



**Telecommunications Legislation
Amendment (Universal Service Reform)
Act 2012**

No. 44, 2012

**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.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Amendments		4
Part 1—Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences		4
<i>Australian Communications and Media Authority Act 2005</i>		4
<i>Competition and Consumer Act 2010</i>		4
<i>Financial Management and Accountability Regulations 1997</i>		4
<i>Sea Installations Act 1987</i>		5
<i>Telecommunications Act 1997</i>		5
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>		16
<i>Telecommunications (Universal Service Levy) Act 1997</i>		33
Part 2—Amendments relating to the National Relay Service		34
<i>Criminal Code Act 1995</i>		34
<i>NRS Levy Imposition Act 1998</i>		34
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>		35
Part 3—Transitional		38



Telecommunications Legislation Amendment (Universal Service Reform) Act 2012

No. 44, 2012

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

[Assented to 16 April 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Telecommunications Legislation
Amendment (Universal Service Reform) Act 2012*.

Telecommunications Legislation Amendment (Universal Service Reform) Act 2012 No. 44,
2012 1

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.	16 April 2012
2. Schedule 1, Part 1	At the same time as section 3 of the <i>Telecommunications Universal Service Management Agency Act 2012</i> commences.	1 July 2012
3. Schedule 1, Part 2	The later of: (a) 1 July 2012; and (b) the day section 3 of the <i>Telecommunications Universal Service Management Agency Act 2012</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2012
4. Schedule 1, Part 3	At the same time as section 3 of the <i>Telecommunications Universal Service Management Agency Act 2012</i> commences.	1 July 2012
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)

- (1) Each Act, and each set of regulations, 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.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

Schedule 1—Amendments

Part 1—Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

Australian Communications and Media Authority Act 2005

1 Section 3 (at the end of paragraph (b) of the definition of authorised disclosure information)

Add:

- (vi) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*; or

2 After subparagraph 8(1)(j)(v)

Insert:

- (va) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*; or

3 After paragraph 59D(1)(n)

Insert:

- (na) the Telecommunications Universal Service Management Agency;

Competition and Consumer Act 2010

4 After paragraph 155AAA(12)(k)

Insert:

- (ka) the Telecommunications Universal Service Management Agency;

Financial Management and Accountability Regulations 1997

5 Part 1 of Schedule 1 (after table item 180)

Insert:

⁴ *Telecommunications Legislation Amendment (Universal Service Reform) Act 2012*
No. 44, 2012

180AA	Telecommunications Universal Service Management Agency, comprising: (a) the Chief Executive Officer of the Telecommunications Universal Service Management Agency; and (b) the staff mentioned in section 71 of the <i>Telecommunications Universal Service Management Agency Act 2012</i> ; and (c) the persons whose services are made available to the Telecommunications Universal Service Management Agency under section 73 of that Act; and (d) the consultants engaged under subsection 72(1) of that Act. <i>See Note B</i>	Chief Executive Officer
-------	---	-------------------------

Sea Installations Act 1987

6 Schedule

Insert in its appropriate alphabetical position, determined on a letter-by-letter basis:

Telecommunications Universal Service Management Agency Act 2012

Telecommunications Act 1997

7 Paragraph 3(2)(a)

Omit “, payphones and other carriage services of social importance”, substitute “and payphones”.

8 Section 7 (after paragraph (b) of the definition of ACMA’s telecommunications powers)

Insert:

(baa) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*; or

9 Section 7

Insert:

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

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

10 Section 7 (definition of *levy*)

Repeal the definition.

11 Section 7

Insert:

TUSMA means the Telecommunications Universal Service Management Agency.

12 Section 7

Insert:

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

13 At the end of section 19

Add:

- (3) A person may be specified in a determination under paragraph (1)(b) even if the person does not operate an emergency call service at the time the determination is made.
- (4) Subsection (3) is enacted for the avoidance of doubt.

14 Subsection 57(2) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*.

15 Paragraphs 58(2)(a) and (b)

Omit “72(1) or (2)”, substitute “72(1), (2) or (2A)”.

16 Paragraphs 58(4)(a), (b) and (c)

Omit “the levy”, substitute “the universal service levy”.

