

*ACA* means the Australian Communications Authority.

*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.

*BCS tariff* has the same meaning as in the *Telecommunications Act 1991*, as in force before 1 July 1997.

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

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

## **Division 22—Transitional provisions relating to the customer service guarantee**

### **85 Definitions**

In this Division:

*ACA* means the Australian Communications Authority.

*AUSTEL* means the Australian Telecommunications Authority.

### **86 Standard assumptions for the purpose of this Division**

For the purposes of the application of this Division to a particular instrument, the following are the *standard assumptions*:

- (a) the assumption that each reference in the instrument to the *Telecommunications Act 1991* were a reference to the *Telecommunications Act 1997*; and
- (b) the assumption that each reference in the instrument to a provision of Division 6 of Part 5 of the *Telecommunications Act 1991* were a reference to the corresponding provision of Part 9 of the *Telecommunications Act 1997*; and
- (c) the assumption that each reference in the instrument to a carrier or service provider (within the meaning of Division 6 of Part 5 of the *Telecommunications Act 1991*) were a reference to a carriage service provider (within the meaning of the *Telecommunications Act 1997*); and
- (d) the assumption that each reference in the instrument to a standard telephone service (within the meaning of the *Telecommunications Act 1991*) were a reference to a standard telephone service (within the meaning of the *Telecommunications Act 1997*) supplied by means of:
  - (i) a public switched telephone service line; and
  - (ii) a telephone handset that does not have switching functions; and
- (e) the assumption that each reference in the instrument to a telecommunications service (within the meaning of the *Telecommunications Act 1991*) were a reference to a carriage

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service (within the meaning of the *Telecommunications Act 1997*); and

- (f) the assumption that each reference in the instrument to AUSTEL were a reference to the ACA.

**87 Performance standards to continue in force**

- (1) This section applies to a standard in force under section 87E of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
- (a) the standard had been determined by the ACA under section 234 of the *Telecommunications Act 1997* at the beginning of 1 July 1997; and
  - (b) the standard had taken effect at the beginning of 1 July 1997; and
  - (c) the standard assumptions were made in relation to the standard.

**88 Directions to continue in force**

- (1) This section applies to a direction in force under section 87P of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
- (a) the direction had been given to the ACA by the Minister under section 242 of the *Telecommunications Act 1997* at the beginning of 1 July 1997; and
  - (b) the standard assumptions were made in relation to the direction.

**89 Scale of damages to continue in force**

- (1) This section applies to a scale of damages in force under section 87G of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
- (a) the scale had been specified by the ACA under section 236 of the *Telecommunications Act 1997* at the beginning of 1 July 1997; and



- (b) the scale had taken effect at the beginning of 1 July 1997;  
and
- (c) the standard assumptions were made in relation to the scale.

**90 Consent by Telecommunications Industry Ombudsman to continue in force**

- (1) This section applies to a consent by the Telecommunications Industry Ombudsman in force under subsection 87H(4) of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
  - (a) the consent had been given by the Telecommunications Industry Ombudsman under subsection 237(4) of the *Telecommunications Act 1997* at the beginning of 1 July 1997; and
  - (b) the requirements set out in subsection 237(6) of that Act had been complied with in relation to the consent; and
  - (c) the standard assumptions were made in relation to the consent.

**91 Instruments making provision for waiver of guarantee to continue in force**

- (1) This section applies to an instrument in force under subsection 87J(1) of the *Telecommunications Act 1991* immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
  - (a) the instrument had been made by the ACA under subsection 238(1) of the *Telecommunications Act 1997* at the beginning of 1 July 1997; and
  - (b) the instrument had taken effect at the beginning of 1 July 1997; and
  - (c) the standard assumptions were made in relation to the instrument.

**92 Waivers to continue in force**

- (1) This section applies to a waiver in force under an instrument made under subsection 87J(1) of the *Telecommunications Act 1991*, where the waiver was in force immediately before 1 July 1997.
- (2) The *Telecommunications Act 1997* has effect as if:
  - (a) the waiver had been given in accordance with an instrument made under subsection 238(1) of the *Telecommunications Act 1997*; and
  - (b) the waiver had been given at the beginning of 1 July 1997; and
  - (c) the standard assumptions were made in relation to the waiver.

**93 Evidentiary certificates to continue to apply**

Despite the repeal of the *Telecommunications Act 1991* by this Act, subsections 87H(1), (2) and (3) of that Act continue to apply, in relation to contraventions that occurred before 1 July 1997, as if that repeal had not been made.

Note: For savings in relation to contraventions that occurred before 1 July 1997, see section 8 of the *Acts Interpretation Act 1901*.

