



# **Telecommunications Legislation Amendment (Deregulation) Act 2015**

**No. 38, 2015**

**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/>)



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# Telecommunications Legislation Amendment (Deregulation) Act 2015

No. 38, 2015

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

[Assented to 13 April 2015]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Telecommunications Legislation  
Amendment (Deregulation) Act 2015*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 April 2015
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	14 April 2015
3. Schedule 1, Parts 2, 3 and 4	The later of: (a) immediately after the commencement of Part 8 of Schedule 2 to the <i>Omnibus Repeal Day (Autumn 2014) Act 2014</i> ; and (b) the start of 1 July 2015.	1 July 2015 (paragraph (b) applies)
4. Schedule 2	The day after this Act receives the Royal Assent.	14 April 2015
5. Schedule 3	The 14th day after this Act receives the Royal Assent.	27 April 2015
6. Schedules 4 to 8	The day after this Act receives the Royal Assent.	14 April 2015

Note: This table relates only to the provisions of this Act as originally enacted.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.

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### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

**Schedule 1—Public interest  
telecommunications services**

**Part 1—Amendments commencing on the day after  
Royal Assent**

*Telecommunications Universal Service Management Agency  
Act 2012*

**1 Section 89**

Repeal the section.



## **Part 2—Repeals**

### *Telecommunications (Universal Service Levy) Act 1997*

#### **2 The whole of the Act**

Repeal the Act.

### *Telecommunications Universal Service Management Agency Act 2012*

#### **3 The whole of the Act**

Repeal the Act.

## Part 3—General amendments

### *Australian Communications and Media Authority Act 2005*

#### **4 Section 3 (subparagraph (b)(vi) of the definition of *authorised disclosure information*)**

Repeal the subparagraph.

#### **5 Subparagraph 8(1)(j)(va)**

Repeal the subparagraph.

#### **6 Paragraph 59D(1)(na)**

Repeal the paragraph, substitute:

(na) the Secretary of the Department administered by the Minister administering Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or an APS employee in that Department whose duties relate to that Part;

### *Competition and Consumer Act 2010*

#### **7 Paragraph 151CM(1)(b)**

Omit “Telstra); and”, substitute “Telstra).”.

#### **8 Paragraph 151CM(1)(c)**

Repeal the paragraph.

#### **9 Subsection 151CM(5) (definition of *universal service provider*)**

Repeal the definition.

#### **10 Paragraph 155AAA(12)(ka)**

Repeal the paragraph.

### ***Criminal Code Act 1995***

#### **11 Section 473.1 of the *Criminal Code* (definition of *National Relay Service*)**

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

#### **12 Section 473.1 of the *Criminal Code* (subparagraphs (a)(i) and (b)(i) of the definition of *NRS provider*)**

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

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

#### **13 Schedule**

Omit “*Telecommunications Universal Service Management Agency Act 2012*”.

### ***Telecommunications Act 1997***

#### **14 Section 7 (paragraph (baa) of the definition of *ACMA’s telecommunications powers*)**

Repeal the paragraph.

#### **15 Section 7 (definition of *TUSMA*)**

Repeal the definition.

#### **16 Section 7 (definition of *universal service levy*)**

Repeal the definition.

#### **17 Section 7 (definition of *universal service provider*)**

Repeal the definition.

#### **18 Subsection 57(2) (definition of *this Act*)**

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**19 Paragraphs 58(2)(a) and (b)**

Omit “, (2)”.

**20 Subsection 58(4)**

Repeal the subsection.

**21 Paragraph 58(5)(a)**

Omit “, (2)”.

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

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**23 Subsection 72(2)**

Repeal the subsection.

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

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

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

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

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

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

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

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**28 Paragraphs 105(3)(eb) and (ec)**

Repeal the paragraphs.

**29 Section 284 (heading)**

Repeal the heading, substitute:

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

**30 Subsection 284(4)**

Repeal the subsection.