17 After subsection 58(4)

Insert:

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

- (4A) For the purposes of subsection (2), an individual is **disqualified** at a particular time (the **test time**) if:
- (a) at any time before the test time, a carrier licence held by a body corporate or partnership was cancelled under subsection 72(2A) because of a failure by the body corporate or partnership to pay in full the industry levy referred to in that subsection; and
 - (b) in the case of a body corporate—at the time when the industry levy referred to in subsection 72(2A) was due and payable, the individual was:
 - (i) a director of the body corporate; or
 - (ii) the secretary of the body corporate; or
 - (iii) a person (by whatever name called and whether or not a director of the body corporate) who was concerned in, or took part in, the management of the body corporate; and
 - (c) in the case of a partnership—at the time when the industry levy referred to in subsection 72(2A) was due and payable, the individual:
 - (i) was an employee of the partnership; and
 - (ii) was concerned in, or took part in, the management of the partnership; and
 - (d) the individual:
 - (i) aided, abetted, counselled or procured the failure of the body corporate or partnership; or
 - (ii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the failure of the body corporate or partnership.

18 Paragraph 58(5)(a)

Omit “72(1) or (2)”, substitute “72(1), (2) or (2A)”.

19 Subsection 67(3) (definition of *this Act*)

Repeal the definition, substitute:

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Telecommunications Universal Service Management Agency Act 2012*.

20 Subsection 72(2)

Omit “levy” (wherever occurring), substitute “universal service levy”.

21 Subsection 72(2) (note)

Omit “*Levy*”, substitute “*Universal service levy*”.

22 After subsection 72(2)

Insert:

Failure to pay industry levy

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

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

23 Subsection 78(2) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Telecommunications Universal Service Management Agency Act 2012*.

24 Subsection 81(5) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
 - (b) the *Telecommunications Universal Service Management Agency Act 2012*.
-

25 Subsection 81A(3) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Telecommunications Universal Service Management Agency Act 2012*.

26 Subsection 83(8) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Telecommunications Universal Service Management Agency Act 2012*.

27 Paragraph 105(3)(e)

Repeal the paragraph, substitute:

- (e) if there are any obligations under Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*—the adequacy of compliance with those obligations;

28 After paragraph 105(3)(ea)

Insert:

- (eb) the adequacy of compliance with obligations under Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*;
- (ec) the operation of Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*;

28A Section 284 (heading)

Repeal the heading, substitute:

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

284 Assisting the ACMA, the ACCC, the Telecommunications Industry Ombudsman or TUSMA

28B At the end of section 284

Add:

- (4) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:
 - (a) the disclosure is made to, or to a member of the staff of, TUSMA; and
 - (b) the information or document may assist TUSMA to carry out its functions or powers.

28C Section 299 (heading)

Repeal the heading, substitute:

299 Assisting the ACMA, the ACCC, the Telecommunications Industry Ombudsman or TUSMA

28D At the end of section 299 (before the note)

Add:

- (4) If information or a document is disclosed to a person as permitted by subsection 284(4) or this subsection, the person must not disclose or use the information or document except for the purpose of, or in connection with, the carrying out of TUSMA's functions and powers.

28E Section 299 (note)

Omit "or the Telecommunications Industry Ombudsman", substitute "the Telecommunications Industry Ombudsman or TUSMA".

29 Subsection 492(5) (after paragraph (a) of the definition of *this Act*)

Insert:

- (aa) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*; and

30 Subsection 502(5) (after paragraph (a) of the definition of *this Act*)

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

(b) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*.

36 Section 563

Omit:

- The Federal Court may grant injunctions in relation to contraventions of this Act, of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or of regulations under that Act.

substitute:

- The Federal Court may grant injunctions in relation to contraventions of:
 - (a) this Act; or
 - (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
 - (c) regulations under that Act; or
 - (d) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*.

37 Subsection 564(4) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*.

38 Subsection 570(7) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*.

39 Subsection 572B(6) (after paragraph (a) of the definition of *this Act*)

Insert:

- (aa) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*; and

40 Subsection 572E(9) (after paragraph (a) of the definition of *this Act*)

Insert:

- (aa) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*; and

41 Section 574A (after paragraph (a) of the definition of *this Act*)

Insert:

- (aa) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*; and

42 Section 582

Omit “and regulations under that Act” (first occurring), substitute “, regulations under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and the *Telecommunications Universal Service Management Agency Act 2012*”.