**94 Revocation and variation of instruments**

This Division does not prevent the revocation or variation of an instrument.

## **Division 23—Transitional provisions relating to carriers' powers and immunities**

### **95 Instrument to be made before 1 July 1997—low-impact facilities**

- (1) This section applies to an instrument under subclause 6(3) of Schedule 3 to the *Telecommunications Act 1997*.

Note: Subclause 6(3) of Schedule 3 to the *Telecommunications Act 1997* deals with the specification of low-impact facilities for the purposes of clause 5 of that Schedule.

- (2) The first instrument is to be made, in accordance with section 4 of the *Acts Interpretation Act 1901*, before 1 July 1997.

### **96 Instrument to be made before 1 July 1997—Code of Practice**

- (1) This section applies to an instrument under subclause 15(1) of Schedule 3 to the *Telecommunications Act 1997*.

Note: Subclause 15(1) of Schedule 3 to the *Telecommunications Act 1997* deals with a Code of Practice in relation to the carrying out by carriers of activities authorised under Division 2, 3 or 4 of Part 1 of that Schedule.

- (2) The first instrument is to be made, in accordance with section 4 of the *Acts Interpretation Act 1901*, before 1 July 1997.

## **Part 4—Amendments**

### **97 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## **Schedule 1—General amendments**

### ***Australian Broadcasting Corporation Act 1983***

#### **1 Subsection 77(2)**

Omit all the words after “imposed on a”, substitute “carrier under Schedule 3 to the *Telecommunications Act 1997* to install or maintain a facility”.

#### **2 At the end of section 77**

Add:

(3) In subsection (2):

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

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

*maintenance*, in relation to a facility, has the same meaning as in clause 7 of Schedule 3 to the *Telecommunications Act 1997*.

### ***Australian National Railways Commission Act 1983***

#### **3 Paragraph 16(4)(c)**

Repeal the paragraph, substitute:

(c) alter the position of any electricity cable or wire; or

(d) alter the position of any line (within the meaning of the *Telecommunications Act 1997*);

#### **4 Subsection 16(4)**

Omit “or wire”, substitute “, wire or line”.

### ***Australian Postal Corporation Act 1989***

#### **5 Section 11**

Omit “*Telecommunications Act 1991*”, substitute “*Telecommunications Act 1997*”.

**6 Paragraph 18(da)**

Repeal the paragraph, substitute:

(da) to supply:

- (i) carriage services (within the meaning of the *Telecommunications Act 1997*); and
- (ii) content services (within the meaning of that Act); and

***Broadcasting Services Act 1992***

**7 Subsection 6(1) (definition of *line*)**

Repeal the definition, substitute:

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

**8 Subsection 6(1) (definition of *SMA*)**

Repeal the definition.

**9 Subsection 6(1) (definition of *subscription television satellite*)**

Omit “operated”, substitute “that was, at any time before 1 July 1997, operated”.

**10 Subsection 6(1) (definition of *telecommunications carrier*)**

Repeal the definition, substitute:

*telecommunications carrier* means a carrier (within the meaning of the *Telecommunications Act 1997*).

**11 Subsection 6(1)**

Insert:

*ACA* means the Australian Communications Authority.

**12 Paragraph 158(a)**

Omit “the SMA”, substitute “the ACA”.

**13 Paragraph 171(2)(b)**

Omit “a telecommunications service”, substitute “a carriage service or a content service”.

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**14 Subsection 171(3)**

Repeal the subsection, substitute:

(3) In this section:

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

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

***The Corporations Law set out in section 82 of the  
Corporations Act 1989***

**15 Subsection 600F(2) (paragraph (d) of the definition of  
essential service)**

Repeal the paragraph, substitute:

(d) a carriage service (within the meaning of the  
*Telecommunications Act 1997*);

***Crimes Act 1914***

**16 Subsection 76A(1) (definition of *carrier*)**

Repeal the definition, substitute:

*carrier* means:

- (a) a carrier (within the meaning of the *Telecommunications Act 1997*); or
- (b) a carriage service provider (within the meaning of that Act).

**17 Section 85S**

Omit “telecommunications service” (wherever occurring), substitute  
“carriage service”.

**18 Section 85S**

Add at the end:

(2) In subsection (1):

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

**19 Part VIIB (heading)**

Repeal the heading, substitute:

**Part VIIB—Offences relating to  
telecommunications**

**20 Section 85ZB (definition of *carrier*)**

Repeal the definition, substitute:

*carrier* means:

- (a) a carrier (within the meaning of the *Telecommunications Act 1997*); or
- (b) a carriage service provider (within the meaning of that Act).

**21 Section 85ZB (definition of *telecommunications network*)**

Repeal the definition.