**31 Section 299 (heading)**

Repeal the heading, substitute:

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

**32 Subsection 299(4)**

Repeal the subsection (not including the note).

**33 Section 299 (note)**

Repeal the note, substitute:

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

**34 Subsection 492(5) (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

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**35 Subsection 502(5) (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

**36 Paragraph 508(aaa)**

Repeal the paragraph.

**37 Paragraph 510(1)(aaa)**

Repeal the paragraph.

**38 Subsection 512(7)**

Repeal the subsection.

**39 Subsection 513(3)**

Repeal the subsection.

**40 Subsection 551(3) (definition of *this Act*)**

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**41 Section 563**

Omit:

- 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*.

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.

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

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

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

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**44 Subsection 572B(6) (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

**45 Subsection 572E(9) (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

**46 Section 574A (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

**47 Section 582**

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

**48 Section 582**

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

**49 Section 582**

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

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

Repeal the definition, substitute:

*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**51 Subsection 585(2) (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

**52 Subsection 586(2) (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

**53 Subsection 587(4) (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

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

Repeal the definition, substitute:



*this Act* includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

**55 Subsection 589(6) (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

**56 Subsection 592(2) (paragraph (aa) of the definition of *this Act*)**

Repeal the paragraph.

**57 Subclause 1(2) of Schedule 1 (definition of *this Act*)**

Omit “, Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*”.

**58 Subclause 1(2) of Schedule 2 (definition of *this Act*)**

Omit “, Part 6 of the *Telecommunications Universal Service Management Agency Act 2012*”.

**59 Subparagraphs 27(5)(e)(ii) and (iii) of Schedule 3**

Repeal the subparagraphs, substitute:

- (ii) the compliance by the applicant with the obligations under a contract entered into under section 14 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* for a purpose relating to the achievement of a policy objective set out in paragraph 13(1)(a) or (b) of that Act; or
- (iii) the compliance by the applicant with the terms and conditions of a grant made under section 14 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* for a purpose relating to the achievement of a policy objective set out in paragraph 13(1)(a) or (b) of that Act;

**60 Paragraph 1(ja) of Schedule 4**

Repeal the paragraph, substitute:

- (ja) a decision of a kind referred to in subsection 70(3) (which deals with remission of late payment penalty) of the

*Telecommunications (Consumer Protection and Service Standards) Act 1999;*

**61 Paragraph 1(jc) of Schedule 4**

Repeal the paragraph.

***Telecommunications (Consumer Protection and Service Standards) Act 1999***

**62 Section 4**

Omit:

- |   |
|---|
| <ul style="list-style-type: none"><li>• The universal service regime established by this Act is to be phased out and replaced by alternative contractual arrangements under the <i>Telecommunications Universal Service Management Agency Act 2012</i>.</li></ul> |
|---|

substitute:

- |   |
|---|
| <ul style="list-style-type: none"><li>• The universal service regime established by this Act is to be phased out and replaced by alternative contractual arrangements.</li><li>• The Secretary is responsible for entering into contracts, and making grants, to support the provision of public interest telecommunications services.</li><li>• Public interest telecommunication services include:<ul style="list-style-type: none"><li>(a) standard telephone services; and</li><li>(b) payphones; and</li><li>(c) emergency call services; and</li><li>(d) the National Relay Service.</li></ul></li><li>• The ACMA will assess and collect the levy imposed on carriers by the <i>Telecommunications (Industry Levy) Act 2012</i>.</li><li>• The proceeds of the levy will be used to:<ul style="list-style-type: none"><li>(a) pay contractors and grant recipients; and</li><li>(b) pay eligible administrative costs.</li></ul></li></ul> |
|---|

**63 Subsection 5(2) (definition of *alternative telecommunications services*)**

Repeal the definition.

**64 Subsection 5(2)**

Insert:

*Appropriation Act* means an Act appropriating money for expenditure out of the Consolidated Revenue Fund in relation to a particular financial year.

**65 Subsection 5(2) (definition of *claim period*)**

Repeal the definition.