43 Section 582

Omit “2006 or the *Telecommunications (Consumer Protection and Service Standards) Act 1999*”, substitute “2006, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or the *Telecommunications Universal Service Management Agency Act 2012*”.

44 Section 582

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

Omit “and regulations under that Act” (last occurring), substitute “, regulations under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and the *Telecommunications Universal Service Management Agency Act 2012*”.

45 Subsection 583(3) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*.

46 Subsection 585(2) (after paragraph (a) of the definition of *this Act*)

Insert:

- (aa) the *Telecommunications Universal Service Management Agency Act 2012*; and

47 Subsection 586(2) (after paragraph (a) of the definition of *this Act*)

Insert:

- (aa) the *Telecommunications Universal Service Management Agency Act 2012*; and

48 Subsection 587(4) (after paragraph (a) of the definition of *this Act*)

Insert:

- (aa) Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*; and

49 Subsection 588(4) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

achievement of a policy objective set out in paragraph 11(a) or (b) of that Act;

55 After paragraph 1(jb) of Schedule 4

Insert:

- (jc) a decision of a kind referred to in subsection 121(3) (which deals with remission of late payment penalty) of the *Telecommunications Universal Service Management Agency Act 2012*;

Telecommunications (Consumer Protection and Service Standards) Act 1999

56 Section 4

Omit:

- | |
|-----------------------------------|
| (b) payphones; and |
| (c) prescribed carriage services. |

substitute:

- | |
|----------------|
| (b) payphones. |
|----------------|

57 Section 4

Before:

- | |
|--|
| <ul style="list-style-type: none">• Provision is made for the National Relay Service (NRS). The NRS provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service. |
|--|

insert:

- | |
|--|
| <ul style="list-style-type: none">• The universal service regime established by this Act is to be phased out and replaced by alternative contractual |
|--|

arrangements under the *Telecommunications Universal
Service Management Agency Act 2012*.

58 Subsection 5(2)

Insert:

designated STS area has the meaning given by section 8H.

59 Subsection 5(2)

Insert:

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

60 Subsection 5(2)

Insert:

universal service contractor means a person who is a contractor
(within the meaning of the *Telecommunications Universal Service
Management Agency Act 2012*).

61 Subsection 5(2)

Insert:

universal service grant recipient means a person who is a grant
recipient (within the meaning of the *Telecommunications
Universal Service Management Agency Act 2012*).

62 Paragraph 6(4)(a)

After “universal service providers”, insert “, universal service
contractors or universal service grant recipients”.

63 Subsection 6(6) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications Act 1997*; and
- (b) the *Telecommunications Universal Service Management
Agency Act 2012*.

64 Section 8

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

After:

This Part establishes a universal service regime.

insert:

The universal service regime established by this Part is to be phased out and replaced by alternative contractual arrangements under the *Telecommunications Universal Service Management Agency Act 2012*.

65 Section 8

Omit:

- (b) payphones; and
- (c) prescribed carriage services.

substitute:

- (b) payphones.

66 Section 8A

After “this Part”, insert “, when read together with the *Telecommunications Universal Service Management Agency Act 2012*.”.

67 Subparagraph 8A(a)(ii)

Omit “and”.

68 Subparagraph 8A(a)(iii)

Repeal the subparagraph.

69 Paragraph 8D(1)(a)

Omit “each later financial year”, substitute “each of the next 11 financial years”.

70 After subsection 8D(3)

Insert:

- (3A) A period determined by the Minister under paragraph (1)(b) must not end after 30 June 2012.

71 At the end of Division 1 of Part 2

Add:

8H Meaning of *designated STS area*

- (1) For the purposes of this Act, *designated STS area* means:
- (a) a non-fibre designated STS area; or
 - (b) a fibre designated STS area.

Note 1: For *non-fibre designated STS area*, see subsection (2).

Note 2: For *fibre designated STS area*, see subsection (6).

Non-fibre designated STS area

- (2) The Minister may, by writing, declare that a specified service area is a *non-fibre designated STS area* for the purposes of this Act.
- (3) The Minister must not make a declaration under subsection (2) in relation to a service area unless:
- (a) a final migration plan is in force; and
 - (b) the Minister is satisfied that no NBN corporation has installed, is installing, or proposes to install, optical fibre lines to premises in the service area; and
 - (c) the Minister has made a declaration under section 8J that, in the Minister's opinion, there are satisfactory alternative contractual arrangements relating to standard telephone services.
- (4) A declaration under subsection (2) comes into force at the later of the following times:
- (a) when the declaration is made;
 - (b) the start of the day immediately after the last day on which a resolution referred to in subsection 42(1) of the *Legislative Instruments Act 2003* disallowing the section 8J declaration could be passed.

