



Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011

No. 23, 2011

**An Act to amend legislation relating to
telecommunications, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title	2
2	Commencement	2
3	Schedule(s)	3
Schedule 1—Amendments		4
Part 1—General amendments		4
<i>Telecommunications Act 1997</i>		4
<i>Competition and Consumer Act 2010</i>		12
Part 2—Amendments relating to infringement notices		51
<i>Telecommunications Act 1997</i>		51
Part 3—Amendments relating to Layer 2 bitstream services		52
<i>Telecommunications Act 1997</i>		52
<i>Competition and Consumer Act 2010</i>		74
Part 4—Amendments relating to freedom of information		89
<i>Freedom of Information Act 1982</i>		89



Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011

No. 23, 2011

**An Act to amend legislation relating to
telecommunications, and for other purposes**

[Assented to 12 April 2011]

The Parliament of Australia enacts:

*Telecommunications Legislation Amendment (National Broadband Network Measures—Access
Arrangements) Act 2011 No. 23, 2011 1*

1 Short title

This Act may be cited as the *Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 April 2011
2. Schedule 1, Part 1	The latest of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>National Broadband Network Companies Act 2011</i>; and (c) immediately after the commencement of Part 2 of Schedule 1 to the <i>Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010</i>. However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (b) and (c) occur.	13 April 2011 (paragraph (b) applies)
3. Schedule 1, Part 2	The latest of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>National Broadband</i>	13 April 2011 (paragraph (b) applies)

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<i>Network Companies Act 2011</i> ; and (c) immediately after the commencement of Part 7 of Schedule 1 to the <i>Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010</i> . However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (b) and (c) occur.	
4. Schedule 1, Part 3	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	12 April 2012
5. Schedule 1, Part 4	The day after the end of the period of 60 days beginning on the day this Act receives the Royal Assent.	11 June 2011
Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.		

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed 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.

Note: On 1 January 2011, the short title of the *Trade Practices Act 1974* was changed to the *Competition and Consumer Act 2010* by the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*.

Schedule 1—Amendments

Part 1—General amendments

Telecommunications Act 1997

1 Section 7 (after paragraph (b) of the definition of ACCC's telecommunications functions and powers)

Insert:

(ba) the *National Broadband Network Companies Act 2011*; or

2 Section 7

Insert:

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

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

3 Section 7

Insert:

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

4 After section 62C

Insert:

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

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

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

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

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

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

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

5 After subsection 69(7C)

Insert:

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

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

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

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

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

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

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

6 After subsection 70(4C)

Insert:

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

Schedule 1 Amendments
Part 1 General amendments

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

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

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

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

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

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

7 At the end of subsection 70(5)

Add:

- ; (g) the condition set out in section 152CJC of the *Competition and Consumer Act 2010*;
- (h) the condition set out in section 37 of the *National Broadband Network Companies Act 2011*;
- (i) a condition covered by section 41 of the *National Broadband Network Companies Act 2011*.

8 At the end of section 98

Add:

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

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

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

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

- (a) the supply of goods and services by NBN corporations; and

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

9 After subsection 102(6C)

Insert:

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

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

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

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

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

10 After subsection 103(3C)

Insert:

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

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

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

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

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

11 After subsection 103(4C)

Insert:

(4D) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*.

(4E) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*.

12 At the end of subsection 110(2)

Add:

- ; (j) persons who install:
 - (i) optical fibre lines; or
 - (ii) facilities used, or for use, in or in connection with optical fibre lines.

13 After paragraph 113(3)(p)

Insert:

- (pa) the design features of:
 - (i) optical fibre lines; or
 - (ii) facilities used, or for use, in or in connection with optical fibre lines;
- (pb) performance requirements to be met by:
 - (i) optical fibre lines; or
 - (ii) facilities used, or for use, in or in connection with optical fibre lines;
- (pc) the characteristics of carriage services supplied using optical fibre lines;
- (pd) performance requirements to be met by carriage services supplied using optical fibre lines;

14 At the end of section 115

Add:

- (5) The rule in subsection (1) does not apply to an industry code or an industry standard to the extent (if any) to which compliance with the code or standard is likely to have the effect (whether direct or indirect) of requiring:
 - (a) optical fibre lines; or

- (b) facilities used, or for use, in or in connection with optical fibre lines;
- to:
- (c) have particular design features; or
- (d) meet particular performance requirements.

15 After subsection 118(4)

Insert:

- (4AA) The rule in subsection (4) does not apply to a code to the extent (if any) to which compliance with the code is likely to have the effect (whether direct or indirect) of requiring:
 - (a) optical fibre lines; or
 - (b) facilities used, or for use, in or in connection with optical fibre lines;
- to:
- (c) have particular design features; or
- (d) meet particular performance requirements.

16 Subsection 125AA(4)

Repeal the subsection, substitute:

- (4) The Minister may, in writing, direct the ACMA to:
 - (a) determine a standard under subsection (1) that:
 - (i) applies to participants in a specified section of the telecommunications industry; and
 - (ii) deals with one or more specified matters relating to the telecommunications activities of those participants; and
 - (b) do so within a specified period.

17 Subsection 384(1) (note)

Omit “section 152AR”, substitute “sections 152AR and 152AXB”.

18 At the end of subsection 564(3) (before the notes)

Add:

- ; or (l) the carrier licence condition set out in section 152CJC of the *Competition and Consumer Act 2010*; or
- (m) the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*; or

- (n) the carrier licence condition set out in section 37 of the *National Broadband Network Companies Act 2011*; or
- (o) the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*; or
- (p) a carrier licence condition covered by section 41 of the *National Broadband Network Companies Act 2011*.

19 At the end of subsection 564(3) (after the notes)

Add:

- Note 11: Section 152CJC of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 12: Subsection 152CJD(2) of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 13: Section 37 of the *National Broadband Network Companies Act 2011* deals with rules about:
 - (a) the supply of goods and services by NBN corporations; and
 - (b) the investment of money by NBN corporations; and
 - (c) the functional separation of NBN corporations; and
 - (d) the divestment of assets by NBN corporations.
- Note 14: Subsection 38(2) of the *National Broadband Network Companies Act 2011* deals with rules about:
 - (a) the supply of goods and services by NBN corporations; and
 - (b) the investment of money by NBN corporations; and
 - (c) the functional separation of NBN corporations; and
 - (d) the divestment of assets by NBN corporations.
- Note 15: Section 41 of the *National Broadband Network Companies Act 2011* deals with rules about the supply of services by NBN corporations.

20 At the end of subsection 571(3) (before the notes)

Add:

- ; or (l) the carrier licence condition set out in section 152CJC of the *Competition and Consumer Act 2010*; or
 - (m) the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*; or
 - (n) the carrier licence condition set out in section 37 of the *National Broadband Network Companies Act 2011*; or
 - (o) the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*; or
 - (p) a carrier licence condition covered by section 41 of the *National Broadband Network Companies Act 2011*.
-

21 At the end of subsection 571(3) (after the notes)

Add:

- Note 11: Section 152CJC of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 12: Subsection 152CJD(2) of the *Competition and Consumer Act 2010* deals with rules about the supply of services by NBN corporations.
- Note 13: Section 37 of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
 - (b) the investment of money by NBN corporations; and
 - (c) the functional separation of NBN corporations; and
 - (d) the divestment of assets by NBN corporations.
- Note 14: Subsection 38(2) of the *National Broadband Network Companies Act 2011* deals with rules about:
- (a) the supply of goods and services by NBN corporations; and
 - (b) the investment of money by NBN corporations; and
 - (c) the functional separation of NBN corporations; and
 - (d) the divestment of assets by NBN corporations.
- Note 15: Section 41 of the *National Broadband Network Companies Act 2011* deals with rules about the supply of services by NBN corporations.

22 Subsection 577BA(12) (at the end of the definition of *national broadband network*)

Add:

To avoid doubt, it is immaterial whether the creation or development of the network is, to any extent, attributable to:

- (a) the acquisition of assets that were used, or for use, in connection with another telecommunications network; or
- (b) the obtaining of access to assets that are also used, or for use, in connection with another telecommunications network.

23 Subsection 577BC(8) (at the end of the definition of *national broadband network*)

Add:

To avoid doubt, it is immaterial whether the creation or development of the network is, to any extent, attributable to:

- (a) the acquisition of assets that were used, or for use, in connection with another telecommunications network; or

- (b) the obtaining of access to assets that are also used, or for use, in connection with another telecommunications network.

24 Clause 45 of Schedule 1 (definition of *active declared service*)

Repeal the definition, substitute:

active declared service means:

- (a) an active declared service within the meaning of section 152AR of the *Competition and Consumer Act 2010*; or
- (b) a declared service (within the meaning of subsection 152AL(8A) of the *Competition and Consumer Act 2010*) that an NBN corporation supplies (whether to itself or to other persons); or
- (c) a declared service within the meaning of subsection 152AL(8D) or (8E) of the *Competition and Consumer Act 2010*.

Note: Subsections 152AL(8A), (8D) and (8E) of the *Competition and Consumer Act 2010* deal with services supplied by an NBN corporation.

Competition and Consumer Act 2010

25 Subsection 25(1)

After “of the *Telecommunications Act 1997*”, insert “, the *National Broadband Network Companies Act 2011*, regulations under the *National Broadband Network Companies Act 2011*,”.

25A Section 151AB

Insert:

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

25B Subsection 151AJ(7)

Omit “subsection (2) or (3)”, substitute “this section”.

25C Subsection 151AJ(9)

Omit “subsection (2) or (3) of”.

25D At the end of section 151AJ

Add:

- (10) Despite anything in this section, a person does not engage in anti-competitive conduct if, under section 151DA, the conduct is authorised for the purposes of subsection 51(1).

26 After paragraph 151BU(4)(d)

Insert:

- (da) the operation of the *National Broadband Network Companies Act 2011* or regulations under that Act; or

27 After subparagraph 151BUA(2)(b)(ii)

Insert:

- (iia) the *National Broadband Network Companies Act 2011* or regulations under that Act; or

28 After subparagraph 151BUB(2)(b)(ii)

Insert:

- (iia) the *National Broadband Network Companies Act 2011* or regulations under that Act; or

29 After subparagraph 151BUC(2)(b)(ii)

Insert:

- (iia) the *National Broadband Network Companies Act 2011* or regulations under that Act; or

29A At the end of Part XIB

Add:

Division 16—NBN corporations

151DA Authorised conduct—subsection 51(1)

Objects

- (1) The objects of this section are:
- (a) to promote the national interest in structural reform of the telecommunications industry; and

- (b) to promote uniform national pricing of eligible services supplied by NBN corporations by authorising, for the purposes of subsection 51(1), certain conduct engaged in by NBN corporations.

Note 1: If conduct is authorised for the purposes of subsection 51(1), the conduct is disregarded in deciding whether a person has contravened Part IV.

Note 2: See also subsection 151AJ(10).

Authorised conduct—points of interconnection

- (2) If:
 - (a) an NBN corporation is a carrier or carriage service provider; and
 - (b) the NBN corporation:
 - (i) owns or controls one or more facilities; or
 - (ii) is a nominated carrier in relation to one or more facilities; and
 - (c) the NBN corporation refuses to permit interconnection of those facilities at a particular location with one or more facilities of:
 - (i) a service provider; or
 - (ii) a utility; and
 - (d) the location is not a listed point of interconnection; and
 - (e) the refusal is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities;the refusal is authorised for the purposes of subsection 51(1).