**66 Subsection 5(2)**

Insert:

*contractor* has the meaning given by section 14.

*data call* has the meaning generally accepted within the telecommunications industry.

**67 Subsection 5(2)**

Repeal the following definitions:

- (a) definition of *default arrangements*;
- (b) definition of *designated STS area*.

**68 Subsection 5(2)**

Insert:

*eligible administrative costs* of the Commonwealth means:

- (a) remuneration, and other employment-related costs and expenses, in respect of APS employees whose duties relate to the performance of the Secretary's functions, or the exercise of the Secretary's powers, under Division 3 of Part 2; or
- (b) any other costs, expenses and other obligations incurred by the Commonwealth in connection with the performance of the Secretary's functions, or the exercise of the Secretary's powers, under Division 3 of Part 2;

but does not include:

- (c) amounts incurred under contracts made under section 14; and
- (d) amounts incurred by way of grants made under section 14.

*eligible levy period* means:

- (a) the 2014-15 financial year; or
- (b) a later financial year.

**69 Subsection 5(2) (definition of *eligible revenue*)**

Repeal the definition, substitute:

*eligible revenue* for an eligible levy period has the meaning given by section 45.

**70 Subsection 5(2) (definition of *eligible revenue period*)**

Repeal the definition, substitute:

*eligible revenue period* means:

- (a) the 2013-14 financial year; or
- (b) a later financial year.

**71 Subsection 5(2)**

Insert:

*eligible revenue return* means a return under section 43.

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

*grant recipient* has the meaning given by section 14.

**72 Subsection 5(2) (definition of *levy*)**

Repeal the definition, substitute:

*levy* means levy imposed by section 4C of the *Telecommunications (Industry Levy) Act 2012*.

**73 Subsection 5(2)**

Insert:

*levy amount* has the meaning given by section 50.

**74 Subsection 5(2) (definition of *levy contribution factor*)**

Repeal the definition, substitute:

*levy contribution factor* has the meaning given by section 49.

**75 Subsection 5(2)**

Repeal the following definitions:

- (a) definition of *levy credit*;
- (b) definition of *levy debit*.

**76 Subsection 5(2)**

Insert:

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

*National Relay Service* means a service that provides persons who:

- (a) are deaf; or
- (b) have a hearing and/or speech impairment;

with access to a standard telephone service on terms, and in circumstances, that are comparable to those on which other Australians have access to a standard telephone service.

*overall levy target amount* has the meaning given by section 41.

**77 Subsection 5(2) (definition of *participating person*)**

Repeal the definition, substitute:

*participating person* for an eligible revenue period has the meaning given by section 44.

**78 Subsection 5(2)**

Insert:

*Public Interest Telecommunications Services Special Account* means the Public Interest Telecommunications Services Special Account established by section 37.

*Secretary* means the Secretary of the Department.

**79 Subsection 5(2) (definition of *service area*)**

Repeal the definition.

**80 Subsection 5(2)**

Insert:

***SMS relay service*** means a service that allows users of the National Relay Service to communicate using SMS.

Note: ***SMS*** is short for short message service.

**81 Subsection 5(2)**

Repeal the following definitions:

- (a) definition of ***universal service area***;
- (b) definition of ***universal service charge***;
- (c) definition of ***universal service contractor***;
- (d) definition of ***universal service grant recipient***.

**82 Subsection 5(2) (definition of *universal service provider*)**

Repeal the definition, substitute:

***universal service provider*** means a primary universal service provider.

**83 Subsection 5(2) (definition of *universal service subsidy*)**

Repeal the definition.

**84 Subsection 5(2)**

Insert:

***video relay service*** means a service that allows persons who:

- (a) are deaf; or
  - (b) have a hearing and/or speech impairment;
- to communicate with other persons using video as well as voice.

**85 Paragraph 6(4)(a)**

Omit “universal service contractors or universal service grant recipients”, substitute “contractors or grant recipients”.