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

- (5) Before making a declaration under subsection (2), the Minister must consult NBN Co.

Fibre designated STS area

- (6) The Minister may, by writing, declare that a specified service area is a ***fibre designated STS area*** for the purposes of this Act.
- (7) The Minister must not make a declaration under subsection (6) in relation to a service area unless:
- (a) a final migration plan is in force; and
 - (b) the Minister is satisfied that an NBN corporation has installed, or is installing, optical fibre lines to premises in the service area; and
 - (c) the Minister has made a declaration under section 8J that, in the Minister's opinion, there are satisfactory alternative contractual arrangements relating to standard telephone services.
- (8) A declaration under subsection (6) comes into force at the later of the following times:
- (a) when the declaration is made;
 - (b) the start of the day immediately after the last day on which a resolution referred to in subsection 42(1) of the *Legislative Instruments Act 2003* disallowing the section 8J declaration could be passed.
- (9) Before making a declaration under subsection (6), the Minister must consult NBN Co.

Duty to make declaration

- (10) If:
- (a) the Minister has made a declaration under section 8J that, in the Minister's opinion, there are satisfactory alternative contractual arrangements relating to standard telephone services; and
 - (b) the Minister has the power to make one or more declarations under subsection (2) or (6), or both, of this section;
- the Minister must ensure that at least one of those declarations is made within 90 days after the section 8J declaration comes into force.
-

Consideration of whether to make a declaration

- (11) The Minister must, at least once every 6 months during the period:
- (a) beginning when the first declaration is made under this section; and
 - (b) ending at the earliest of the following times:
 - (i) if Telstra has entered into a contract under section 13 of the *Telecommunications Universal Service Management Agency Act 2012* for a purpose relating to the achievement of the policy objective set out in paragraph 11(a) of that Act—when the contract ceases to be in force;
 - (ii) if any of the provisions of a final migration plan cease to have effect in compliance with the migration plan principles (see section 577BB of the *Telecommunications Act 1997*)—at the time of that cessation;
 - (iii) if the Minister makes a declaration under section 48 of the *National Broadband Network Companies Act 2011* that, in his or her opinion, the national broadband network should be treated as built and fully operational—when the declaration is made;
- consider whether to make a declaration under subsection (2) or (6) of this section.
- (12) Subsection (11) does not limit the power of the Minister to make a declaration under this section at any other time.

Declarations

- (13) The Minister must cause a declaration under this section to be published on the Department's website.
- (14) A declaration under this section cannot be varied or revoked.
- (15) A declaration under this section is not a legislative instrument.

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

8J Declaration about alternative contractual arrangements relating to standard telephone services

Initial declaration

- (1) During the period:
- (a) beginning 18 months after the commencement of this section; and
 - (b) ending 23 months after the commencement of this section;
- the Minister must make either of the following declarations:
- (c) a declaration that, in his or her opinion, there are satisfactory alternative contractual arrangements relating to standard telephone services;
 - (d) a declaration that the 18-month period starting immediately after the declaration is made is the ***first declaration deferral period*** for the purposes of this section.
- (2) If:
- (a) a declaration is made under paragraph (1)(c) or (d); and
 - (b) the declaration is not in force as at the later of the following times:
 - (i) the end of the period of 26 months that began at the commencement of this section;
 - (ii) the start of the day immediately after the last day on which a resolution referred to in subsection 42(1) of the *Legislative Instruments Act 2003* disallowing the declaration could be passed;
- the 18-month period starting immediately after the declaration was made is the ***first declaration deferral period*** for the purposes of this section.

Subsequent declarations

- (3) Before the end of the first declaration deferral period, the Minister must make either of the following declarations:
- (a) a declaration that, in his or her opinion, there are satisfactory alternative contractual arrangements relating to standard telephone services;
-

(b) a declaration that the 18-month period starting immediately after the declaration is made is the *second declaration deferral period* for the purposes of this section.