**22 Section 85ZB (definition of *telecommunications service*)**

Repeal the definition.

**23 Section 85ZBA**

Omit “general carrier or a mobile”.

Note: The heading to section 85ZBA of the *Crimes Act 1914* is altered by omitting “**general or mobile**”.

**24 Section 85ZC**

Omit “*Telecommunications Act 1991*”, substitute “*Telecommunications Act 1997*”.

**25 Section 85ZC**

Add at the end:

- (2) For the purposes of the application of the *Telecommunications Act 1997* to this Part, it is to be assumed that a reference in that Act to communication does not include a reference to communication solely by means of radiocommunication.



**26 Section 85ZD**

Omit “telecommunications service”, substitute “carriage service”.

**27 Section 85ZE**

Omit “telecommunications service” (wherever occurring), substitute “carriage service”.

Note: The heading to section 85ZE of the *Crimes Act 1914* is altered by omitting “telecommunications services” and substituting “carriage services”.

**28 Section 85ZF**

Omit “telecommunications service” (wherever occurring), substitute “carriage service”.

**29 Subsection 85ZG(1)**

Omit “telecommunications service”, substitute “carriage service”.

Note: The heading to section 85ZG of the *Crimes Act 1914* is altered by omitting “telecommunications services” and substituting “carriage services”.

**30 Subsection 85ZG(2)**

Omit “telecommunications service”, substitute “carriage service”.

**31 Subsection 85ZK(2)**

Omit “section 253 of the *Telecommunications Act 1991*”, substitute “section 411 of the *Telecommunications Act 1997*”.

**32 Subsection 85ZKA(1)**

Omit “telecommunications services”, substitute “carriage services”.

**33 Paragraph 85ZKA(2)(a)**

Omit “section 253 of the *Telecommunications Act 1991*”, substitute “section 411 of the *Telecommunications Act 1997*”.

**34 Paragraph 85ZKA(2)(b)**

Omit “telecommunications service”, substitute “carriage service”.

***Lands Acquisition Act 1989***

**35 Paragraph 12(3)(c)**

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Repeal the paragraph, substitute:

- (c) alter the position of any electricity cable or wire; or
- (d) alter the position of any line (within the meaning of the *Telecommunications Act 1997*);

**36 Subsection 12(3)**

Omit “or wire”, substitute “, wire or line”.

***Legislative Instruments Act 1997***

**37 Schedule 2 (table row relating to the *Radiocommunications (Permit Tax) Act 1983*)**

Repeal the row.

**38 Schedule 2 (table rows relating to the *Telecommunications Act 1991*, the *Telecommunications (Application Fees) Act 1991* and the *Telecommunications (Carrier Licence Fees) Act 1991*)**

Repeal the rows, substitute:

Telecommunications Act 1997

Telecommunications (Carrier Licence Charges) Act 1997

**39 Schedule 2 (table rows relating to the *Telecommunications (Numbering Fees) Act 1991*, the *Telecommunications (Public Mobile Licence Charge) Act 1992* and the *Telecommunications (Universal Service Levy) Act 1991*)**

Repeal the rows, substitute:

Telecommunications (Numbering Charges) Act 1997

Telecommunications (Universal Service Levy) Act 1997

***Ombudsman Act 1976***

**40 Subsections 6(4D) and (4E)**

Omit “AUSTEL” (wherever occurring), substitute “the ACA”.

**41 Subsections 6(4D) and (4E)**

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Omit “Part 15 of the *Telecommunications Act 1991*” (wherever occurring), substitute “Part 26 of the *Telecommunications Act 1997*”.

**42 Subsection 6(4F)**

Repeal the subsection, substitute:

(4F) In subsections (4D) and (4E):

*ACA* means the Australian Communications Authority.

***Radiocommunications Taxes Collection Act 1983***

**43 Section 4 (paragraph (a) of the definition of tax)**

Repeal the paragraph.

**44 Subsection 7A(1)**

Omit “SMA”, substitute “ACA”.

**45 Section 10A**

Omit “SMA”, substitute “ACA”.

**46 Transitional—determinations**

- (1) This item applies to a determination that was in force under section 7A of the *Radiocommunications Taxes Collection Act 1983* immediately before the commencement of this item.
- (2) The *Radiocommunications Taxes Collection Act 1983* has effect, after the commencement of this item, as if the determination had been made by the ACA under section 7A of the *Radiocommunications Taxes Collection Act 1983* as amended by this Act.
- (3) This item does not prevent the variation or revocation of the determination.

**47 Transitional—arrangements**

- (1) This item applies to an arrangement that was in force under section 10A of the *Radiocommunications Taxes Collection Act 1983* immediately before the commencement of this item.