Note: For ***listed point of interconnection***, see section 151DB.

Authorised conduct—bundling of designated access services

- (3) If:
 - (a) an NBN corporation is a carrier or carriage service provider; and
 - (b) the NBN corporation:
 - (i) refuses to supply; or
 - (ii) refuses to offer to supply;

a designated access service to a service provider or utility unless the service provider or utility acquires, or agrees to acquire, one or more other designated access services (other than voice telephony facilitation services) from the NBN corporation; and

- (c) the refusal is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities;

the refusal is authorised for the purposes of subsection 51(1).

Authorised conduct—uniform national pricing

- (4) If an NBN corporation engages in conduct that is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities, that conduct is authorised for the purposes of subsection 51(1).

Uniform national pricing

- (5) For the purposes of this section, uniform national pricing of an eligible service supplied, or offered to be supplied, by an NBN corporation to service providers and utilities is achieved, if, and only if, the price-related terms and conditions on which the NBN corporation supplies, or offers to supply, the eligible service to service providers and utilities are the same throughout Australia.
- (6) For the purposes of this section, in determining whether there is uniform national pricing of an eligible service supplied, or offered to be supplied, by an NBN corporation, disregard any discrimination by the NBN corporation against another person on the grounds that the NBN corporation has reasonable grounds to believe that the other person would fail, to a material extent, to comply with the terms and conditions on which the NBN corporation supplies, or on which the NBN corporation is reasonably likely to supply, the eligible service.
- (6A) Examples of grounds for believing as mentioned in subsection (6) include:
 - (a) evidence that the other person is not creditworthy; and
 - (b) repeated failures by the other person to comply with the terms and conditions on which the same or a similar eligible

service has been supplied (whether or not by the NBN corporation).

- (7) For the purposes of this section, in determining whether eligible services are characterised as:
- (a) the same eligible service; or
 - (b) different eligible services;
- it is immaterial whether the services are supplied, or offered to be supplied, using:
- (c) the same facilities or kinds of facilities; or
 - (d) different facilities or kinds of facilities.
- (8) For example, the same eligible service could be supplied, or offered to be supplied, using:
- (a) an optical fibre line; or
 - (b) terrestrial radiocommunications equipment; or
 - (c) a satellite.

Definitions

- (9) In this section:

access virtual circuit service means an eligible service that is known as:

- (a) an access virtual circuit service; or
- (b) the access virtual circuit component of a fibre access service.

connectivity virtual circuit service means an eligible service that is known as:

- (a) a connectivity virtual circuit service; or
- (b) the connectivity virtual circuit component of a fibre access service.

designated access service means:

- (a) an access virtual circuit service; or
- (b) a connectivity virtual circuit service; or
- (c) a network-network interface service; or
- (d) a user network interface service; or
- (e) a voice telephony facilitation service.

eligible service has the same meaning as in section 152AL.

listed point of interconnection has the meaning given by section 151DB.

network-network interface service means an eligible service that is known as:

- (a) a network-network interface service; or
- (b) the network-network interface component of a fibre access service.

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

point of interconnection means a location for the interconnection of facilities.

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

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

special access undertaking has the same meaning as in Part XIC.

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

uniform national pricing has the meaning given by subsections (5) and (6).

use, in relation to a facility, means use:

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

user network interface service means an eligible service that is known as:

- (a) a user network interface service; or
- (b) the user network interface service component of a fibre access service.

utility means:

- (a) Airservices Australia; or
- (b) a State or Territory transport authority; or

- (c) a rail corporation (within the meaning of the *National Broadband Network Companies Act 2011*); or
- (d) an electricity supply body (within the meaning of that Act); or
- (e) a gas supply body (within the meaning of that Act); or
- (f) a water supply body (within the meaning of that Act); or
- (g) a sewerage services body (within the meaning of that Act); or
- (h) a storm water drainage services body (within the meaning of that Act); or
- (i) a State or Territory road authority (within the meaning of that Act).

voice telephony facilitation service means a service that facilitates the supply of a carriage service that is a carriage service for the purpose of voice telephony.

151DB Listed points of interconnection

- (1) The Commission:
 - (a) must prepare a written list setting out points of interconnection; and
 - (b) may, by writing, vary that list.
- (2) For the purposes of this Division, a point of interconnection specified in a list in force under subsection (1) is a **listed point of interconnection**.
- (2A) The Commission must not vary a list under subsection (1) except with the agreement of an NBN corporation.
- (2B) Subsection (2A) ceases to have effect when the Communications Minister makes a declaration under section 48 of the *National Broadband Network Companies Act 2011* that, in the Communications Minister's opinion, the national broadband network should be treated as built and fully operational.
- (2C) For the purposes of subsection (2B), **Communications Minister** has the same meaning as in the *National Broadband Network Companies Act 2011*.
- (3) The Commission must publish on its website a copy of a list in force under subsection (1).

- (4) A list under subsection (1) is not a legislative instrument.
- (5) A variation of a list under subsection (1) is not a legislative instrument.

151DC Review of policies and procedures relating to the identification of listed points of interconnection

- (1) Before 30 June 2013, the Commission must cause to be conducted a review of the policies and procedures relating to the identification of listed points of interconnection.
- (2) Without limiting subsection (1), a review under that subsection must consider:
 - (a) the Commission's requests to NBN corporations to agree to the variation of the list in force under subsection 151DB(1); and
 - (b) the responses of NBN corporations to such requests; and
 - (c) the extent to which facilities are interconnected at listed points of interconnection.
- (3) A review under subsection (1) must make provision for public consultation.
- (4) The Commission must cause to be prepared a report of a review under subsection (1).
- (5) The Commission must give the report to the Minister.
- (6) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

151DD Review of operation of this Division

- (1) After the end of the 2-year period that began at the commencement of this Division, the Minister must cause to be conducted an independent review of the operation of this Division during that period.
- (2) Without limiting subsection (1), a review under that subsection must consider:

- (a) the conduct that was authorised under subsection 151DA(2) for the purposes of subsection 51(1); and
 - (b) the conduct that was authorised under subsection 151DA(3) for the purposes of subsection 51(1); and
 - (c) the conduct that was authorised under subsection 151DA(4) for the purposes of subsection 51(1).
- (3) A review under subsection (1) is to be conducted by a person who has expertise in:
 - (a) competition law; and
 - (b) economics.
- (4) A review under subsection (1) must make provision for public consultation.
- (5) The Minister must cause to be prepared a report of a review under subsection (1).
- (6) The Minister must ensure that the report is completed within 6 months after the end of the 2-year period mentioned in subsection (1).
- (7) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

30 Section 152AA

Omit:

- The Commission may declare carriage services and related services to be ***declared services***.

substitute:

- A carriage service, or a related service, supplied, or capable of being supplied, by a carrier (other than an NBN corporation) or a carriage service provider (other than an NBN corporation) is a ***declared service*** if:
 - (a) the Commission has declared the service to be a ***declared service***; or

- (b) the service is supplied by the carrier or carriage service provider, and a special access undertaking given by the carrier or carriage service provider is in operation in relation to the service.
- A carriage service, or a related service, supplied, or capable of being supplied, by an NBN corporation is a **declared service** if:
 - (a) the Commission has declared the service to be a **declared service**; or
 - (b) the NBN corporation has formulated a standard form of access agreement that relates to access to the service; or
 - (c) the service is supplied by the NBN corporation, and a special access undertaking given by the NBN corporation is in operation in relation to the service.

31 Section 152AC

Insert:

category A standard access obligation has the meaning given by section 152AR.

32 Section 152AC

Insert:

category B standard access obligation has the meaning given by section 152AXB.

33 Section 152AC

Insert:

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

34 Section 152AC

Insert:

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

35 Section 152AC (definition of *standard access obligation*)

Repeal the definition, substitute:

standard access obligation means:

- (a) a category A standard access obligation; or
- (b) a category B standard access obligation.

36 Subsection 152AG(2)

After “which deals with the”, insert “category A”.

37 Subsection 152AG(2)

After “obligations)”, insert “or section 152AXB (which deals with the category B standard access obligations)”.

38 After subsection 152AL(3)

Insert:

- (3A) A declaration under subsection (3) does not apply to an eligible service to the extent to which the service is supplied, or is capable of being supplied, by an NBN corporation (whether to itself or to other persons).
- (3B) Before commencing to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make a declaration under subsection (3) in relation to an eligible service, the Commission must consider whether to hold a public inquiry under that Part about a proposal to make a declaration under subsection (8A) in relation to the service.

Note: For combined public inquiries, see section 152AN.

Note: The heading to subsection 152AL(3) is altered by adding at the end “—*services not supplied by an NBN corporation*”.

39 Subsections 152AL(4) and (5)

Omit “this section”, substitute “subsection (3)”.

40 Paragraph 152AL(7)(a)

After “person”, insert “(other than an NBN corporation)”.

Note: The heading to subsection 152AL(7) is altered by adding at the end “—services not supplied by an NBN corporation”.

41 After subsection 152AL(8)

Insert:

Declaration made after public inquiry—services supplied by an NBN corporation

(8A) The Commission may, by written instrument, declare that a specified eligible service, to the extent to which the service is supplied, or is capable of being supplied, by a specified NBN corporation (whether to itself or to other persons), is a **declared service** if:

- (a) the Commission has held a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to make the declaration; and
- (b) the Commission has prepared a report about the inquiry under section 505 of the *Telecommunications Act 1997*; and
- (c) the report was published during the 180-day period ending when the declaration was made; and
- (d) the Commission is satisfied that the making of the declaration will promote the long-term interests of end-users of carriage services or of services provided by means of carriage services.

If the Commission does so, the declared service **relates to** the NBN corporation for the purposes of subsections 152AXB(2) and 152AXC(7).

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

(8B) A declaration under subsection (8A) has effect accordingly.

(8C) A copy of a declaration under section (8A) is to be published in the *Gazette*.

Services supplied by an NBN corporation—standard form of access agreement

(8D) If:

- (a) an eligible service is supplied, or is capable of being supplied, by an NBN corporation (whether to itself or to other persons); and
- (b) the NBN corporation is a carrier or a carriage service provider; and
- (c) the NBN corporation has formulated a standard form of access agreement that relates to access to the service; and
- (d) the standard form of access agreement is available on the NBN corporation's website;

then:

- (e) the service, to the extent to which it is supplied, or is capable of being supplied, by the NBN corporation (whether to itself or to other persons) is a **declared service**; and
- (f) the declared service **relates to** the NBN corporation for the purposes of subsections 152AXB(2) and 152AXC(7).

Services covered by special access undertakings—services supplied by an NBN corporation

(8E) If:

- (a) an NBN corporation gives the Commission a special access undertaking in relation to a service or a proposed service; and
- (b) the undertaking is in operation; and
- (c) the NBN corporation supplies the service or proposed service (whether to itself or to other persons);

then:

- (d) the service supplied by the NBN corporation is a **declared service**; and
- (e) the declared service **relates to** the NBN corporation for the purposes of subsections 152AXB(2) and 152AXC(7).

To avoid doubt, if the undertaking is subject to limitations, the service supplied by the NBN corporation is a **declared service** only to the extent to which the service falls within the scope of the limitations.

(8F) The Commission may declare a service under subsection (8A) even if the service is, to any extent, covered by subsection (8E).

42 Subsections 152ALA(8) and (9)

After “and (c)”, insert “, or paragraphs 152AL(8A)(a), (b) and (c), as the case requires,”.