(4) If:

(a) a declaration is made under paragraph (3)(a) or (b); and

(b) the declaration is not in force as at the later of the following times:

(i) the end of the 3-month period starting immediately after the end of the first declaration deferral period;

(ii) the start of the day immediately after the last day on which a resolution referred to in subsection 42(1) of the *Legislative Instruments Act 2003* disallowing the declaration could be passed;

the 18-month period starting immediately after the declaration was made is the *second declaration deferral period* for the purposes of this section.

(5) Before the end of the second declaration deferral period, the Minister must make either of the following declarations:

(a) a declaration that, in his or her opinion, there are satisfactory alternative contractual arrangements relating to standard telephone services;

(b) a declaration that, in his or her opinion, there are no satisfactory alternative contractual arrangements relating to standard telephone services.

Criteria for making declaration

(6) The Minister must not make a declaration under paragraph (1)(c), (3)(a) or (5)(a) unless:

(a) Telstra has entered into a contract under section 13 of the *Telecommunications Universal Service Management Agency Act 2012*; and

(b) the contract was entered into for a purpose relating to the achievement of the policy objective set out in paragraph 11(a) of that Act; and

(c) the contract is in force; and

(d) neither party to the contract has given notice of termination of the contract; and

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

- (e) the Minister is satisfied that Telstra is likely to substantially comply with the contract, having regard to:
 - (i) Telstra's record of compliance with its obligations under the contract; and
 - (ii) the nature of Telstra's obligations under the contract; and
 - (iii) Telstra's record of compliance with its obligations under this Part, to the extent that the obligations relate to the service obligation mentioned in paragraph 9(1)(a); and
 - (iv) Telstra's record of compliance with its obligations under Part 5; and
 - (v) such other matters (if any) as the Minister considers relevant; and
 - (f) the Minister has obtained advice from:
 - (i) the ACMA; and
 - (ii) TUSMA;about the making of the declaration.
- (7) Subparagraphs (6)(e)(iii) and (iv) do not apply to an act, omission, matter or thing that occurs before the commencement of this section.
- (8) Subsection (6) does not limit the matters to which the Minister may have regard in making a declaration under this section.

Declarations

- (9) A declaration under this section cannot be varied or revoked.
- (10) A declaration under this section is a legislative instrument.

8K Declaration about alternative contractual arrangements relating to payphones

Initial declaration

- (1) During the period:
 - (a) beginning 18 months after the commencement of this section; and
 - (b) ending 23 months after the commencement of this section;
-

the Minister must make either of the following declarations:

- (c) a declaration that, in his or her opinion, there are satisfactory alternative contractual arrangements relating to payphones;
- (d) a declaration that the 18-month period starting immediately after the declaration is made is the ***first declaration deferral period*** for the purposes of this section.

(2) If:

- (a) a declaration is made under paragraph (1)(c) or (d); and
- (b) the declaration is not in force as at the later of the following times:
 - (i) the end of the period of 26 months that began at the commencement of this section;
 - (ii) the start of the day immediately after the last day on which a resolution referred to in subsection 42(1) of the *Legislative Instruments Act 2003* disallowing the declaration could be passed;

the 18-month period starting immediately after the declaration was made is the ***first declaration deferral period*** for the purposes of this section.

Subsequent declarations

(3) Before the end of the first declaration deferral period, the Minister must make either of the following declarations:

- (a) a declaration that, in his or her opinion, there are satisfactory alternative contractual arrangements relating to payphones;
- (b) a declaration that the 18-month period starting immediately after the declaration is made is the ***second declaration deferral period*** for the purposes of this section.

(4) If:

- (a) a declaration is made under paragraph (3)(a) or (b); and
- (b) the declaration is not in force as at the later of the following times:
 - (i) the end of the 3-month period starting immediately after the end of the first declaration deferral period;
 - (ii) the start of the day immediately after the last day on which a resolution referred to in subsection 42(1) of the

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

Legislative Instruments Act 2003 disallowing the declaration could be passed;

the 18-month period starting immediately after the declaration was made is the *second declaration deferral period* for the purposes of this section.

- (5) Before the end of the second declaration deferral period, the Minister must make either of the following declarations:
- (a) a declaration that, in his or her opinion, there are satisfactory alternative contractual arrangements relating to payphones;
 - (b) a declaration that, in his or her opinion, there are no satisfactory alternative contractual arrangements relating to payphones.