- (2) The *Radiocommunications Taxes Collection Act 1983* has effect, after the commencement of this item, as if the arrangement had been entered into by the ACA under section 10A of the *Radiocommunications Taxes Collection Act 1983* as amended by this Act.
- (3) This item does not prevent the variation or termination of the arrangement.

### ***Sea Installations Act 1987***

#### **48 Schedule**

Omit “*Telecommunications Act 1991*”, substitute “*Telecommunications Act 1997*”.

### ***Special Broadcasting Service Act 1991***

#### **49 Subsection 72(3)**

Omit all the words after “imposed on a”, substitute “carrier under Schedule 3 to the *Telecommunications Act 1997* to install or maintain a facility”.

#### **50 At the end of section 72**

Add:

- (4) In subsection (3):

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

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

*maintenance*, in relation to a facility, has the same meaning as in clause 7 of Schedule 3 to the *Telecommunications Act 1997*.

### ***Telecommunications (Interception) Act 1979***

#### **51 Subsection 5(1) (definition of *carrier*)**

Repeal the definition, substitute:

*carrier* means:

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- (a) a carrier (within the meaning of the *Telecommunications Act 1997*); or
- (b) a carriage service provider (within the meaning of that Act).

**52 Subsection 5(1) (definition of *equipment*)**

Repeal the definition, substitute:

*equipment* means any apparatus or equipment used, or intended for use, in or in connection with a telecommunications network, but does not include a line.

**53 Subsection 5(1) (definition of *facility*)**

Repeal the definition, substitute:

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

**54 Subsection 5(1) (definition of *line*)**

Repeal the definition, substitute:

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

**55 Subsection 5(3)**

Repeal the subsection, substitute.

- (3) For the purposes of this Act, the question whether equipment, or a line or other facility, is connected to a telecommunications network is to be determined in the same manner as that question is determined for the purposes of the *Telecommunications Act 1997*.

***Telstra Corporation Act 1991***

**56 Section 3**

Insert:

*ACA* means the Australian Communications Authority.

**57 Section 3**

Insert:

*ACCC* means the Australian Competition and Consumer Commission.

**58 Subsection 9(4)**

Omit “or order made, by AUSTEL”, substitute “made, by the ACA”.

**59 Subsection 9(4)**

Omit “*Telecommunications Act 1991*”, substitute “*Telecommunications Act 1997*”.

**60 Subsection 19(1) (definition of *carrier charge*)**

Repeal the definition, substitute:

*carrier charge* means:

- (a) a charge for a carriage service, or a content service, supplied by a carrier; or
- (b) a charge for a facility supplied by a carrier.

**61 Subsection 19(2)**

Omit “*Telecommunications Act 1991*”, substitute “*Telecommunications Act 1997*”.

**62 Section 22**

Omit “AUSTEL” (wherever occurring), substitute “the ACCC”.

**63 Subsection 24(2)**

Omit “AUSTEL”, substitute “the ACCC”.

**64 Subsection 24(3)**

Omit “AUSTEL”, substitute “The ACCC”.

**65 Subsection 24(4)**

Omit “AUSTEL’s”, substitute “the ACCC’s”.

**66 Transitional—certain acts of AUSTEL to be attributed to the ACCC**

- (1) This item applies to anything done by, or in relation to, AUSTEL under section 22 or 24 of the *Telstra Corporation Act 1991* before the commencement of this item.
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- (2) The *Telstra Corporation Act 1991* has effect, after the commencement of this item, as if the thing had been done by, or in relation to, the ACCC.

## **Schedule 2—Amendment of the Radiocommunications Act 1992**

### ***Radiocommunications Act 1992***

#### **Part 1—Merger of the SMA and the ACA**

##### **1 Paragraph 4(e)**

Omit all the words after “enforcement of this”, substitute “Act.”

##### **2 Section 5**

Insert:

*ACA* means the Australian Communications Authority.

##### **3 Section 5 (definition of *SMA*)**

Repeal the definition.

##### **4 Subsection 231(2)**

Repeal the subsection, substitute:

(2) Part 5.1 provides for the ACA to delegate certain powers to authorities of the Commonwealth.

##### **5 Part 5.1 (heading)**

Repeal the heading, substitute:

#### **Part 5.1—Delegation**

##### **6 Division 1 of Part 5.1 (heading)**

Repeal the heading.

##### **7 Sections 232, 233, 234, 235, 236 and 237**

Repeal the sections.

##### **8 Subsection 238(1)**

Repeal the subsection, substitute:

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- (1) The powers conferred on the ACA by this section are in addition to the powers conferred by section 49 of the *Australian Communications Authority Act 1997*.