43 Subsections 152AM(1) and (3)

After “152AL(3)(a)”, insert “or (8A)(a)”.

44 Subsection 152AN(1)

After “152AL(3)(a)”, insert “, or (8A)(a)”.

45 Subsection 152AO(3)

After “152AL(3)”, insert “or (8A)”.

46 Paragraph 152AQ(2)(c)

After “152AL(3)(a)”, insert “or (8A)(a)”.

47 Before section 152AR

Insert:

Subdivision A—Category A standard access obligations

48 Subsection 152AR(1)

Omit “*standard access obligations*”, substitute “*category A standard access obligations*”.

Note: The heading to section 152AR is altered by omitting “**Standard**” and substituting “**Category A standard**”.

49 Subsection 152AR(2)

Omit “carrier or a carriage service provider”, substitute “carrier (other than an NBN corporation) or a carriage service provider (other than an NBN corporation)”.

Note 1: The heading to section 152ASA is altered by omitting “**standard**” and substituting “**category A standard**”.

Note 2: The heading to section 152ATA is altered by omitting “**standard**” and substituting “**category A standard**”.

50 Before section 152AY

Insert:

Subdivision B—Category B standard access obligations

152AXB Category B standard access obligations

- (1) This section sets out the *category B standard access obligations*.

Supply of declared service to service provider

- (2) If:
- (a) an NBN corporation is a carrier or carriage service provider; and
 - (b) under subsection 152AL(8A), (8D) or (8E), a declared service relates to the NBN corporation;
- the NBN corporation must, if requested to do so by a service provider, supply the service to the service provider in order that the service provider can provide carriage services and/or content services.

Note: For declared services, see subsections 152AL(8A), (8D) and (8E).

Limit on subsection (2) obligations

- (3) Subsection (2) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have any of the following effects:
- (a) preventing a service provider who already has access to the declared service from obtaining a sufficient amount of the service to be able to meet the service provider's reasonably anticipated requirements, measured at the time when the request was made;
 - (b) preventing the NBN corporation from obtaining a sufficient amount of the service to be able to meet the NBN corporation's reasonably anticipated requirements, measured at the time when the request was made;
 - (c) preventing a person from obtaining, by the exercise of a pre-request right, a sufficient level of access to the declared service to be able to meet the person's actual requirements.
- (3A) Subsection (2) does not impose an obligation on an NBN corporation to supply a service in circumstances where a refusal by the NBN corporation to supply the service is authorised under section 151DA for the purposes of subsection 51(1).

Interconnection of facilities

(4) If:

- (a) an NBN corporation is a carrier or carriage service provider;
and
- (b) the NBN corporation:
 - (i) owns or controls one or more facilities; or
 - (ii) is a nominated carrier in relation to one or more facilities;

the NBN corporation must, if requested to do so by a service provider:

- (c) permit interconnection of those facilities with the facilities of the service provider for the purpose of enabling the service provider to be supplied with declared services in order that the service provider can provide carriage services and/or content services; and
- (d) take all reasonable steps to ensure that, if a standard is in force under section 384 of the *Telecommunications Act 1997*, the interconnection complies with the standard.

(4A) Subsection (4) does not apply to an interconnection at a location that is not a listed point of interconnection (within the meaning of section 151DB).

Conditional-access customer equipment

(5) If:

- (a) an NBN corporation is a carrier or carriage service provider;
and
- (b) the NBN corporation supplies a declared service by means of conditional-access customer equipment;

the NBN corporation must, if requested to do so by a service provider who has made a request referred to in subsection (2), supply to the service provider any service that is necessary to enable the service provider to supply carriage services and/or content services by means of the declared service and using the equipment.

Exceptions

- (6) This section does not impose an obligation on an NBN corporation if there are reasonable grounds to believe that:
- (a) the access seeker would fail, to a material extent, to comply with the terms and conditions on which the NBN corporation complies, or on which the NBN corporation is reasonably likely to comply, with that obligation; or
 - (b) the access seeker would fail, in connection with that obligation, to protect:
 - (i) the integrity of a telecommunications network; or
 - (ii) the safety of individuals working on, or using services supplied by means of, a telecommunications network or a facility.

Examples—paragraph (6)(a) grounds

- (7) Examples of grounds for believing as mentioned in paragraph (6)(a) include:
- (a) evidence that the access seeker is not creditworthy; and
 - (b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the NBN corporation).

Definition

- (8) In this section:
- pre-request right***, in relation to a request made for the purposes of subsection (2), means a right under a contract that was in force at the time when the request was made.

152AXC NBN corporation to supply declared services on a non-discriminatory basis

No discrimination between access seekers

- (1) An NBN corporation must not, in complying with any of its category B standard access obligations, discriminate between access seekers.

Note: For explanatory material, see section 152CJH.

- (2) The rule in subsection (1) does not prevent discrimination against an access seeker if the NBN corporation has reasonable grounds to believe that the access seeker would fail, to a material extent, to comply with the terms and conditions on which the NBN corporation complies, or on which the NBN corporation is reasonably likely to comply, with the relevant obligation.
- (3) Examples of grounds for believing as mentioned in subsection (2) include:
 - (a) evidence that the access seeker is not creditworthy; and
 - (b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the NBN corporation).

No discrimination by an NBN corporation in favour of itself

- (7) If:
 - (a) an NBN corporation is a carrier or carriage service provider; and
 - (b) under subsection 152AL(8A), (8D) or (8E), a declared service relates to the NBN corporation; and
 - (c) the NBN corporation is subject to a category B standard access obligation in relation to the service;the NBN corporation must not discriminate in favour of itself in relation to the supply of the service.

Authorised conduct

- (12) If conduct is authorised under section 151DA for the purposes of subsection 51(1), the conduct is taken not to be discrimination for the purposes of this section.

152AXD NBN corporation to carry on related activities on a non-discriminatory basis

- (1) An NBN corporation must not, in carrying on any of the following activities, discriminate between access seekers:
 - (a) developing a new eligible service;
 - (b) enhancing a declared service;

- (c) extending or enhancing the capability of a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
- (d) planning for a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
- (e) an activity that is preparatory to the supply of a declared service;
- (f) an activity that is ancillary or incidental to the supply of a declared service;
- (g) giving information to service providers about any of the above activities.

Note: For explanatory material, see section 152CJH.

- (5A) If conduct is authorised under section 151DA for the purposes of subsection 51(1), the conduct is taken not to be discrimination for the purposes of this section.

Definition

- (6) In this section:

eligible service has the same meaning as in section 152AL.

Subdivision C—Compliance with standard access obligations

51 After paragraph 152AZ(a)

Insert:

- (aa) any rule in section 152AXC or 152AXD that is applicable to the carrier; and

52 After paragraph 152BA(2)(a)

Insert:

- (aa) any rule in section 152AXC or 152AXD that is applicable to the provider; and

53 After subsection 152BB(1)

Insert:

- (1AB) If the Federal Court is satisfied that an NBN corporation has contravened the rule in subsection 152AXC(1) or (7) or 152AXD(1), the Court may, on the application of:

- (a) the Commission; or
 - (b) any person whose interests are affected by the contravention;
- make all or any of the following orders:
- (c) an order directing the NBN corporation to comply with that rule;
 - (d) an order directing the NBN corporation to compensate any other person who had suffered loss or damage as a result of the contravention;
 - (e) any other order that the Court thinks appropriate.

54 Section 152BBD

Before “The Commission”, insert “(1)”.

55 Section 152BBD

After “152BBC”, insert “in relation to any of the category A standard access obligations”.

56 At the end of section 152BBD

Add:

- (2) The Commission must, in exercising its powers under sections 152BBA and 152BBC in relation to any of the category B standard access obligations, have regard to the desirability of NBN corporations and access seekers agreeing on terms and conditions as mentioned in paragraph 152AY(2)(a) in a timely manner.

57 After subsection 152BC(4)

Insert:

- (4A) An access determination may be expressed to be an NBN-specific access determination.
- (4B) An access determination does not apply in relation to access to a declared service to the extent to which the service is supplied, or is capable of being supplied, by an NBN corporation unless the access determination is expressed to be an NBN-specific access determination.
- (4C) If an access determination is expressed to be an NBN-specific access determination, the access determination does not apply in relation to access to a declared service to the extent to which the

service is supplied, or is capable of being supplied, by a person other than an NBN corporation.

58 At the end of paragraphs 152BCB(1)(a) and (b)

Add “or 152AXB”.

58A After subsection 152BCB(3A)

Insert:

- (3B) The Commission must not make an access determination that would have the effect of:
- (a) requiring an NBN corporation to engage in conduct that is inconsistent with conduct authorised under subsection 151DA(2) or (3) for the purposes of subsection 51(1); or
 - (b) preventing an NBN corporation from giving a refusal that is authorised under subsection 151DA(3) for the purposes of subsection 51(1).
- (3C) The Commission must not make an access determination that would have the effect of preventing an NBN corporation from engaging in conduct that is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities.
- (3D) In subsection (3C), ***eligible services, uniform national pricing and utilities*** have the same meaning as in section 151DA.

59 After subsection 152BCB(4)

Insert:

- (4A) The Commission must not make an access determination that:
- (a) relates to any or all of the category B standard access obligations applicable to an NBN corporation; and
 - (b) has the effect (whether direct or indirect) of discriminating between access seekers.

Note: For explanatory material, see section 152CJH.

- (4B) Subsection (4A) does not prevent discrimination against an access seeker if the Commission has reasonable grounds to believe that the access seeker would fail, to a material extent, to comply with the terms and conditions on which the NBN corporation complies,

or on which the NBN corporation is reasonably likely to comply, with the relevant obligation.

(4C) Examples of grounds for believing as mentioned in subsection (4B) include:

- (a) evidence that the access seeker is not creditworthy; and
- (b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the NBN corporation).

60 Subsection 152BCB(5)

Omit “or (3A)”, substitute “, (3A), (3B), (3C) or (4A)”.

61 Before subsection 152BCF(4)

Insert:

- (3B) If the declared service is covered by subsection 152AL(8D), the specified day must not be earlier than the day on which the service became a declared service under that subsection.
- (3C) If the declared service is covered by subsection 152AL(8E), the specified day must not be earlier than the day on which the service became a declared service under that subsection.

62 At the end of subsection 152BCK(1)

Add “, and the declared service to which the access determination relates is not covered by subsection 152AL(8D)”.

63 After subsection 152BD(4)

Insert:

- (4A) Binding rules of conduct may be expressed to be NBN-specific binding rules of conduct.
- (4B) Binding rules of conduct do not apply in relation to access to a declared service to the extent to which the service is supplied, or is capable of being supplied, by an NBN corporation unless the binding rules of conduct are expressed to be NBN-specific binding rules of conduct.
- (4C) If binding rules of conduct are expressed to be NBN-specific binding rules of conduct, the binding rules of conduct do not apply

in relation to access to a declared service to the extent to which the service is supplied, or is capable of being supplied, by a person other than an NBN corporation.

64 At the end of paragraphs 152BDA(1)(a) and (b)

Add “or 152AXB”.

64A After subsection 152BDA(3A)

Insert:

- (3B) The Commission must not make binding rules of conduct that would have the effect of:
- (a) requiring an NBN corporation to engage in conduct that is inconsistent with conduct authorised under subsection 151DA(2) or (3) for the purposes of subsection 51(1); or
 - (b) preventing an NBN corporation from giving a refusal that is authorised under subsection 151DA(3) for the purposes of subsection 51(1).
- (3C) The Commission must not make binding rules of conduct that would have the effect of preventing an NBN corporation from engaging in conduct that is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities.
- (3D) In subsection (3C), ***eligible services, uniform national pricing and utilities*** have the same meaning as in section 151DA.