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

Repeal the definition, substitute:

*this Act* includes the *Telecommunications Act 1997*.

**87 Section 6A**

Repeal the section.

**88 Part 2 (heading)**

Repeal the heading, substitute:

**Part 2—Public interest telecommunications services**

**89 Section 8**

Repeal the section, substitute:

**8 Simplified outline of this Part**

- This Part establishes a universal service regime.
- The main object of the universal service regime is to ensure that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:
  - (a) standard telephone services; and
  - (b) payphones.
- The universal service regime is to be phased out and replaced by alternative contractual arrangements.
- The Secretary is responsible for entering into contracts, and making grants, to support the provision of public interest telecommunications services.
- Public interest telecommunication services include:
  - (a) standard telephone services; and
  - (b) payphones; and
  - (c) emergency call services; and
  - (d) the National Relay Service.

- The Secretary will monitor the performance of contractors and grant recipients.
- The ACMA will assess and collect the levy imposed on carriers by the *Telecommunications (Industry Levy) Act 2012*.
- The proceeds of the levy will be used to:
  - (a) pay contractors and grant recipients; and
  - (b) pay eligible administrative costs.

#### **90 Sections 8A, 8B, 8C, 8D, 8E, 8F, 8G and 8H**

Repeal the sections.

#### **91 Sections 8J and 8K**

Repeal the sections, substitute:

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

##### *Initial declaration*

- (1) During the period of 24 months that began at the commencement of this section, 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 24-month period starting immediately after the declaration is made is the *declaration deferral period* for the purposes of this section.
- (2) If:
  - (a) a declaration is made under paragraph (1)(a) or (b); 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 24-month period starting immediately after the declaration was made is the ***declaration deferral period*** for the purposes of this section.

*Subsequent declarations*

- (3) Before the end of the 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 not satisfactory alternative contractual arrangements relating to standard telephone services.

*Criteria for making declaration*

- (4) The Minister must not make a declaration under paragraph (1)(a) or (3)(a) unless:
- (a) Telstra has entered into a contract under section 14; and
  - (b) the contract was entered into for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(a); 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)(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) the Secretary;about the making of the declaration.
- (5) Subparagraphs (4)(e)(iii) and (iv) do not apply to an act, omission, matter or thing that occurs before the commencement of this section.
- (6) Subsection (4) does not limit the matters to which the Minister may have regard in making a declaration under this section.

*Declarations*

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

**8K Declaration about alternative contractual arrangements relating to payphones**

*Initial declaration*

- (1) During the period of 24 months that began at the commencement of this section, 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 24-month period starting immediately after the declaration is made is the ***declaration deferral period*** for the purposes of this section.
- (2) If:
  - (a) a declaration is made under paragraph (1)(a) or (b); 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 24-month period starting immediately after the declaration was made is the ***declaration deferral period*** for the purposes of this section.

*Subsequent declarations*

- (3) Before the end of the 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 not satisfactory alternative contractual arrangements relating to payphones.

*Criteria for making declaration*

- (4) The Minister must not make a declaration under paragraph (1)(a) or (3)(a) unless:
  - (a) Telstra has entered into a contract under section 14; and
  - (b) the contract was entered into for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(b); 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) the Secretary;about the making of the declaration.
- (5) Subparagraph (4)(e)(iii) does not apply to an act, omission, matter or thing that occurs before the commencement of this section.
- (6) Subsection (4) does not limit the matters to which the Minister may have regard in making a declaration under this section.

*Declarations*

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

**92 Paragraph 9(1)(a)**

Omit “(other than people in designated STS areas)”.

**93 Subsection 9(2)**

Omit “(other than people in designated STS areas)”.

**94 After subsection 9(2A)**

Insert:

(2AAA) If:

- (a) the Minister makes a declaration under section 8J that, in the Minister’s opinion, there are satisfactory alternative contractual arrangements relating to standard telephone services; 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)(a) or subsection (2) of this section after the last day on which such a resolution could have been passed by a House of the Parliament.