### **9 Subsections 238(2) and (3)**

Omit “Spectrum Manager may”, substitute “ACA may, by writing,”.

### **10 Division 2 of Part 5.1**

Repeal the Division.

### **11 General amendments**

The following provisions of the *Radiocommunications Act 1992* are amended by omitting “SMA” (wherever occurring), and “SMA’s” (wherever occurring) and substituting “ACA” or “ACA’s” respectively:

- (a) Chapter 1 (other than the definition of *SMA* in section 5);
- (b) Chapter 2;
- (c) Chapter 3 (other than paragraph 101(1)(b));
- (d) Chapter 4 (other than subsections 163(2) and 167(3) and sections 183 and 184);
- (e) Chapter 5 (other than sections 232, 233, 234, 235, 236 and 237, subsection 238(1) and Division 2 of Part 5.1);
- (f) Chapter 6;
- (g) the Schedule.

Note: The headings to the sections of the *Radiocommunications Act 1992* are altered by omitting “SMA” (wherever occurring) and “SMA’s” (wherever occurring) and substituting “ACA” or “ACA’s” respectively.

## Part 2—Consequential amendments

### 12 Paragraphs 7(2)(b) and (3)(b)

Omit “*Telecommunications Act 1991*”, substitute “*Telecommunications Act 1997*”.

### 13 Paragraph 67(a)

Omit “293”, substitute “53 of the *Australian Communications Authority Act 1997*”.

### 14 Subparagraph 107(1)(c)(i)

Omit “293”, substitute “53 of the *Australian Communications Authority Act 1997*”.

### 15 Subparagraph 109(1)(b)(i)

Omit “293”, substitute “53 of the *Australian Communications Authority Act 1997*”.

### 16 Paragraph 146(2)(b)

Omit “293”, substitute “53 of the *Australian Communications Authority Act 1997*”.

### 17 Subparagraph 157(2)(d)(iii)

Repeal the subparagraph, substitute:

- (iii) carriage services (within the meaning of the *Telecommunications Act 1997*); or

### 18 Subparagraph 158(2)(d)(iii)

Repeal the subparagraph, substitute:

- (iii) carriage services (within the meaning of the *Telecommunications Act 1997*); or

### 19 Paragraph 263(1)(b)

Omit “293”, substitute “53 of the *Australian Communications Authority Act 1997*”.

### 20 Section 293

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Repeal the section.

## **21 Transitional—charge determinations**

- (1) This item applies to a determination that:
  - (a) was in force under section 293 of the *Radiocommunications Act 1992* immediately before the commencement of this item; and
  - (b) related to a matter in relation to which expenses are incurred by the SMA under that Act or under regulations under that Act.
- (2) The *Australian Communications Authority Act 1997* has effect, after the commencement of this item, as if:
  - (a) the determination had been made by the ACA under section 53 of that Act immediately after the commencement of this item; and
  - (b) each reference in the determination to the SMA were a reference to the ACA.
- (3) This item does not prevent the variation or revocation of the determination.

## Part 3—Public inquiries

### 22 Subsection 258(2)

Repeal the subsection, substitute:

- (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*.

### 23 At the end of section 259

Add:

- (2) For the purposes of subsection (1), the ACA is taken not to have provided a reasonable opportunity to make submissions unless there is a period of at least 28 days during which the submissions could be made.

### 24 Section 261

Repeal the section, substitute:

#### 261 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.

**261A Hearing to be in public except in exceptional cases**

- (1) This section applies to a hearing conducted under this Part.
- (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.

**261B Confidential material not to be published**

- (1) This section applies to a hearing conducted under this Part.
  - (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*.

### **261C Direction about private hearings**

- (1) This section applies to a hearing conducted under this Part.
- (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*.

**261D 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 256, 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 256, 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 261B or 261C.

## Part 4—Standards and other technical regulation

### 25 Section 5

Insert:

*apply*, in relation to a label, has a meaning affected by section 9A.

### 26 Section 5

Insert:

*label* has a meaning affected by section 9A.

### 27 Section 5 (definition of *compliance certificate*)

Repeal the definition.

### 28 Section 5 (definition of *recognised testing authority*)

Repeal the definition.

### 29 After section 9

Insert:

#### 9A Application of labels

- (1) A reference in this Act to a *label* includes a reference to a statement.
- (2) For the purposes of this Act, 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.

### 30 Paragraph 101(1)(b)

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Omit “SMA, or a person authorised by the SMA,”, substitute “ACA, or a recognised testing authority,”.

**31 Paragraph 163(1)(a)**

Omit “standard”, substitute “standard (either directly, or indirectly by means of a report under paragraph (2)(g))”.

**32 Subsections 163(2) and (3)**

Repeal the subsections, substitute:

(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*.