65 After subsection 152BDA(4)

Insert:

- (4A) The Commission must not make binding rules of conduct that:
- (a) relate to any or all of the category B standard access obligations applicable to an NBN corporation; and
 - (b) have the effect (whether direct or indirect) of discriminating between access seekers.

Note: For explanatory material, see section 152CJH.

- (4B) Subsection (4A) does not prevent discrimination against an access seeker if the Commission has reasonable grounds to believe that the access seeker would fail, to a material extent, to comply with

the terms and conditions on which the NBN corporation complies, or on which the NBN corporation is reasonably likely to comply, with the relevant obligation.

(4C) Examples of grounds for believing as mentioned in subsection (4B) include:

- (a) evidence that the access seeker is not creditworthy; and
- (b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the NBN corporation).

66 Subsection 152BDA(5)

Omit “or (3A)”, substitute “, (3A), (3B), (3C) or (4A)”.

67 After section 152BEB

Insert:

152BEBA NBN corporation to give the Commission a statement about the differences between an access agreement and a standard form of access agreement

Access agreement

(1) If:

- (a) an access agreement is covered by subsection 152BE(1); and
- (b) the carrier or carriage service provider who supplies, or proposes to supply, the declared service is an NBN corporation; and
- (c) immediately before the access agreement was entered into, a standard form of access agreement relating to access to the service was available on the NBN corporation’s website; and
- (d) the terms and conditions set out in the access agreement are not the same as the terms and conditions set out in the standard form of access agreement;

the NBN corporation must, within 7 days after the day on which the access agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:

- (e) identifying the parties to the access agreement; and

- (f) describing the differences between the terms and conditions set out in the access agreement and the terms and conditions set out in the standard form of access agreement; and
- (j) setting out such other information (if any) about the access agreement as is required by the form.

Variation agreement

(2) If:

- (a) a variation agreement is entered into after the commencement of this section; and
- (b) the carrier or carriage service provider who supplies, or proposes to supply, the service to which the relevant access agreement relates is an NBN corporation; and
- (c) immediately before the variation agreement was entered into, a standard form of access agreement relating to access to the service was available on the NBN corporation's website; and
- (d) the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) are not the same as the terms and conditions set out in the standard form of access agreement;

the NBN corporation must, within 7 days after the day on which the variation agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:

- (e) identifying the parties to the relevant access agreement (as varied by the variation agreement); and
- (f) describing the differences between the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) and the terms and conditions set out in the standard form of access agreement; and
- (j) setting out such other information (if any) about the relevant access agreement (as varied by the variation agreement) as is required by the form.

152BEBB NBN corporation to give the Commission a statement about the differences between an access agreement and a special access undertaking

Access agreement

- (1) If:
- (a) an access agreement is covered by subsection 152BE(1); and
 - (b) the carrier or carriage service provider who supplies, or proposes to supply, the declared service is an NBN corporation; and
 - (c) immediately before the access agreement was entered into, a special access undertaking that:
 - (i) relates to access to the service; and
 - (ii) was given by the NBN corporation; andwas in operation; and
 - (d) the terms and conditions set out in the access agreement are not the same as the terms and conditions set out in the special access undertaking;
- the NBN corporation must, within 7 days after the day on which the access agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:
- (e) identifying the parties to the access agreement; and
 - (f) describing the differences between the terms and conditions set out in the access agreement and the terms and conditions set out in the special access undertaking; and
 - (j) setting out such other information (if any) about the access agreement as is required by the form.

Variation agreement

- (2) If:
- (a) a variation agreement is entered into after the commencement of this section; and
 - (b) the carrier or carriage service provider who supplies, or proposes to supply, the service to which the relevant access agreement relates is an NBN corporation; and
 - (c) immediately before the variation agreement was entered into, a special access undertaking that:
 - (i) relates to access to the service; and

(ii) was given by the NBN corporation;
was in operation; and

- (d) the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) are not the same as the terms and conditions set out in the special access undertaking;

the NBN corporation must, within 7 days after the day on which the variation agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:

- (e) identifying the parties to the relevant access agreement (as varied by the variation agreement); and
(f) describing the differences between the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) and the terms and conditions set out in the special access undertaking; and
(j) setting out such other information (if any) about the relevant access agreement (as varied by the variation agreement) as is required by the form.

152BEC NBN corporation to give the Commission a statement about the differences between an access agreement and an access determination

Access agreement

(1) If:

- (a) an access agreement is covered by subsection 152BE(1); and
(b) the carrier or carriage service provider who supplies, or proposes to supply, the declared service is an NBN corporation; and
(c) immediately before the access agreement was entered into, an access determination relating to access to the service was in force; and
(d) the terms and conditions set out in the access agreement are not the same as the terms and conditions set out in the access determination;

the NBN corporation must, within 7 days after the day on which the access agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:

- (e) identifying the parties to the access agreement; and
-

- (f) describing the differences between the terms and conditions set out in the access agreement and the terms and conditions set out in the access determination; and
- (j) setting out such other information (if any) about the access agreement as is required by the form.

Variation agreement

(2) If:

- (a) a variation agreement is entered into after the commencement of this section; and
- (b) the carrier or carriage service provider who supplies, or proposes to supply, the service to which the relevant access agreement relates is an NBN corporation; and
- (c) immediately before the variation agreement was entered into, an access determination relating to access to the service was in force; and
- (d) the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) are not the same as the terms and conditions set out in the access determination;

the NBN corporation must, within 7 days after the day on which the variation agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:

- (e) identifying the parties to the relevant access agreement (as varied by the variation agreement); and
- (f) describing the differences between the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) and the terms and conditions set out in the access determination; and
- (j) setting out such other information (if any) about the relevant access agreement (as varied by the variation agreement) as is required by the form.

152BEBD Register of NBN Access Agreement Statements

- (1) The Commission is to maintain a register, to be known as the Register of NBN Access Agreement Statements, in which the Commission includes all statements given to it under the following provisions:

- (a) section 152BEBA;
 - (b) section 152BEBB;
 - (c) section 152BEBC.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Commission's website.
- (4) The Register is not a legislative instrument.
- (5) If the Commission is satisfied that:
 - (a) publication of particular material contained in a statement could reasonably be expected to prejudice substantially the commercial interests of a person; and
 - (b) the prejudice outweighs the public interest in the publication of the matter;the Commission may remove the material from the version of the statement that is included in the Register.
- (6) If the Commission does so, the Commission must include in the Register an annotation to that effect.

68 Section 152BEC

Omit "and 152BEB", substitute " , 152BEB, 152BEBA, 152BEBB and 152BEBC".

69 Subsection 152BED(2)

Omit "and 152BEB", substitute " , 152BEB, 152BEBA, 152BEBB and 152BEBC".

70 Subsection 152CBA(1)

Repeal the subsection, substitute:

Scope

- (1) This section applies to:
 - (a) a person (other than an NBN corporation) who is, or expects to be, a carrier or a carriage service provider supplying:
 - (i) a listed carriage service (within the meaning of the *Telecommunications Act 1997*); or

- (ii) a service that facilitates the supply of a listed carriage service (within the meaning of that Act);
whether to itself or to other persons, so long as the service is not a declared service; or
- (b) a person who is an NBN corporation and who is, or expects to be, a carrier or carriage service provider supplying or capable of supplying:
 - (i) a listed carriage service (within the meaning of the *Telecommunications Act 1997*); or
 - (ii) a service that facilitates the supply of a listed carriage service (within the meaning of that Act);
whether to itself or to other persons, so long as:
 - (iii) the service is not a declared service under subsection 152AL(8A); and
 - (iv) there is no access determination that applies in relation to access to the service.

71 Subsection 152CBA(3)

Omit “The undertaking”, substitute “If paragraph (1)(a) applies, the undertaking”.

72 After subsection 152CBA(3)

Insert:

- (3A) If paragraph (1)(b) applies, the undertaking must state that, in the event that the person supplies, or becomes capable of supplying, the service (whether to itself or to other persons), the person:
 - (a) agrees to be bound by the obligations referred to in section 152AXB, to the extent that those obligations would apply to the person in relation to the service if the service were treated as a declared service; and
 - (b) undertakes to comply with the terms and conditions specified in the undertaking in relation to the obligations referred to in section 152AXB.

Note: The undertaking need not specify all terms and conditions—see subparagraph 152AY(2)(b)(ii).

73 Before subsection 152CBA(4)

Insert:

- (3C) If the person is an NBN corporation, the undertaking may also state that the NBN corporation will engage in specified conduct in relation to:
- (a) developing a new eligible service (within the meaning of section 152AL); or
 - (b) enhancing a declared service; or
 - (c) extending or enhancing the capability of a facility or telecommunications network by means of which a declared service is, or is to be, supplied; or
 - (d) planning for a facility or telecommunications network by means of which a declared service is, or is to be, supplied; or
 - (e) an activity that is preparatory to the supply of a declared service; or
 - (f) an activity that is ancillary or incidental to the supply of a declared service; or
 - (g) giving information to service providers about any of the above activities.
- (3D) For the purposes of this Part, in determining whether the undertaking relates to a particular service or proposed service, disregard a statement included in the undertaking in accordance with subsection (3C).

74 Subsection 152CBA(11)

Omit “paragraph (1)(b)”, substitute “subparagraphs (1)(a)(ii) and (b)(ii)”.

75 Paragraphs 152CBD(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) if paragraph 152CBA(1)(a) applies—the Commission is satisfied that:
 - (i) the terms and conditions referred to in paragraph 152CBA(3)(b) would be consistent with the obligations referred to in paragraph 152CBA(3)(a); and
 - (ii) those terms and conditions are reasonable; and
- (b) if paragraph 152CBA(1)(b) applies—the Commission is satisfied that:

- (i) the terms and conditions referred to in subsection 152CBA(3A) would be consistent with the obligations referred to in section 152AXB; and
- (ii) those terms and conditions are reasonable; and

76 Before paragraph 152CBD(2)(d)

Insert:

- (cb) if subsection 152CBA(3C) applies—the Commission is satisfied that the conduct specified in accordance with that subsection will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services; and

76A After subsection 152CBD(5)

Insert:

(5A) If:

- (a) the undertaking contains price-related terms and conditions relating to the supply of a service; and
- (b) the price-related terms and conditions are reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities;

then:

- (c) the Commission must not reject the undertaking for a reason that concerns the price-related terms and conditions; and
- (d) paragraph (2)(b) does not apply to the price-related terms and conditions.

(5B) In subsection (5A), ***eligible services, price-related terms and conditions, uniform national pricing*** and ***utilities*** have the same meaning as in section 151DA.

(5C) If a refusal is authorised under subsection 151DA(2) or (3) for the purposes of subsection 51(1):

- (a) the Commission must not reject the undertaking for a reason that concerns that refusal; and
- (b) paragraph (2)(b) of this section does not apply to that refusal.

77 Paragraph 152CBF(2)(b)

After “even if”, insert “, in the case of an undertaking covered by subsection 152CBA(3),”.

78 Subsection 152CBI(3)

Omit “subsection 152AL(7)”, substitute “subsections 152AL(7) and (8E)”.