**95 At the end of section 9E**

Add:

- (3) For the purposes of this section, *supply*, in relation to customer equipment or other goods, includes supply by way of hire.
- (4) For the purposes of this section, *disability* has the same meaning as in the *Disability Discrimination Act 1992*.

**96 Subdivision B of Division 2 of Part 2**

Repeal the Subdivision.

**97 Division 4 of Part 2**

Repeal the Division.

**98 Division 5 of Part 2 (heading)**

Repeal the heading.

**99 Subdivision A of Division 5 of Part 2**

Repeal the Subdivision.

**100 Subdivision B of Division 5 of Part 2 (heading)**

Repeal the heading.

**101 Before section 12A**

Insert:

**Subdivision B—Primary universal service provider**

**102 Subsection 12A(1)**

Omit “for a universal service area”.

**103 Paragraph 12A(2)(a)**

Omit “for the same universal service area”.

**104 Paragraph 12A(2)(b)**

Omit “for one or more universal service areas”.

**105 Subsection 12A(3)**

Omit “, for each universal service area”.

**106 Section 12A (note)**

Omit “or 12E”.

**107 Section 12A (note)**

Omit “subsections 12D(2) and 12E(6)”, substitute “subsection 12D(2)”.

**108 Subsection 12B(1)**

Omit “That day must not be before the day on which notice of the determination is published in the *Gazette*.”.

**109 Subsection 12B(3)**

Omit “That day must not be before notice of the instrument is published in the *Gazette*.”.

**110 Subsection 12B(5)**

Repeal the subsection.

**111 Section 12C**

Omit “for a universal service area”.

**112 Section 12C**

Omit “, so far as it relates to that area”.

**113 Section 12D**

Repeal the section, substitute:

**12D Transitional: when Telstra is taken to be a primary universal service provider**

Until a determination of a primary universal service provider under section 12A takes effect for the first time in respect of a service obligation, the Minister is taken to have made a determination under section 12A that Telstra is the primary universal service provider in respect of that service obligation.

## **114 Sections 12E and 12EA**

Repeal the sections, substitute:

### **12E Former universal service provider may be required to provide information to current universal service provider**

#### *Scope*

- (1) This section applies if:
  - (a) the Minister determines under section 12A that a carrier or carriage service provider (the **current provider**) is the primary universal service provider in respect of a service obligation; and
  - (b) another person, who is or was a universal service provider in respect of the obligation, is determined to be a former provider under subsection (4).
- (2) This section also applies if:
  - (a) either:
    - (i) the Minister revokes or varies a determination under section 12A so that a person (the **former provider**) ceases to be a universal service provider in respect of a service obligation; or
    - (ii) a person (the **former provider**) otherwise ceases to be a universal service provider in respect of a service obligation; and
  - (b) another person (the **current provider**), who was also a universal service provider in respect of the service obligation, continues to be a universal service provider in respect of that obligation:
    - (i) if subparagraph (a)(i) applies—after the revocation or variation; or
    - (ii) if subparagraph (a)(ii) applies—after the cessation.
- (3) Subsections (1) and (2) can apply before the determination, revocation or variation under section 12A takes effect.

#### *Former provider*

- (4) The Minister may determine in writing that a person is a former provider for the purposes of this section.