**33 Paragraph 164(b)**

Omit “published”, substitute “notified”.

**34 Subsection 165(1)**

Omit “Subject to subsection (2), a standard”, substitute “A standard”.

**35 Subsection 165(2)**

Repeal the subsection.

**36 Subsection 167(3)**

Repeal the subsection, substitute:

- (3) In deciding whether to issue a permit, the ACA may have regard to whether the purpose for which the permit is sought is a purpose related to:
- (a) education or research; or
  - (b) testing of devices; or
  - (c) demonstration of devices.
- (3A) In deciding whether to issue a permit, the ACA must have regard to the protection of the health or safety of persons who:
- (a) operate devices; or
  - (b) work on devices; or
  - (c) use services supplied by means of devices; or
  - (d) are otherwise reasonably likely to be affected by the operation of devices.
- (3B) Subsections (3) and (3A) do not, by implication, limit the matters to which the ACA may have regard.

**37 Paragraph 169(4)(a)**

Repeal the paragraph, substitute:

- (a) if:
- (i) there is in force a written determination made by the ACA that is expressed to apply in relation to all permits or in relation to a class of permits in which the permit is included; and
  - (ii) the determination specifies a period longer than 12 months in relation to all permits or in relation to a class of permits in which the permit is included;
- a day within that longer period; or

**38 At the end of section 169**

Add:

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

- (6) The ACA may, by written notice given to the holder of a 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 permit. The declaration has effect accordingly.
- (7) The day specified in a notice under subsection (5) must:
  - (a) be later than the day on which the notice was given to the holder; and
  - (b) comply with the rules set out in subsection (4).

### **39 After section 169**

Insert:

#### **169A Compensation—constitutional safety-net**

- (1) If:
  - (a) apart from this section, the operation of subsection 169(6) 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.

### **40 Subparagraph 171(3)(b)(i)**

Omit “must”, substitute “may”.

### **41 After subparagraph 171(3)(b)(i)**

Insert:

- (ia) any matter to which the ACA must, under subsection 167(3A), have regard in deciding whether to issue a permit; and

**42 Subsection 182(1)**

Omit “affix”, substitute “apply”.

Note: The heading to section 182 of the *Radiocommunications Act 1992* is altered by omitting “**affix**” and substituting “**apply**”.

**43 Subsection 182(1B)**

Omit “affix”, substitute “apply”.

**44 After subsection 182(2)**

Insert:

- (2A) The method of applying the label to the device must be as specified by the ACA in the instrument.

**45 Subsection 182(3)**

Omit “requirements of laws of another country”, substitute:  
requirements of:

- (a) a specified law of a foreign country; or
- (b) a specified instrument in force under a law of a 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;

**46 Subsection 182(4)**

Repeal the subsection, substitute:

- (4) The notice 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, the manufacturer or importer must have obtained a written statement from a certification body certifying that the device complies with the standard or class licence specified in the notice; and

- (b) a requirement that, before a manufacturer or importer applies the label, the device must have been tested by a recognised testing authority for compliance with the standard or class licence specified in the notice; and
- (c) a requirement that, before a manufacturer or importer applies the label, the manufacturer or importer must have obtained a written statement from a competent body certifying that reasonable efforts have been made to avoid contravention of the standard or class licence specified in the notice; and
- (d) a requirement that, before a manufacturer or importer applies the label, the manufacturer or importer must make a written declaration in relation to the device, being a declaration in a form specified in the notice.

Note 1: *Certification body* is defined by section 183A.

Note 2: *Competent body* is defined by section 183.

Note 3: *Recognised testing authority* is defined by section 183.

**47 Subsection 182(4A)**

Omit “affixed”, substitute “applied”.

**48 Subsection 182(4A)**

Omit “, records of”.

**49 Paragraph 182(4A)(a)**

Before “the quality”, insert “records of”.

**50 Paragraph 182(4A)(b)**

Before “any results”, insert “records of”.

**51 Paragraph 182(4A)(b)**

Omit “class licence.”, substitute “class licence; and”.

**52 Subsection 182(4A)**

Add at the end:

- (c) a declaration, or a copy of the declaration, made as mentioned in paragraph (4)(d).

**53 Subsection 182(6)**

Repeal the subsection.

**54 Section 183**

Repeal the section, substitute:

**183 Recognised testing authorities**

- (1) The ACA may, by notice 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.

**183A 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.

**55 Section 184**

Repeal the section.

**56 Section 185**

Repeal the section.

**57 Paragraph 186(b)**

Omit “affix”, substitute “apply”.

**58 Section 186**

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Omit “sell or” (wherever occurring).

**59 Section 186**

Omit “affixed”, substitute “applied”.