79 After Division 6 of Part XIC

Insert:

Division 6A—Supply of services by NBN corporations

152CJA Supply of services by NBN corporations

- (1) An NBN corporation must not supply an eligible service (within the meaning of section 152AL) to another person unless:
 - (a) the service is a declared service under subsection 152AL(8A); or
 - (b) both:
 - (i) the NBN corporation has formulated a standard form of access agreement that relates to access to the service; and
 - (ii) the standard form of access agreement is available on the NBN corporation’s website; or
 - (c) both:
 - (i) a special access undertaking given by the NBN corporation is in operation; and
 - (ii) the undertaking relates to the service.
- (2) If:
 - (a) as the result of a request made by an access seeker under section 152AXB, an NBN corporation is subject to a category B standard access obligation in relation to a declared service; and
 - (b) the NBN corporation has formulated a standard form of access agreement that relates to access to the service; and
 - (c) the standard form of access agreement is available on the NBN corporation’s website; and

(d) the access seeker requests the NBN corporation to enter into an access agreement that:

- (i) relates to access to the service; and
- (ii) sets out terms and conditions that are the same as the terms and conditions set out in the standard form of access agreement;

the NBN corporation must comply with the request mentioned in paragraph (d).

Note: An NBN corporation will not be subject to a category B standard access obligation in the circumstances set out in subsection 152AXB(3) or (6).

- (3) If an access seeker does not make a request under paragraph (2)(d), this Part does not, by implication, prevent the NBN corporation and the access seeker from entering into an access agreement that sets out terms and conditions that are not the same as the terms and conditions set out in the standard form of access agreement.

152CJB Mandatory NBN services

Scope

- (1) This section applies if a condition of a carrier licence held by an NBN corporation requires the NBN corporation to comply with this section in relation to a specified eligible service (within the meaning of section 152AL) that is supplied, or is capable of being supplied, by the NBN corporation (whether to itself or other persons).

Note 1: See section 41 of the *National Broadband Network Companies Act 2011*.

Note 2: For declaration of carrier licence conditions, see section 63 of the *Telecommunications Act 1997*.

Compliance by NBN corporation

- (2) The NBN corporation must, within 90 days after the carrier licence condition comes into force:
- (a) both:
 - (i) formulate a standard form of access agreement that relates to access to the service; and

- (ii) make the standard form of access agreement available on the NBN corporation's website; or
 - (b) give the Commission a special access undertaking in connection with the provision of access to the service.
- (3) If:
 - (a) the NBN corporation, in accordance with paragraph (2)(b), gives the Commission a special access undertaking in connection with the provision of access to the service; and
 - (b) the Commission rejects the undertaking;
the NBN corporation must, within 90 days after the rejection of the undertaking:
 - (c) formulate a standard form of access agreement that relates to access to the service; and
 - (d) make the standard form of access agreement available on the NBN corporation's website.
- (4) If the NBN corporation, in accordance with
 - (a) subparagraph (2)(a)(ii); or
 - (b) paragraph (3)(d);makes a standard form of access agreement available on the NBN corporation's website, the NBN corporation must ensure that a standard form of access agreement that:
 - (c) relates to access to the service; and
 - (d) is formulated by the NBN corporation;is available on the NBN corporation's website at all times during the remainder of the period when the carrier licence condition is in force.
- (5) If:
 - (a) the NBN corporation, in accordance with paragraph (2)(b), gives the Commission a special access undertaking in connection with the provision of access to the service; and
 - (b) the Commission accepts the undertaking; and
 - (c) the undertaking subsequently ceases to be in operation;
the NBN corporation must ensure that a standard form of access agreement that:
 - (d) relates to access to the service; and
 - (e) is formulated by the NBN corporation;

is available on the NBN corporation's website at all times during the remainder of the period when the carrier licence condition is in force.

152CJC Carrier licence condition

A carrier licence held by an NBN corporation is subject to a condition that the NBN corporation must comply with any rules in section 152CJA that are applicable to the NBN corporation.

Note: See also section 62D of the *Telecommunications Act 1997*.

152CJD Service provider rule

- (1) In addition to the rules mentioned in section 98 of the *Telecommunications Act 1997*, the rule set out in subsection (2) of this section is a service provider rule for the purposes of that Act.
- (2) If an NBN corporation is a service provider, the NBN corporation must comply with any rules in section 152CJA that are applicable to the NBN corporation.

152CJE Judicial enforcement of obligations

- (1) If the Federal Court is satisfied that an NBN corporation has contravened an obligation imposed by section 152CJA or 152CJB, the Court may, on the application of:
 - (a) the Commission; or
 - (b) any person whose interests are affected by the contravention;make all or any of the following orders:
 - (c) an order directing the NBN corporation to comply with the obligation;
 - (d) an order directing the NBN corporation to compensate any other person who has suffered loss or damage as a result of the contravention;
 - (e) any other order that the Court thinks appropriate.
- (2) The Federal Court may discharge or vary an order granted under this section.

152CJF Standard form of access agreement

For the purposes of this Part, if, at a particular time, a service is not a declared service, a standard form of access agreement relating to access to the service may be formulated by an NBN corporation at that time on the assumption that the service is a declared service.

152CJG When NBN corporation is not capable of supplying a carriage service

Condition of a carrier licence

- (1) If a condition of a carrier licence held by an NBN corporation prohibits the NBN corporation from supplying a specified carriage service to carriers or service providers, then, for the purposes of:
- (a) this Part; and
 - (b) subsections 41(1) and (2) of the *National Broadband Network Companies Act 2011*;
- the NBN corporation is taken not to be capable of supplying the service.

Note: See subsection 41(3) of the *National Broadband Network Companies Act 2011*.

Avoidance of doubt

- (2) Subsection (1) is enacted for the avoidance of doubt.

Division 6B—Explanatory material relating to anti-discrimination provisions

152CJH Explanatory material relating to anti-discrimination provisions

The Commission must:

- (a) as soon as practicable after the commencement of this section, publish on its website explanatory material relating to the following provisions:
 - (i) section 152AXC;
 - (ii) section 152AXD;
 - (iii) subsections 152BCB(4A) to (4C);

- (iv) subsections 152BDA(4A) to (4C); and
- (b) keep that statement up-to-date.

80 Subsection 152CK(4)

After “special access undertaking”, insert “given by a person other than an NBN corporation”.

81 At the end of section 152CK

Add:

- (5) For the purposes of this section, if a special access undertaking given by an NBN corporation is in operation, assume that subsection 152AL(8E) has effect in relation to the undertaking as if paragraph 152AL(8E)(c) had not been enacted.

81A At the end of subsection 152EOA(1)

Add:

- ; and (c) Division 2 of Part 2 of the *National Broadband Network Companies Act 2011*; and
 - (d) the remaining provisions of the *National Broadband Network Companies Act 2011* so far as they relate to Division 2 of Part 2 of that Act.
- (1A) Without limiting subsection (1), a review under that subsection must consider the following matters:
- (a) the supply by NBN corporations of eligible services covered by section 10, 11, 12, 13, 14, 15 or 16 of the *National Broadband Network Companies Act 2011*;
 - (b) the types of eligible services that have been, are being, or are proposed to be, supplied by NBN corporations.
- (1B) For the purposes of subsection (1A), **eligible service** has the same meaning as in section 152AL.

Note: The heading to section 152EOA is altered by adding at the end “**etc.**”.

82 After paragraph 155(9)(b)

Insert:

- (ba) the *National Broadband Network Companies Act 2011*; or

83 Transitional—continuity of special access undertakings

Schedule 1 Amendments

Part 1 General amendments

The amendments of section 152CBA of the *Competition and Consumer Act 2010* made by this Part do not affect the continuity of a special access undertaking that was in operation immediately before the commencement of this item.

Part 2—Amendments relating to infringement notices

Telecommunications Act 1997

84 At the end of paragraph 572E(4)(b)

Add:

- or (xiv) the carrier licence condition set out in section 152CJC of the *Competition and Consumer Act 2010*; or
- (xv) the service provider rule set out in subsection 152CJD(2) of the *Competition and Consumer Act 2010*; or
- (xvi) the carrier licence condition set out in section 37 of the *National Broadband Network Companies Act 2011*; or
- (xvii) the service provider rule set out in subsection 38(2) of the *National Broadband Network Companies Act 2011*; or
- (xviii) a carrier licence condition covered by section 41 of the *National Broadband Network Companies Act 2011*;

Part 3—Amendments relating to Layer 2 bitstream services

Telecommunications Act 1997

85 Section 7

Insert:

Layer 2 bitstream service means a carriage service that is:

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

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

86 After Part 6

Insert:

Part 7—Layer 2 bitstream services

140 Simplified outline

The following is a simplified outline of this Part:

- A local access line that belongs to a telecommunications network (other than the national broadband network) must not be used to supply a fixed-line carriage service if:
 - (a) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business

	customers, or prospective residential or small business customers, in Australia; and
(b)	no Layer 2 bitstream service is available for supply to those customers or prospective customers using the network; and
(c)	the network came into existence, or was upgraded, on or after 1 January 2011.

141 Supply of Layer 2 bitstream services

Scope

- (1) This section applies to a local access line if:
- (a) the local access line is:
 - (i) part of the infrastructure of a telecommunications network in Australia; or
 - (ii) used, or for use, in or in connection with a telecommunications network in Australia; and
 - (b) the network is not the national broadband network; and
 - (c) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
 - (d) no Layer 2 bitstream service is available for supply to those customers or prospective customers using the network; and
 - (e) either:
 - (i) the network came into existence on or after 1 January 2011; or
 - (ii) the network was altered or upgraded on or after 1 January 2011 and, as a result of the alteration or upgrade, the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia.

Note 1: See also section 141B (deemed networks).

Note 2: For exemptions, see section 141A.

Sole owner of local access line

- (2) If there is only one owner of the local access line, the owner of the local access line must not:
- (a) use the local access line, either alone or jointly with one or more other persons, to supply a fixed-line carriage service; or
 - (b) allow or permit another person to use the local access line to supply a fixed-line carriage service.

Multiple owners of local access line

- (3) If there are 2 or more owners of the local access line, an owner of the local access line must not:
- (a) use the local access line, either alone or jointly with one or more other persons, to supply a fixed-line carriage service; or
 - (b) either alone or together with one or more other owners, allow or permit another person to use the local access line to supply a fixed-line carriage service.

Offence

- (4) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2) or (3); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty: 20,000 penalty units.

Definitions

- (10) In this section:

alter, in relation to a telecommunications network, has a meaning affected by section 141E.

fixed-line carriage service means:

- (a) a carriage service that is supplied using a line to premises occupied or used by an end-user; or
- (b) a service that facilitates the supply of a carriage service covered by paragraph (a).

local access line has the meaning given by section 141D.

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

small business customer has the meaning given by section 141G.

superfast carriage service means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the download transmission speed of the carriage service is normally more than 25 megabits per second; and
- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

upgrade, in relation to a telecommunications network, has a meaning affected by section 141F.

141A Exemptions

- (1) The Minister may, by written instrument, exempt a specified network from section 141.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (2) The Minister may, by written instrument, exempt a specified local access line from section 141.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (3) The Minister may, by written instrument, exempt a specified owner from subsections 141(2) and (3).

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (4) An instrument under subsection (1), (2) or (3) may be:

- (a) unconditional; or
- (b) subject to such conditions (if any) as are specified in the instrument.

- (5) Before making an instrument under subsection (1), (2) or (3), the Minister must consult:

- (a) the ACCC; and
- (b) the ACMA.