*Requirement to give information*

- (5) The current provider may, by written notice given to the former provider, require the former provider to give to the current provider specified information of the kind referred to in subsection (6). A notice of this kind cannot be given more than 6 months after:
- (a) if subsection (1) applies—the later of the following days:
    - (i) the day on which the current provider became a universal service provider;
    - (ii) the day on which the determination under section 12A was made in respect of the current provider; or
  - (b) if subsection (2) applies—the day on which the former provider ceases to be a universal service provider.
- (6) The information that may be required to be given must be information that will assist the current provider in doing something that the current provider is or will be required or permitted to do by or under a provision of this Part. The notice must identify the doing of that thing as the purpose for which the information is required.
- Note 1: If, for example, information about service location and customer contact details will assist the current provider in fulfilling its obligation under section 12C, the former provider may be required to provide that kind of information.
- Note 2: See also subsection (8), which allows the Minister to determine that a specified kind of information is information referred to in this subsection.
- (7) If a requirement made by a notice under subsection (5) is reasonable, the former provider must comply with the requirement as soon as practicable after receiving the notice. However, if the requirement is unreasonable, the former provider does not have to comply with it.
- (8) The Minister may, by legislative instrument, make a determination to the effect that, either generally or in a particular case, information of a kind specified in the determination is taken to be information that will assist a person in doing a specified thing that the person is or will be required or permitted to do by or under a provision of this Part.
- (9) If a former provider has been given notice of a requirement under subsection (5), the ACMA may, in writing, direct the former provider to comply with the requirement or with specified aspects
-



of the requirement. The former provider must comply with the direction.

- (10) In deciding whether to give a direction under subsection (9), the ACMA must consider whether the requirement under subsection (5) is reasonable.

**115 Subdivision BA of Division 5 of Part 2 (heading)**

Repeal the heading.

**116 Before section 12EB**

Insert:

**Subdivision C—USO standards and rules**

**117 Section 12EB (heading)**

Repeal the heading, substitute:

**12EB Performance standards—standard telephone service**

**118 Subsection 12EB(6) (note)**

Repeal the note.

**119 Section 12EC (heading)**

Repeal the heading, substitute:

**12EC Performance benchmarks—standard telephone service**

**120 Subdivision BB of Division 5 of Part 2 (heading)**

Repeal the heading.

**121 Section 12ED (heading)**

Repeal the heading, substitute:

**12ED Performance standards—payphones**

**122 Section 12EE (heading)**

Repeal the heading, substitute:

**12EE Performance benchmarks—payphones**

**123 Divisions 7 to 16 of Part 2**

Repeal the Divisions, substitute:

**Division 3—Public interest telecommunications service  
contracts and grants**

**Subdivision A—Policy objectives**

**13 Policy objectives**

- (1) The policy objectives of this Division are:
- (a) that standard telephone services are to:
    - (i) be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
    - (ii) be supplied to people in Australia on request; and
  - (b) that payphones are to:
    - (i) be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
    - (ii) be supplied, installed and maintained in Australia; and
  - (c) that end-users of standard telephone services in Australia are to have access, free of charge, to an emergency call service; and
  - (d) that the National Relay Service is to be reasonably accessible to all persons in Australia who:
    - (i) are deaf; or
    - (ii) have a hearing and/or speech impairment;wherever they reside or carry on business; and
  - (e) that there are to be such:
    - (i) customer information programs; and
    - (ii) customer cabling installation programs; and
    - (iii) carriage service development programs; and
    - (iv) other measures (if any) as are specified in the regulations;

as are necessary to support the continuity of supply of carriage services during the transition to the national broadband network; and

- (f) that all persons in Australia outside a standard zone are to have access to untimed voice calls on a basis that is comparable to the access provided to persons in standard zones for voice calls made:
    - (i) using a standard telephone service; or
    - (ii) using a payphone; and
  - (g) that all persons in Australia outside a standard zone are to have access to untimed data calls on a basis that is comparable to the access provided to persons in standard zones for data calls made to an internet service provider using a data network access number; and
  - (h) that an SMS relay service is reasonably accessible to all persons in Australia who:
    - (i) are deaf; or
    - (ii) have a hearing and/or speech impairment; and
  - (i) that a video relay service is reasonably accessible to all persons in Australia who communicate in Auslan; and
  - (j) that a software application is reasonably available to assist all users of the National Relay Service in communication with emergency call services; and
  - (k) the objectives (if any) specified in the regulations, where those objectives relate to the supply of carriage services.
- (2) For the purposes of paragraphs (1)(f) and (g), *standard zone* has the meaning given by section 108.