**60 Section 187**

Omit “affixing”, substitute “applying”.

**61 Section 187**

Omit “affix”, substitute “apply”.

Note: The heading to section 187 of the *Radiocommunications Act 1992* is altered by omitting “**Affixing**” and substituting “**Applying**”.

**62 Section 187A**

Omit “affixed”, substitute “applied”.

**63 After section 188**

Insert:

**188A 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 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 a device in accordance with section 182 of this Act or labelling customer equipment or customer cabling in accordance with section 407 of the *Telecommunications Act 1997*.
- (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 radiocommunications community 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 a device with:
      - (A) any applicable standards; and
      - (B) any applicable class licences; 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 a device with:
    - (A) any applicable standards; and
    - (B) any applicable class licences; 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 a device with:
      - (A) applicable standards; and
      - (B) any applicable class licences.
- (9) For the purposes of this Division, if:
  - (a) a label is applied to a device; and
  - (b) the label embodies a symbol referred to in paragraph (8)(a), or (b);the label is taken to indicate that the device meets the requirements of:
  - (c) each applicable standard; and
  - (d) each applicable class licence.
- (10) For the purposes of this Division, if:
  - (a) a label is applied to a device; and
  - (b) the label embodies a symbol referred to in paragraph (8)(c);the label is taken to indicate that the device does not meet the requirements of:
  - (c) each applicable standard; and
  - (d) each applicable class licence.
- (11) For the purposes of this section, a standard or class licence is taken to be applicable in relation to a device if, and only if, the standard or licence was specified in the subsection 182(1) notice that dealt with the manufacture or importation of the device.
- (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.

(15) In this section:

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

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

*radiocommunications community* has the same meaning as in the *Australian Communications Authority Act 1997*.

#### **64 Paragraph 277(1)(a)**

Repeal the paragraph, substitute:

- (a) a transmitter is operating on any land, or on or in any premises, vessel, aircraft or vehicle; and

#### **65 Paragraph 277(1)(c)**

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Repeal the paragraph, substitute:

- (c) the operation of the transmitter is:
  - (i) interfering with radiocommunications that are essential to the safety of human life; or
  - (ii) interfering substantially with the operation of an organisation specified in regulations made for the purposes of paragraph 193(1)(a); or
  - (iii) interfering substantially with the operation of an organisation referred to in paragraph 193(1)(b) or (c); or
  - (iv) causing substantial loss or damage;

**66 Paragraph 277(1)(e)**

Repeal the paragraph, substitute:

- (e) subject to subsection (2), take such action as the inspector considers necessary to cause the transmitter to:
  - (i) cease operating; or
  - (ii) operate in such a way that no longer gives rise to one or more of the consequences set out in paragraph (c).

**67 Paragraph 279(1)(d)**

Omit “affixed”, substitute “applied”.

**68 After paragraph 285(q)**

Insert:

- (qa) giving a notice under subsection 169(6);

**69 Subsections 300(1) and (4)**

Omit “affix”, substitute “apply”.

**70 Section 314A**

Repeal the section, substitute:

**314A 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.

**71 Transitional—procedures for making standards**

The amendments of section 163 of the *Radiocommunications Act 1992* made by this Schedule do not apply in relation to a standard made before 1 July 1998 if the SMA had taken any action in relation to the standard under that section before the commencement of this item.

**72 Transitional—section 186 of the *Radiocommunications Act 1992***

- (1) This item applies to the amendment of section 186 of the *Radiocommunications Act 1992* made by this Schedule, being the amendment that omits the expression “sell or”.
- (2) The amendment does not imply that the expression “supply”, when used in a provision of the *Radiocommunications Act 1992*, does not include supply by way of sale.

## **Schedule 3—Amendments consequential on the enactment of the Commonwealth Authorities and Companies Act 1997**

### *Australian Communications Authority Act 1997*

#### **1 Section 10**

Repeal the section.

#### **2 Section 11**

Repeal the section.

#### **3 At the end of section 12**

Add:

- (3) The ACA must perform its functions in a manner consistent with any directions given by the Minister under subsection (1).
- (4) This section does not affect the application of section 28 of the *Commonwealth Authorities and Companies Act 1997* in relation to the ACA.

#### **4 At the end of subsection 15(1)**

Add:

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the ACA. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment and conduct of officers.

#### **5 At the end of section 19**

Add:

- (6) Except as expressly provided by this Act, an associate member is taken not to be a director of the ACA for the purposes of the *Commonwealth Authorities and Companies Act 1997*.