- (6) An instrument under subsection (1), (2) or (3) is not a legislative instrument.

(7) In this section:

local access line has the meaning given by section 141D.

141B Deemed networks

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

- (a) a telecommunications network is altered or upgraded on or after 1 January 2011; and
- (b) as a result of the alteration or upgrade, a part of the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;

then:

- (c) that part is taken to be a network in its own right; and
- (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

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

- (a) a telecommunications network is extended on or after 1 January 2011; and
- (b) the extended part of the network is capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;

then:

- (c) the extended part is taken to be a network in its own right; and
- (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(3) If:

- (a) a part of the infrastructure of a telecommunications network is situated in a particular area that is being or was developed as a particular stage of a real estate development project (within the ordinary meaning of that expression); and
- (b) the network is extended to another area that is being, or is to be, developed as another stage of the project;

subsection (2) does not apply to the extension.

- (4) If:
- (a) a telecommunications network was in existence immediately before 1 January 2011; and
 - (b) the network is extended on or after 1 January 2011; and
 - (c) no point on the infrastructure of the extension is located more than:
 - (i) 1 kilometre; or
 - (ii) if a longer distance is specified in the regulations—that longer distance;from a point on the infrastructure of the network as the network stood immediately before 1 January 2011;
- subsection (2) does not apply to the extension.
- (5) The regulations may provide that subsection (2) does not apply to a specified extension of a telecommunications network.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

141C Certain installations and connections are not taken to be an extension, alteration or upgrade

For the purposes of this Part, if:

- (a) a line is or was installed for the purposes of connecting particular premises to a telecommunications network; and
 - (b) the installation of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the network; and
 - (c) the premises are in close proximity to a line that forms part of the infrastructure of the network; and
 - (d) the network is capable of being used to supply a superfast carriage service; and
 - (e) the network came into existence before 1 January 2011;
- neither the installation of the line mentioned in paragraph (a), nor the connection of the premises, is taken to be an extension, alteration or upgrade of the network.

141D Local access line

- (1) For the purposes of this Part, a **local access line** is a line that is part of the infrastructure of a local access network.

- (2) However, a line does not form part of a **local access line** to the extent that the line is on the customer side of the boundary of a telecommunications network.
- (3) For the purposes of this section, the **boundary of a telecommunications network** is to be determined in the same manner in which it is determined under section 22 for the purposes of sections 20, 21 and 30.
- (4) For the purposes of this section, **local access network** has the meaning generally accepted within the telecommunications industry.

141E Alteration

For the purposes of this Part, an **alteration** of a telecommunications network does not include an extension of the network.

141F Upgrade of telecommunications network

For the purposes of this Part, an **upgrade** of a telecommunications network does not include an extension of the network.

141G Small business customer

For the purposes of this Part, **small business customer** means:

- (a) a customer who is a small business employer (within the meaning of the *Fair Work Act 2009*); or
- (b) a customer who:
 - (i) carries on a business; and
 - (ii) does not have any employees.

For the purposes of paragraph (a) of this section, it is to be assumed that each reference in section 23 of the *Fair Work Act 2009* to a national system employer were a reference to an employer (within the ordinary meaning of that expression).

Part 8—Superfast fixed-line networks

Division 1—Introduction

142 Simplified outline

The following is a simplified outline of this Part:

- A controller of a telecommunications network (other than the national broadband network) must not use a local access line to supply an eligible service to a person other than a carrier or a service provider, if:
 - (a) the local access line is part of the infrastructure of the network; and
 - (b) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
 - (c) the network came into existence, or was upgraded, on or after 1 January 2011.

142A Definitions

In this Part:

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

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

eligible service has the same meaning as in section 152AL of the *Competition and Consumer Act 2010*.

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

local access line has the meaning given by section 158.

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

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

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

small business customer means:

- (a) a customer who is a small business employer (within the meaning of the *Fair Work Act 2009*); or
- (b) a customer who:
 - (i) carries on a business; and
 - (ii) does not have any employees.

For the purposes of paragraph (a) of this definition, it is to be assumed that each reference in section 23 of the *Fair Work Act 2009* to a national system employer were a reference to an employer (within the ordinary meaning of that expression).

State or Territory road authority has the same meaning as in the *National Broadband Network Companies Act 2011*.

storm water drainage services has the same meaning as in the *National Broadband Network Companies Act 2011*.

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

superfast carriage service means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the download transmission speed of the carriage service is normally more than 25 megabits per second; and
- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

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

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

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

143 Supply of eligible services to be on wholesale basis

Scope

- (1) This section applies to a local access line if:
- (a) the local access line is part of the infrastructure of a telecommunications network in Australia; and
 - (b) the network is used, or proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
 - (c) the network is not the national broadband network; and
 - (d) either:
 - (i) the network came into existence on or after 1 January 2011; or
 - (ii) the network was altered or upgraded on or after 1 January 2011 and, as a result of the alteration or upgrade, the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia.

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

Note 2: For exemptions, see sections 144 to 151.

Person in position to exercise control of network

- (2) A person who is in a position to exercise control of the network, or a person who is an associate of such a person, must not use the local access line, either alone or jointly with one or more other persons, to supply an eligible service unless the service is supplied to:
- (a) a carrier; or
 - (b) a service provider.

Note 1: For when a person is in a position to exercise control of a network, see section 155.

Note 2: For control of a company, see section 154.

Offence

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Penalty: 20,000 penalty units.

144 Exemptions—Ministerial instrument

- (1) The Minister may, by written instrument, exempt a specified network from section 143.
- Note: For specification by class, see the *Acts Interpretation Act 1901*.
- (2) The Minister may, by written instrument, exempt a specified local access line from section 143.
- Note: For specification by class, see the *Acts Interpretation Act 1901*.
- (3) The Minister may, by written instrument, exempt a specified person from subsection 143(2).
- Note: For specification by class, see the *Acts Interpretation Act 1901*.
- (4) An instrument under subsection (1), (2) or (3) may be:
- (a) unconditional; or
 - (b) subject to such conditions (if any) as are specified in the instrument.
- (5) Before making an instrument under subsection (1), (2) or (3), the Minister must consult:
- (a) the ACCC; and
 - (b) the ACMA.
- (6) An instrument under subsection (1), (2) or (3) is not a legislative instrument.

145 Exemption—transport authorities

- (1) Subsection 143(2) does not apply if:
- (a) both:
 - (i) the eligible service is a carriage service; and

- (ii) the sole use of the carriage service is use by Airservices Australia to carry communications necessary or desirable for the workings of aviation services; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to Airservices Australia unless the carriage service is supplied on the basis that Airservices Australia must not re-supply the carriage service.
- (3) Subsection 143(2) does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a State or Territory transport authority to carry communications necessary or desirable for the workings of the following services:
 - (i) train services of a kind provided by the authority;
 - (ii) bus or other road services of a kind provided by the authority;
 - (iii) tram services of a kind provided by the authority; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.
- (4) Paragraph (3)(a) does not apply to a carriage service supplied to a State or Territory transport authority unless the carriage service is supplied on the basis that the State or Territory transport authority must not re-supply the carriage service.
- (5) Subsection 143(2) does not apply if:
 - (a) both:
 - (i) the eligible service is a carriage service; and
 - (ii) the sole use of the carriage service is use by a rail corporation to carry communications necessary or desirable for the workings of train services; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.
- (6) Paragraph (5)(a) does not apply to a carriage service supplied to a rail corporation unless the carriage service is supplied on the basis that the rail corporation must not re-supply the carriage service.

146 Exemption—electricity supply bodies

- (1) Subsection 143(2) does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by an electricity supply body to carry communications necessary or desirable for:
 - (i) managing the generation, transmission, distribution or supply of electricity; or
 - (ii) charging for the supply of electricity; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to an electricity supply body unless the carriage service is supplied on the basis that the electricity supply body must not re-supply the carriage service.

147 Exemption—gas supply bodies

- (1) Subsection 143(2) does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a gas supply body to carry communications necessary or desirable for:
 - (i) managing the transmission or distribution of natural gas in a pipeline; or
 - (ii) charging for the supply of natural gas transmitted or distributed in a pipeline; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a gas supply body unless the carriage service is supplied on the basis that the gas supply body must not re-supply the carriage service.

148 Exemption—water supply bodies

- (1) Subsection 143(2) does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a water supply body to carry communications necessary or desirable for:
 - (i) managing the distribution of water in a pipeline; or
-

- (ii) charging for the supply of water distributed in a pipeline; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a water supply body unless the carriage service is supplied on the basis that the water supply body must not re-supply the carriage service.

149 Exemption—sewerage services bodies

- (1) Subsection 143(2) does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a sewerage services body to carry communications necessary or desirable for:
 - (i) managing the supply of sewerage services; or
 - (ii) charging for the supply of sewerage services; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a sewerage services body unless the carriage service is supplied on the basis that the sewerage services body must not re-supply the carriage service.

150 Exemption—storm water drainage services bodies

- (1) Subsection 143(2) does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a storm water drainage services body to carry communications necessary or desirable for:
 - (i) managing the supply of storm water drainage services; or
 - (ii) charging for the supply of storm water drainage services; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a storm water drainage services body unless the carriage service is

supplied on the basis that the storm water drainage services body must not re-supply the carriage service.

151 Exemption—State or Territory road authorities

- (1) Subsection 143(2) does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a State or Territory road authority to carry communications necessary or desirable for the management or control of road traffic; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a State or Territory road authority unless the carriage service is supplied on the basis that the State or Territory road authority must not re-supply the carriage service.

Division 3—Other provisions

152 Associate

- (1) For the purposes of this Part, an **associate** of a person (the **controller**) in relation to control of:
 - (a) a telecommunications network; or
 - (b) a company;is:
 - (c) a partner of the controller; or
 - (d) if the controller or another person who is an associate of the controller under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
 - (e) a person (whether a company or not) who:
 - (i) acts, or is accustomed to act; or
 - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;
in accordance with the directions, instructions or wishes of, or in concert with:
 - (iii) the controller; or

- (iv) the controller and another person who is an associate of the controller under another paragraph; or
- (f) another company if:
 - (i) the other company is a related body corporate of the controller for the purposes of the *Corporations Act 2001*; or
 - (ii) the controller, or the controller and another person who is an associate of the controller under another paragraph, is or are in a position to exercise control of the other company.
- (2) However, persons are not **associates** of each other if the ACCC is satisfied that:
 - (a) they do not act together in any relevant dealings relating to the network or company; and
 - (b) neither of them is in a position to exert influence over the business dealings of the other in relation to the network or company.

153 Control

In this Part, **control** includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

154 Control of a company

- (1) For the purposes of this Part, the question of whether a person is in a position to exercise control of a company is to be determined under Schedule 1 to the *Broadcasting Services Act 1992*.
- (2) However, in determining that question:
 - (a) the definition of **associate** in subsection 6(1) of the *Broadcasting Services Act 1992* does not apply; and
 - (b) the definition of **associate** in section 152 of this Act applies instead.