Criteria for making declaration

- (6) The Minister must not make a declaration under paragraph (1)(c), (3)(a) or (5)(a) unless:
- (a) Telstra has entered into a contract under section 13 of the *Telecommunications Universal Service Management Agency Act 2012*; and
 - (b) the contract was entered into for a purpose relating to the achievement of the policy objective set out in paragraph 11(b) of that Act; and
 - (c) the contract is in force; and
 - (d) neither party to the contract has given notice of termination of the contract; and
 - (e) the Minister is satisfied that Telstra is likely to substantially comply with the contract, having regard to:
 - (i) Telstra's record of compliance with its obligations under the contract; and
 - (ii) the nature of Telstra's obligations under the contract; and
 - (iii) Telstra's record of compliance with its obligations under this Part, to the extent that the obligations relate to the service obligation mentioned in paragraph 9(1)(b); and
 - (iv) such other matters (if any) as the Minister considers relevant; and
 - (f) the Minister has obtained advice from:

- (i) the ACMA; and
 - (ii) TUSMA;
- about the making of the declaration.

- (7) Subparagraph (6)(e)(iii) does not apply to an act, omission, matter or thing that occurs before the commencement of this section.
- (8) Subsection (6) does not limit the matters to which the Minister may have regard in making a declaration under this section.

Declarations

- (9) A declaration under this section cannot be varied or revoked.
- (10) A declaration under this section is a legislative instrument.

72 Paragraph 9(1)(a)

After “Australia”, insert “(other than people in designated STS areas)”.

73 Paragraph 9(1)(b)

Omit “business; and”, substitute “business.”.

74 Paragraph 9(1)(c)

Repeal the paragraph.

75 Subsection 9(2)

After “Australia”, insert “(other than people in designated STS areas)”.

76 After subsection 9(2A)

Insert:

(2AA) If:

- (a) the Minister makes a declaration under section 8K that, in the Minister’s opinion, there are satisfactory alternative contractual arrangements relating to payphones; and
- (b) neither House of the Parliament passes a resolution under section 42 of the *Legislative Instruments Act 2003* disallowing the declaration;

an obligation does not arise under paragraph (1)(b) or subsection (2A) of this section after the last day on which such a resolution could have been passed by a House of the Parliament.

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

77 Subsection 9(2B)

Repeal the subsection.

78 Subsection 9(5)

Repeal the subsection.

79 Section 9A

Repeal the section.

80 Paragraph 9B(1)(b)

Omit “payphones);”, substitute “payphones).”.

81 Paragraph 9B(1)(c)

Repeal the paragraph.

82 Section 9D

Repeal the section.

83 Section 9F

Repeal the section.

84 Subsection 9G(1) (note)

Omit “and (4)”, substitute “, (4), (5) and (6)”.

85 Subsection 9G(3)

After “Australia”, insert “(other than designated STS areas)”.

86 Subsection 9G(3)

Omit “a service obligation”, substitute “the service obligation mentioned in paragraph 9B(1)(a)”.

87 Paragraph 9G(4)(a)

Omit “all of the service obligations referred to in that subsection”, substitute “the service obligation mentioned in paragraph 9B(1)(a)”.

88 Subsection 9G(5)

Repeal the subsection, substitute:

- (5) If, at a particular time, any areas of Australia are not within a universal service area, covered by a determination under subsection (1), in respect of the service obligation mentioned in paragraph 9B(1)(b):
- (a) those areas together constitute at that time a single universal service area in respect of that service obligation; and
 - (b) the Minister is taken to have made a determination under subsection (1) to that effect.
- (6) If, at a particular time, one or more of the universal service areas, in respect of which the Minister is taken to have made a determination because of subsection (5), cover the same areas of Australia, then despite that subsection:
- (a) those areas together constitute at that time a single universal service area in respect of the service obligation mentioned in paragraph 9B(1)(b); and
 - (b) the Minister is taken to have made a determination under subsection (1) to that effect.
- (7) A determination under this section is a legislative instrument.
- (8) Despite subsection (7), a determination that the Minister is taken to have made is not a legislative instrument.
- (9) The Minister must cause a determination that the Minister is taken to have made to be published on the Department's website.