## **Subdivision B—Contracts and grants**

### **14 Contracts and grants**

- (1) The Secretary may, on behalf of the Commonwealth:
- (a) enter into a contract; or
  - (b) make a grant of financial assistance;
- for a purpose relating to the achievement of any or all of the policy objectives of this Division.

Note 1: For the policy objectives, see subsection 13(1).

Note 2: For transitional provisions, see section 22.

- (2) For the purposes of this Act, if the Secretary enters into a contract with a person under subsection (1), the person is a ***contractor***.
- (3) For the purposes of this Act, if the Secretary makes a grant of financial assistance to a person under subsection (1), the person is a ***grant recipient***.

## **15 Terms and conditions of grants**

### *Scope*

- (1) This section applies to a grant of financial assistance made under section 14.

### *Terms and conditions*

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the grant recipient.
- (3) An agreement under subsection (2) is to be entered into by the Secretary on behalf of the Commonwealth.
- (4) Subsection (2) does not apply to a condition under section 16.

## **16 Condition about compliance with Ministerial determination**

### *Condition*

- (1) It is a condition of:
  - (a) a contract entered into under section 14; or
  - (b) a grant made under section 14;that the contractor or grant recipient, as the case may be, must comply with a determination under subsection (2) in so far as the determination applies to the contract or grant, as the case may be.

### *Determination*

- (2) The Minister may, by legislative instrument, make a determination that sets out either or both of the following:

- (a) standards or rules that must be complied with by contractors or grant recipients, as the case may be, in relation to contracts entered into, or grants made, under section 14;
- (b) minimum benchmarks that must be met or exceeded by contractors or grant recipients, as the case may be, in relation to contracts entered into, or grants made, under section 14.

*Application of determinations*

- (3) A determination under subsection (2) may be of general application or may be limited as provided in the determination.
- (4) Subsection (3) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Other terms and conditions*

- (5) This section does not, by implication, limit:
  - (a) the terms and conditions that may be included in a contract entered into under section 14; or
  - (b) the terms and conditions that may be included in an agreement under section 15.

*Determination prevails over inconsistent contract or agreement*

- (6) A term or condition:
  - (a) of a contract entered into under section 14; or
  - (b) set out in an agreement under section 15;has no effect to the extent to which it is inconsistent with a determination under subsection (2) that applies to the contract or to the grant to which the agreement relates, as the case may be.
- (7) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it overrides a term or condition:
  - (a) of a contract entered into under section 14; and
  - (b) that gives the contractor a right to adjustment of payment for a change in the services, facilities or customer equipment to be supplied by the contractor in accordance with the contract.
- (8) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it specifies the price, or a method of ascertaining the price, for any of the services, facilities or customer

equipment to be supplied by a contractor in accordance with a section 14 contract.

- (9) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it overrides a term or condition:
- (a) set out in an agreement under section 15; and
  - (b) that gives the grant recipient a right to adjustment of payment for a change in the services, facilities or customer equipment to be supplied by the grant recipient in accordance with the terms and conditions of the grant.
- (10) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it specifies the price, or a method of ascertaining the price, for any of the services, facilities or customer equipment to be supplied by the grant recipient of a section 14 grant in accordance with the terms and conditions of the grant.

### **17 Exemption of designated transitional contracts from Ministerial determination**

If:

- (a) a contract is in force as at the commencement of this section; and
- (b) the contract was entered into before 1 July 2012; and
- (c) the contract was a designated transitional contract within the meaning of the repealed *Telecommunications Universal Service Management Agency Act 2012*;

the contract is exempt from a determination under subsection 16(2) of this Act.