155 When a person is in a position to exercise control of a network

- (1) For the purposes of this Part, a person (the **controller**) is in a position to exercise control of a telecommunications network if:
- (a) the controller legally or beneficially owns the network (whether alone or together with one or more other persons); or
 - (b) the controller is in a position, either alone or together with an associate of the controller and whether directly or indirectly:
 - (i) to exercise control of the operation of all or part of the network; or
 - (ii) to exercise control of the selection of the kinds of services that are supplied using the network; or
 - (iii) to exercise control of the supply of services using the network; or
 - (c) a company other than the controller legally or beneficially owns the network (whether alone or together with one or more other persons), and:
 - (i) the controller is in a position, either alone or together with an associate of the controller, to exercise control of the company; or
 - (ii) the controller, either alone or together with an associate of the controller, is in a position to veto any action taken by the board of directors of the company; or
 - (iii) the controller, either alone or together with an associate of the controller, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
 - (iv) the controller, either alone or together with an associate of the controller, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or

- (v) the company or more than 50% of its directors act, or are accustomed to act, in accordance with the directions, instructions or wishes of, or in concert with, the controller, the controller and an associate of the controller acting together, or the directors of the controller; or
 - (vi) the company or more than 50% of its directors, under a contract or an arrangement or understanding (whether formal or informal), are intended or expected to act in accordance with the directions, instructions or wishes of, or in concert with, the controller, the controller and an associate of the controller acting together, or the directors of the controller.
- (2) An employee is not, except through an association with another person, to be regarded as being in a position to exercise control of a network under subsection (1) purely because of being an employee.
- (3) More than one person may be in a position to exercise control of a network.

156 Deemed networks

- (1) For the purposes of this Part, if:
- (a) a telecommunications network is altered or upgraded on or after 1 January 2011; and
 - (b) as a result of the alteration or upgrade, a part of the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;
- then:
- (c) that part is taken to be a network in its own right; and
 - (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.
- (2) For the purposes of this Part, if:
- (a) a telecommunications network is extended on or after 1 January 2011; and
 - (b) the extended part of the network is capable of being used to supply a superfast carriage service to residential or small

business customers, or prospective residential or small business customers, in Australia;

then:

- (c) the extended part is taken to be a network in its own right; and
- (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(3) If:

- (a) a part of the infrastructure of a telecommunications network is situated in a particular area that is being or was developed as a particular stage of a real estate development project (within the ordinary meaning of that expression); and
- (b) the network is extended to another area that is being, or is to be, developed as another stage of the project;

subsection (2) does not apply to the extension.

(4) If:

- (a) a telecommunications network was in existence immediately before 1 January 2011; and
- (b) the network is extended on or after 1 January 2011; and
- (c) no point on the infrastructure of the extension is located more than:
 - (i) 1 kilometre; or
 - (ii) if a longer distance is specified in the regulations—that longer distance;from a point on the infrastructure of the network as the network stood immediately before 1 January 2011;

subsection (2) does not apply to the extension.

(5) The regulations may provide that subsection (2) does not apply to a specified extension of a telecommunications network.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

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

For the purposes of this Part, if:

- (a) a line is or was installed for the purposes of connecting particular premises to a telecommunications network; and

- (b) the installation of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the network; and
 - (c) the premises are in close proximity to a line that forms part of the infrastructure of the network; and
 - (d) the network is capable of being used to supply a superfast carriage service; and
 - (e) the network came into existence before 1 January 2011;
- neither the installation of the line mentioned in paragraph (a), nor the connection of the premises, is taken to be an extension, alteration or upgrade of the network.

158 Local access line

- (1) For the purposes of this Part, a **local access line** is a line that is part of the infrastructure of a local access network.
- (2) However, a line does not form part of a **local access line** to the extent that the line is on the customer side of the boundary of a telecommunications network.
- (3) For the purposes of this section, the **boundary of a telecommunications network** is to be determined in the same manner in which it is determined under section 22 for the purposes of sections 20, 21 and 30.
- (4) For the purposes of this section, **local access network** has the meaning generally accepted within the telecommunications industry.

159 Alteration

For the purposes of this Part, an **alteration** of a telecommunications network does not include an extension of the network.

160 Upgrade of telecommunications network

For the purposes of this Part, an **upgrade** of a telecommunications network does not include an extension of the network.

87 Section 373

Schedule 1 Amendments

Part 3 Amendments relating to Layer 2 bitstream services

Omit:

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

substitute:

- The ACMA may make the following types of standards:
 - (a) technical standards about customer equipment and customer cabling;
 - (b) standards relating to the features of customer equipment that are designed to cater for the special needs of persons with disabilities;
 - (c) technical standards about the interconnection of facilities;
 - (d) technical standards relating to Layer 2 bitstream services.

88 After Division 5 of Part 21

Insert:

Division 5A—Technical standards relating to Layer 2 bitstream services

389A ACMA’s power to determine technical standards

The ACMA may, by legislative instrument, determine technical standards relating to Layer 2 bitstream services.

Note: See section 589 (instruments under this Act may provide for matters by reference to other instruments).

389B Compliance with technical standards

- (1) A carrier or carriage service provider must comply with a standard determined under section 389A.
- (2) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (1); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
 - (d) conspire with others to effect a contravention of subsection (1).
- (3) Subsections (1) and (2) are ***civil penalty provisions***.

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

Exemptions

- (4) The Minister may, by written instrument, exempt a specified carrier, or a specified carriage service provider, from subsection (1).

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (5) An instrument under subsection (4) may be:
 - (a) unconditional; or
 - (b) subject to such conditions (if any) as are specified in the instrument.

- (6) Before making an instrument under subsection (4), the Minister must consult:
 - (a) the ACCC; and
 - (b) the ACMA.
- (7) An instrument under subsection (4) is not a legislative instrument.

Competition and Consumer Act 2010

89 Section 152AC

Insert:

designated superfast telecommunications network has the meaning given by section 152AGA.

90 Section 152AC

Insert:

Layer 2 bitstream service has the same meaning as in the *Telecommunications Act 1997*.

91 Section 152AC

Insert:

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

92 Section 152AC

Insert:

superfast carriage service has the same meaning as in section 141 of the *Telecommunications Act 1997*.

93 After section 152AG

Insert:

152AGA Designated superfast telecommunications network

- (1) For the purposes of this Part, if:
 - (a) a telecommunications network is used, or is proposed to be used, to supply one or more Layer 2 bitstream services

wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and

- (b) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
- (c) the network is not the national broadband network; and
- (d) either:
 - (i) the network came into existence on or after 1 January 2011; or
 - (ii) the network was altered or upgraded on or after 1 January 2011 and, as a result of the alteration or upgrade, the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;

the network is a ***designated superfast telecommunications network***.

- (2) A network is not a ***designated superfast telecommunications network*** for the purposes of this Part if, under subsection 141A(1), the network is exempt from section 141.

Note: Section 141 deals with the supply of Layer 2 bitstream services.

Deemed networks

- (3) For the purposes of this section, if:
 - (a) a telecommunications network is altered or upgraded on or after 1 January 2011; and
 - (b) as a result of the alteration or upgrade, a part of the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;then:
 - (c) that part is taken to be a network in its own right; and
 - (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(4) For the purposes of this section, if:

- (a) a telecommunications network is extended on or after 1 January 2011; and
- (b) the extended part of the network is capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;

then:

- (c) the extended part is taken to be a network in its own right; and
- (d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(5) If:

- (a) a part of the infrastructure of a telecommunications network is situated in a particular area that is being or was developed as a particular stage of a real estate development project (within the ordinary meaning of that expression); and
- (b) the network is extended to another area that is being, or is to be, developed as another stage of the project;

subsection (4) does not apply to the extension.

(6) If:

- (a) a telecommunications network was in existence immediately before 1 January 2011; and
- (b) the network is extended on or after 1 January 2011; and
- (c) no point on the infrastructure of the extension is located more than:
 - (i) 1 kilometre; or
 - (ii) if a longer distance is specified in the regulations—that longer distance;from a point on the infrastructure of the network as the network stood immediately before 1 January 2011;

subsection (4) does not apply to the extension.

(7) The regulations may provide that subsection (4) does not apply to a specified extension of a telecommunications network.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

Certain installations and connections are not taken to be an extension, alteration or upgrade

- (8) For the purposes of this section, if:
- (a) a line is or was installed for the purposes of connecting particular premises to a telecommunications network; and
 - (b) the installation of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the network; and
 - (c) the premises are in close proximity to a line that forms part of the infrastructure of the network; and
 - (d) the network is capable of being used to supply a superfast carriage service; and
 - (e) the network came into existence before 1 January 2011;
- neither the installation of the line mentioned in paragraph (a), nor the connection of the premises, is taken to be an extension, alteration or upgrade of the network.

Small business customer

- (9) For the purposes of this section, **small business customer** means:
- (a) a customer who is a small business employer (within the meaning of the *Fair Work Act 2009*); or
 - (b) a customer who:
 - (i) carries on a business; and
 - (ii) does not have any employees.

For the purposes of paragraph (a), it is to be assumed that each reference in section 23 of the *Fair Work Act 2009* to a national system employer were a reference to an employer (within the ordinary meaning of that expression).

Alteration

- (10) For the purposes of this section, an **alteration** of a telecommunications network does not include an extension of the network.

Upgrade

- (11) For the purposes of this section, an **upgrade** of a telecommunications network does not include an extension of the network.

94 Before subsection 152AL(4)

Insert:

Mandatory declaration—Layer 2 bitstream service

- (3C) As soon as practicable after the commencement of this subsection, the Commission must declare under subsection (3) that a specified Layer 2 bitstream service is a declared service.
- (3D) A declaration mentioned in subsection (3C) has no effect except to the extent (if any) to which the Layer 2 bitstream service is supplied using a designated superfast telecommunications network.
- Note: For **designated superfast telecommunications network**, see section 152AGA.
- (3E) Paragraphs (3)(a) to (d) do not apply to a declaration mentioned in subsection (3C).
- (3F) If a Layer 2 bitstream service is declared as mentioned in subsection (3C), that subsection does not, by implication, prevent the Commission from making a declaration under subsection (3) in relation to another Layer 2 bitstream service.
- (3G) If a Layer 2 bitstream service is declared as mentioned in subsection (3C), that subsection does not, by implication, prevent the Commission from making another declaration under subsection (3) in relation to the same Layer 2 bitstream service.
- (3H) The other declaration mentioned in subsection (3G) has no effect except to the extent (if any) to which the Layer 2 bitstream service is supplied otherwise than by using a designated superfast telecommunications network.

Note: For **designated superfast telecommunications network**, see section 152AGA.

95 After subsection 152AL(8C)

Insert:

- (8CA) Subsection (3C) does not, by implication, prevent a Layer 2 bitstream service from being declared under subsection (8A).

96 Subsections 152ALA(1) and (5)

After “section 152AL”, insert “(other than a declaration mentioned in subsection 152AL(3C))”.

97 After subsection 152ALA(5)

Insert:

- (5A) A declaration mentioned in subsection 152AL(3C) remains in force indefinitely.

98 At the end of section 152AO

Add:

- (4) The Commission must not vary or revoke a declaration mentioned in subsection 152AL(3C).

Note: Subsection 152AL(3C) deals with Layer 2 bitstream services.

99 After section 152AR

Insert:

152ARA Layer 2 bitstream services to be supplied on a non-discriminatory basis

No discrimination between access seekers

- (1) If a Layer 2 bitstream service is:
- (a) supplied using a designated superfast telecommunications network; and
 - (b) a declared service;
- a carrier (other than an NBN corporation) or carriage service provider (other than an NBN corporation) must not, in complying with any of its category A standard access obligations in relation to the service, discriminate between access seekers.

Note: For explanatory material, see section 152CJH.