89 Subsection 12A(6)

Repeal the subsection, substitute:

- (6) A determination under this section is a legislative instrument.

Note: A determination that the Minister is taken to have made under this section because of section 12D or 12E is not a legislative instrument (see subsections 12D(2) and 12E(6)).

90 Subsection 12D(2)

Omit "disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*", substitute "legislative instrument".

91 Subsection 12E(6)

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

Omit “9G(5) and 12A(6), the deemed determinations are not disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*”, substitute “9G(7) and 12A(6), the deemed determinations are not legislative instruments”.

92 Subsection 12E(7)

Omit “disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*”, substitute “legislative instrument”.

93 Paragraph 18(2)(b)

Omit “area; or”, substitute “area.”.

94 Paragraph 18(2)(c)

Repeal the paragraph.

95 Paragraph 20C(1)(a)

Omit “each later financial year”, substitute “each of the next 12 financial years”.

96 After subsection 20C(1)

Insert:

(1A) A period determined by the Minister under paragraph (1)(b) must not end after 30 June 2012.

97 Subparagraph 106(1)(b)(ii)

Omit “in fulfilment of the universal service obligation”, substitute “for a universal service purpose”.

98 Subsection 106(1)

Omit “party in fulfilment of the universal service obligation”, substitute “party for a universal service purpose”.

99 Subparagraph 106(2)(c)(ii)

Omit “in fulfilment of the universal service obligation”, substitute “for a universal service purpose”.

100 Subsection 106(2)

Omit “party in fulfilment of the universal service obligation”, substitute “party for a universal service purpose”.

101 After subsection 106(3)

Insert:

- (3A) For the purposes of this section, a service is supplied *for a universal service purpose* if, and only if, the service is supplied:
- (a) in fulfilment of the universal service obligation; or
 - (b) in compliance with the obligations under a contract entered into under section 13 of the *Telecommunications Universal Service Management Agency Act 2012* for a purpose relating to the achievement of the policy objective set out in paragraph 11(a) of that Act; or
 - (c) in compliance with the terms and conditions of a grant made under section 13 of the *Telecommunications Universal Service Management Agency Act 2012* for a purpose relating to the achievement of the policy objective set out in paragraph 11(a) of that Act.

102 Subparagraphs 109(1)(a)(i), (b)(i), (c)(i) and (d)(i)

After “universal service provider”, insert “, universal service contractor or universal service grant recipient”.

103 At the end of section 109

Add:

- (4) For the purposes of this section if:
- (a) a customer of a carriage service provider is in a particular area; and
 - (b) the provider is a universal service contractor in relation to a contract entered into for a purpose relating to the achievement of the policy objective set out in paragraph 11(a) of the *Telecommunications Universal Service Management Agency Act 2012*; and
 - (c) the contract imposes an obligation on the universal service contractor to supply standard telephone services in the area; the provider is a universal service contractor for the customer.
- (5) For the purposes of this section if:

Schedule 1 Amendments

Part 1 Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2012 commences

- (a) a customer of a carriage service provider is in a particular area; and
- (b) the provider is a universal service grant recipient in relation to a grant made for a purpose relating to the achievement of the policy objective set out in paragraph 11(a) of the *Telecommunications Universal Service Management Agency Act 2012*; and
- (c) the terms and conditions of the grant require the universal service grant recipient to supply standard telephone services in the area;

the provider is a universal service grant recipient for the customer.

104 Subsection 120(7)

Omit all the words after “proposed to be” (second occurring), substitute:

supplied:

- (a) in fulfilment of the universal service obligation; or
- (b) in compliance with the obligations under a contract entered into under section 13 of the *Telecommunications Universal Service Management Agency Act 2012* for a purpose relating to the achievement of the policy objective set out in paragraph 11(a) of that Act; or
- (c) in compliance with the terms and conditions of a grant made under section 13 of the *Telecommunications Universal Service Management Agency Act 2012* for a purpose relating to the achievement of the policy objective set out in paragraph 11(a) of that Act.

105 Paragraph 136(2)(b)

Omit all the words after “to the”, substitute:

customer:

- (i) in fulfilment of the universal service obligation; or
 - (ii) in compliance with the obligations under a contract entered into under section 13 of the *Telecommunications Universal Service Management Agency Act 2012* for a purpose relating to the achievement of the policy objective set out in paragraph 11(a) of that Act; or
 - (iii) in compliance with the terms and conditions of a grant made under section 13 of the *Telecommunications*
-

Universal Service Management Agency Act 2012 for a
purpose relating to the achievement of the policy
objective set out in paragraph 11(a) of that Act.