#### **6 Section 30**

Repeal the section, substitute:

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**30 Disclosure of interests—associate members taken to be directors**

For the purposes of section 21 of the *Commonwealth Authorities and Companies Act 1997* (which deals with disclosure of interests), an associate member is taken to be a director of the ACA.

**7 Paragraph 37(4)(d)**

Repeal the paragraph, substitute:

- (d) a member or associate member fails, without reasonable excuse, to comply with section 21 of the *Commonwealth Authorities and Companies Act 1997* (in so far as that section relates to the ACA);

**8 Subsection 37(6)**

Omit “section 63H of the *Audit Act 1901*”, substitute “section 9 of the *Commonwealth Authorities and Companies Act 1997*”.

**9 At the end of section 37**

Add:

- (7) If the Minister is of the opinion that the members have failed to comply with any of the following provisions (in so far as those provisions relate to the ACA):
  - (a) subsection 13(2) or 15(1) of the *Commonwealth Authorities and Companies Act 1997*;
  - (b) paragraph 16(1)(a) or (b) of the *Commonwealth Authorities and Companies Act 1997*;the Governor-General may terminate the appointment of all members or particular members.

**10 Subsection 40(3)**

Repeal the subsection.

**11 Subsection 44(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not prevent the investment of surplus money of the ACA under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

**12 Section 45**

Repeal the section.

**13 Subsection 50(1)**

Omit “section 63H of the *Audit Act 1901*”, substitute “section 9 of the *Commonwealth Authorities and Companies Act 1997*”.

**14 Paragraph 50(2)(a)**

Omit “section 11”, substitute “section 28 of the *Commonwealth Authorities and Companies Act 1997*”.

**15 Paragraph 56(1)(a)**

Omit “section 11”, substitute “section 28 of the *Commonwealth Authorities and Companies Act 1997*”.



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## **Schedule 4—Amendments consequential on the enactment of the Financial Management and Accountability Act 1997**

### *Telecommunications Act 1997*

#### **1 Section 211**

Repeal the section, substitute:

##### **211 Universal Service Reserve**

- (1) This subsection establishes a reserve called the Universal Service Reserve.
- (2) The Universal Service Reserve is a component of the Reserved Money Fund.
- (3) The Universal Service Reserve is to be administered by the Department.

#### **2 Section 212**

Repeal the section, substitute:

##### **212 Payments into Universal Service Reserve**

There must be transferred to the Universal Service Reserve from the Consolidated Revenue Fund:

- (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.

## **Schedule 5—Repeal of Acts**

### **1 Repeal of Acts**

The Acts specified in this Schedule are repealed.

*Radiocommunications (Permit Tax) Act 1983*

*Telecommunications Act 1991*

*Telecommunications (Application Fees) Act 1991*

*Telecommunications (Numbering Charges) Act 1991*

*Telecommunications (Public Mobile Licence Charge) Act  
1992*

*Telecommunications (Universal Service Levy) Act 1991*

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106 *Telecommunications (Transitional Provisions and Consequential  
Amendments) Act 1997*

**Table of Acts**

**Notes to the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997***

**Note 1**

The *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997* as shown in this compilation comprises Act No. 59, 1997 amended as indicated in the Tables below.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997</i>	59, 1997	3 May 1997	See s. 2	
<i>Telecommunications Legislation Amendment Act 1997</i>	200, 1997	16 Dec 1997	Schedule 2 (item 28): (a) Schedule 2 (item 29): (a)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 919–922): 5 Dec 1999 (see s. 2(1), (2) and <i>Gazette</i> 1999, No. S584)	—
<i>Statute Stocktake Act (No. 1) 2011</i>	100, 2011	15 Sept 2011	Schedule 1 (item 11): 16 Sept 2011	—

## Act Notes

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- (a) The *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997* was amended by Schedule 2 (items 28 and 29) only of the *Telecommunications Legislation Amendment Act 1997*, subsections 2(2) and (3) of which provide as follows:
- (2) Item 28 of Schedule 2 is taken to have commenced on 3 May 1997, immediately after the commencement of subsection 40(4) of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*.
  - (3) Item 29 of Schedule 2 commences, or is taken to have commenced, immediately before the commencement of item 15 of Schedule 3 to the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*.

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**Table of Amendments**

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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Provision affected	How affected
<b>Part 3</b>	
<b>Division 1</b>	
S. 25 .....	am. No. 146, 1999
<b>Division 2</b>	
S. 35 .....	am. No. 146, 1999
<b>Division 3</b>	
S. 40 .....	am. No. 200, 1997
<b>Division 7</b>	
Subdiv. C of Div. 7 .....	rep. No. 100, 2011 of Part 3
Ss. 61, 62.....	rep. No. 100, 2011
<b>Schedule 3</b>	
Item 15.....	am. No. 200, 1997