- (2) The rule in subsection (1) does not prevent discrimination against an access seeker if the carrier or carriage service provider has

reasonable grounds to believe that the access seeker would fail, to a material extent, to comply with the terms and conditions on which the carrier or carriage service provider complies, or on which the carrier or carriage service provider is reasonably likely to comply, with the relevant obligation.

- (3) Examples of grounds for believing as mentioned in subsection (2) include:
- (a) evidence that the access seeker is not creditworthy; and
 - (b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the carrier or carriage service provider).

No discrimination by a carrier or carriage service provider in favour of itself

- (7) If:
- (a) a Layer 2 bitstream service is:
 - (i) supplied using a designated superfast telecommunications network; and
 - (ii) a declared service; and
 - (b) the carrier (other than an NBN corporation) or carriage service provider (other than an NBN corporation) supplies, or is capable of supplying, the service to itself and to other persons; and
 - (c) the carrier or carriage service provider is subject to a category A standard access obligation in relation to the service;

the carrier or carriage service provider must not discriminate in favour of itself in relation to the supply of the service.

152ARB Layer 2 bitstream services—carriers and carriage service providers to carry on related activities on a non-discriminatory basis

Scope

- (1) This section applies to a carrier or carriage service provider if:
- (a) a Layer 2 bitstream service is:

- (i) supplied using a designated superfast telecommunications network; and
- (ii) a declared service; and
- (b) the carrier or provider is subject to a category A standard access obligation in relation to the service.

No discrimination

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

Note: For explanatory material, see section 152CJH.

Definition

- (6) In this section:

eligible service has the same meaning as in section 152AL.

100 Paragraph 152AZ(aa)

Before “152AXC”, insert “152ARA, 152ARB,”.

101 Paragraph 152BA(2)(aa)

Before “152AXC”, insert “152ARA, 152ARB,”.

102 Before subsection 152BB(1AB)

Insert:

- (1AA) If the Federal Court is satisfied that a carrier or carriage service provider has contravened the rule in subsection 152ARA(1) or (7) or 152ARB(2), the Court may, on the application of:
- (a) the Commission; or
 - (b) any person whose interests are affected by the contravention;
- make all or any of the following orders:
- (c) an order directing the carrier or provider to comply with the obligation;
 - (d) an order directing the carrier or provider to compensate any other person who had suffered loss or damage as a result of the contravention;
 - (e) any other order that the Court thinks appropriate.

103 After subsection 152BC(4)

Insert:

- (4A) Paragraphs (3)(h) and (i) do not apply to an access determination that relates to a declared service that is a Layer 2 bitstream service supplied using a designated superfast telecommunications network.

104 After subsection 152BCB(4F)

Insert:

- (4G) The Commission must not make an access determination that:
- (a) relates to a declared service that is:
 - (i) a Layer 2 bitstream service; and
 - (ii) supplied using a designated superfast telecommunications network; and
 - (iii) supplied by a carrier (other than an NBN corporation) or a carriage service provider (other than an NBN corporation); and
 - (b) has the effect (whether direct or indirect) of discriminating between access seekers.

Note: For explanatory material, see section 152CJH.

- (4H) Subsection (4G) does not prevent discrimination against an access seeker if the Commission has reasonable grounds to believe that the access seeker would fail, to a material extent, to comply with the terms and conditions on which the carrier or carriage service provider complies, or on which the carrier or carriage service

provider is reasonably likely to comply, with the relevant obligation.

- (4J) Examples of grounds for believing as mentioned in subsection (4H) include:
- (a) evidence that the access seeker is not creditworthy; and
 - (b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the carrier or carriage service provider).

105 Subsection 152BCB(5)

Omit “or (4A)”, substitute “, (4A) or (4G)”.

106 After subsection 152BDA(4F)

Insert:

- (4G) The Commission must not make binding rules of conduct that:
- (a) relate to a declared service that is:
 - (i) a Layer 2 bitstream service; and
 - (ii) supplied using a designated superfast telecommunications network; and
 - (iii) supplied by a carrier (other than an NBN corporation) or a carriage service provider (other than an NBN corporation); and
 - (b) have the effect (whether direct or indirect) of discriminating between access seekers.

Note: For explanatory material, see section 152CJH.

- (4H) Subsection (4G) does not prevent discrimination against an access seeker if the Commission has reasonable grounds to believe that the access seeker would fail, to a material extent, to comply with the terms and conditions on which the carrier or carriage service provider complies, or on which the carrier or carriage service provider is reasonably likely to comply, with the relevant obligation.
- (4J) Examples of grounds for believing as mentioned in subsection (4H) include:
- (a) evidence that the access seeker is not creditworthy; and

- (b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the carrier or carriage service provider).

107 Subsection 152BDA(5)

Omit “or (4A)”, substitute “, (4A) or (4G)”.

108 After subsection 152BE(1A)

Insert:

- (1B) Subparagraphs (1)(e)(ix) and (x) do not apply to an agreement that relates to a declared service that is a Layer 2 bitstream service supplied using a designated superfast telecommunications network.

109 After section 152BEBD

Insert:

152BEBE Layer 2 bitstream services—carrier or carriage service provider to give the Commission a statement about the differences between an access agreement and a special access undertaking

Access agreement

- (1) If:
 - (a) an access agreement is covered by subsection 152BE(1); and
 - (b) the declared service to which the agreement relates is a Layer 2 bitstream service supplied using a designated superfast telecommunications network; and
 - (c) the carrier or carriage service provider who supplies, or proposes to supply, the declared service is not an NBN corporation; and
 - (d) immediately before the access agreement was entered into, a special access undertaking that:
 - (i) relates to access to the service; and
 - (ii) was given by the carrier or provider; was in operation; and

- (e) the terms and conditions set out in the access agreement are not the same as the terms and conditions set out in the special access undertaking;

the carrier or provider must, within 7 days after the day on which the access agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:

- (f) identifying the parties to the access agreement; and
- (g) describing the differences between the terms and conditions set out in the access agreement and the terms and conditions set out in the special access undertaking; and
- (k) setting out such other information (if any) about the access agreement as is required by the form.

Variation agreement

(2) If:

- (a) a variation agreement is entered into after the commencement of this section; and
- (b) the declared service to which the relevant access agreement relates is a Layer 2 bitstream service supplied using a designated superfast telecommunications network; and
- (c) the carrier or carriage service provider who supplies, or proposes to supply, the service to which the relevant access agreement relates is not an NBN corporation; and
- (d) immediately before the variation agreement was entered into, a special access undertaking that:
 - (i) relates to access to the service; and
 - (ii) was given by the carrier or provider; was in operation; and
- (e) the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) are not the same as the terms and conditions set out in the special access undertaking;

the carrier or provider must, within 7 days after the day on which the variation agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:

- (f) identifying the parties to the relevant access agreement (as varied by the variation agreement); and

- (g) describing the differences between the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) and the terms and conditions set out in the special access undertaking; and
- (k) setting out such other information (if any) about the relevant access agreement (as varied by the variation agreement) as is required by the form.

152BEBF Layer 2 bitstream services—carrier or carriage service provider to give the Commission a statement about the differences between an access agreement and an access determination

Access agreement

- (1) If:
- (a) an access agreement is covered by subsection 152BE(1); and
 - (b) the declared service to which the agreement relates is a Layer 2 bitstream service supplied using a designated superfast telecommunications network; and
 - (c) the carrier or carriage service provider who supplies, or proposes to supply, the declared service is not an NBN corporation; and
 - (d) immediately before the access agreement was entered into, an access determination relating to access to the service was in force; and
 - (e) the terms and conditions set out in the access agreement are not the same as the terms and conditions set out in the access determination;

the carrier or provider must, within 7 days after the day on which the access agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:

- (f) identifying the parties to the access agreement; and
- (g) describing the differences between the terms and conditions set out in the access agreement and the terms and conditions set out in the access determination; and
- (k) setting out such other information (if any) about the access agreement as is required by the form.

Variation agreement

- (2) If:
- (a) a variation agreement is entered into after the commencement of this section; and
 - (b) the declared service to which the relevant access agreement relates is a Layer 2 bitstream service supplied using a designated superfast telecommunications network; and
 - (c) the carrier or carriage service provider who supplies, or proposes to supply, the service to which the relevant access agreement relates is not an NBN corporation; and
 - (d) immediately before the variation agreement was entered into, an access determination relating to access to the service was in force; and
 - (e) the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) are not the same as the terms and conditions set out in the access determination;
- the carrier or provider must, within 7 days after the day on which the variation agreement was entered into, give the Commission a statement, in a form approved in writing by the Commission:
- (f) identifying the parties to the relevant access agreement (as varied by the variation agreement); and
 - (g) describing the differences between the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) and the terms and conditions set out in the access determination; and
 - (k) setting out such other information (if any) about the relevant access agreement (as varied by the variation agreement) as is required by the form.

152BEBG Register of Layer 2 Bitstream Access Agreement Statements

- (1) The Commission is to maintain a register, to be known as the Register of Layer 2 Bitstream Access Agreement Statements, in which the Commission includes all statements given to it under the following provisions:
- (a) section 152BEBE;
 - (b) section 152BEBF.

- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Commission's website.
- (4) The Register is not a legislative instrument.
- (5) If the Commission is satisfied that:
 - (a) publication of particular material contained in a statement could reasonably be expected to prejudice substantially the commercial interests of a person; and
 - (b) the prejudice outweighs the public interest in the publication of the matter;the Commission may remove the material from the version of the statement that is included in the Register.
- (6) If the Commission does so, the Commission must include in the Register an annotation to that effect.

110 Section 152BEC

Omit "and 152BEBC", substitute ", 152BEBC, 152BEBE and 152BEBF".

111 Subsection 152BED(2)

Omit "and 152BEBC", substitute ", 152BEBC, 152BEBE and 152BEBF".

112 Before subparagraph 152CJH(a)(i)

Insert:

- (ia) section 152ARA;
- (ib) section 152ARB;

113 At the end of subparagraph 152CJH(a)(iii)

Add "and (4G) to (4J)".

114 At the end of subparagraph 152CJH(a)(iv)

Add "and (4G) to (4J)".

Part 4—Amendments relating to freedom of information

Freedom of Information Act 1982

115 Subsection 4(1)

Insert:

NBN Co means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

116 Subsection 4(1) (at the end of paragraph (a) of the definition of *prescribed authority*)

Add “or”.

117 Subsection 4(1) (after paragraph (a) of the definition of *prescribed authority*)

Insert:

(aa) NBN Co; or

118 Subsection 4(1) (at the end of paragraph (b) of the definition of *prescribed authority*)

Add “or”.

119 Subsection 4(1) (after paragraph (b) of the definition of *responsible Minister*)

Insert:

(ba) in relation to the prescribed authority referred to in paragraph (aa) of that definition—the Minister administering the *National Broadband Network Companies Act 2011*; or

120 Subsection 7(3)

Before “means”, insert “(except when used in relation to NBN Co)”.

121 After subsection 7(3)

Schedule 1 Amendments

Part 4 Amendments relating to freedom of information

Insert:

- (3A) In Part II of Schedule 2, ***commercial activities***, when used in relation to NBN Co, means:
- (a) activities carried on by NBN Co on a commercial basis; or
 - (b) activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.

122 Division 1 of Part II of Schedule 2 (after the item relating to the National Health and Medical Research Council)

Insert:

NBN Co, in relation to documents in respect of its commercial activities

*[Minister's second reading speech made in—
House of Representatives on 25 November 2010
Senate on 2 March 2011]*

(284/10)