106 After subsection 147(9)

Insert:

- (9A) Before making a determination under this section, the ACMA must consult TUSMA.

Telecommunications (Universal Service Levy) Act 1997

107 At the end of section 6

Add:

- Note: The last claim period will end on or before 30 June 2012: see section 8D of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Part 2—Amendments relating to the National Relay Service

Criminal Code Act 1995

108 Section 473.1 of the *Criminal Code*

Insert:

National Relay Service has the same meaning as in the *Telecommunications Universal Service Management Agency Act 2012*.

109 Section 473.1 of the *Criminal Code* (definition of *NRS provider*)

Repeal the definition, substitute:

NRS provider means:

- (a) a person who:
 - (i) is a contractor (within the meaning of the *Telecommunications Universal Service Management Agency Act 2012*); and
 - (ii) provides the whole or a part of the National Relay Service; or
- (b) a person who:
 - (i) is a grant recipient (within the meaning of the *Telecommunications Universal Service Management Agency Act 2012*); and
 - (ii) provides the whole or a part of the National Relay Service.

110 Paragraph 474.17(2)(a) of the *Criminal Code*

Omit “the NRS provider”, substitute “an NRS provider”.

NRS Levy Imposition Act 1998

111 At the end of section 3

Add:

Note: An NRS contribution amount is calculated for a quarter. The last quarter ends on 30 June 2012: see section 98 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Telecommunications (Consumer Protection and Service Standards) Act 1999

112 Section 4

After:

- Provision is made for the National Relay Service (NRS). The NRS provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service.

insert:

- The NRS provisions in this Act are to be replaced by alternative contractual arrangements under the *Telecommunications Universal Service Management Agency Act 2012*.

113 Section 93

Omit:

- The NRS provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service.

substitute:

- The NRS provisions in this Part are to be replaced by alternative contractual arrangements under the

Telecommunications Universal Service Management Agency Act 2012.

114 Section 94 (definition of NRS service plan)

Repeal the definition.

115 After subsection 95(1)

Insert:

(1A) This section does not authorise the entering into of a contract after the commencement of this subsection.

Note: After commencement, contracts may be entered into under section 13 of the *Telecommunications Universal Service Management Agency Act 2012*.

116 Subsections 95(2) and (3)

Repeal the subsections.

117 After subsection 97(2)

Insert:

(2A) Subsections (1) and (2) do not apply to an obligation of an NRS provider if the obligation arises after the commencement of this subsection.

118 Subsection 97(5)

Omit “or a later financial year”, substitute “and each of the next 12 financial years”.

119 At the end of section 97

Add:

- (6) For the purposes of this section, an *NRS service plan* is a plan:
- (a) referred to in subsection 95(2), as in force immediately before the commencement of this subsection; and
 - (b) that was prepared before the commencement of this subsection.

120 Section 98

Omit all the words after “each of”, substitute:

the quarters in:

- (a) the 1999-2000 financial year; and
- (b) each of the next 12 financial years.

121 Subsection 102(3)

Repeal the subsection, substitute:

- (3) The purposes of the NRS Account are as follows:
 - (a) to pay amounts payable by the Commonwealth under a contract entered into under section 13 of the *Telecommunications Universal Service Management Agency Act 2012* for a purpose relating to the achievement of the policy objective set out in paragraph 11(d) of that Act;
 - (b) to make grants under section 13 of the *Telecommunications Universal Service Management Agency Act 2012* for a purpose relating to the achievement of the policy objective set out in paragraph 11(d) of that Act.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

Part 3—Transitional

122 Transitional—NRS policy objective

Section 12 of the *Telecommunications Universal Service Management Agency Act 2012* does not apply, before the commencement of Part 2 of this Schedule, in relation to the objective set out in paragraph 11(d) of that Act.

123 Transitional—regulations

The Governor-General may make regulations in relation to transitional matters arising out of the amendments made by this Schedule.

*[Minister's second reading speech made in—
House of Representatives on 2 November 2011
Senate on 9 February 2012]*

(201/11)