### **18 Secretary has powers etc. of the Commonwealth**

- (1) The Secretary, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as:
- (a) a party to a contract entered into under section 14; or
  - (b) the grantor of a grant made under section 14.
- (2) Without limiting subsection (1):

- (a) an amount payable by the Commonwealth under a section 14 contract is to be paid by the Secretary on behalf of the Commonwealth; and
- (b) an amount payable to the Commonwealth under a section 14 contract is to be paid to the Secretary on behalf of the Commonwealth; and
- (c) a section 14 grant is to be paid by the Secretary on behalf of the Commonwealth; and
- (d) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a section 14 grant is to be paid to the Secretary on behalf of the Commonwealth; and
- (e) the Secretary may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns:
  - (i) a section 14 contract; or
  - (ii) a section 14 grant.

## **19 Conferral of powers on the Secretary**

The Secretary may exercise a power conferred on the Secretary by:

- (a) a contract entered into under section 14; or
- (b) an agreement under section 14.

## **20 Monitoring of performance**

- (1) The Secretary must monitor, and report each financial year to the Minister on, all significant matters relating to:
  - (a) the performance of contractors; and
  - (b) the performance of grant recipients.
- (2) A report under subsection (1) for a financial year must set out details of the following matters:
  - (a) the adequacy of each contractor's compliance, during that year, with the terms and conditions of a section 14 contract;
  - (b) the adequacy of each grant recipient's compliance, during that year, with the terms and conditions of a section 14 grant;
  - (c) any notice of breach by a contractor of a section 14 contract, where the notice was given during that year;
  - (d) any notice of breach by a grant recipient of a term or condition of a section 14 grant, where the notice was given during that year;

- (e) any remedial action taken by the Secretary during that year in response to a breach of a section 14 contract;
  - (f) any remedial action taken by the Secretary during that year in response to a breach of the terms or conditions of a section 14 grant;
  - (g) the result of any such remedial action.
- (3) Subsection (2) does not limit subsection (1).
- (4) A report under subsection (1) for a financial year must be included in the annual report prepared by the Secretary and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for the financial year.

## 21 Executive power of the Commonwealth

This Division does not, by implication, limit the executive power of the Commonwealth.

## 22 Transitional—pre-commencement contracts

- (1) If:
- (a) a contract is in force as at the commencement of this section; and
  - (b) the contract was entered into before 1 July 2012; and
  - (c) under section 22, 23, 24, 25 or 26 of the repealed *Telecommunications Universal Service Management Agency Act 2012*, that Act had effect as if the contract had been entered into under section 13 of that Act for a purpose relating to the achievement of a particular policy objective;
- this Act, and any other law of the Commonwealth, has effect as if the contract had been entered into by the Secretary under section 14 of this Act for a purpose relating to the achievement of the corresponding policy objective.
- (2) If:
- (a) a contract is in force as at the commencement of this section; and
  - (b) the contract was entered into on or after 1 July 2012; and
  - (c) the contract was entered into under section 13 of the repealed *Telecommunications Universal Service Management Agency*



*Act 2012* for a purpose relating to the achievement of a particular policy objective;

this Act, and any other law of the Commonwealth, has effect as if the contract had been entered into by the Secretary under section 14 of this Act for a purpose relating to the achievement of the corresponding policy objective.

- (3) For the purposes of this section, *contract* includes a part of a contract.

## **Division 4—Disclosure of information**

### **Subdivision A—Access to information or documents held by a carriage service provider**

#### **23 Access to information or documents held by a carriage service provider**

*Scope*

- (1) This section applies to a carriage service provider if the Secretary believes on reasonable grounds that the carriage service provider has information or a document that is relevant to the achievement of the policy objective set out in paragraph 13(1)(e).

*Requirement*

- (2) The Secretary may, by written notice given to the carriage service provider, require the carriage service provider:
- (a) to give to the Secretary, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Secretary, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the Secretary, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

*Compliance*

- (4) A carriage service provider must comply with a requirement under subsection (2) to the extent that the carriage service provider is capable of doing so.
- (5) A carriage service provider commits an offence if:
  - (a) the Secretary has given a notice to the carriage service provider under subsection (2); and
  - (b) the carriage service provider engages in conduct; and
  - (c) the carriage service provider's conduct contravenes a requirement in the notice.

Penalty for contravention of this subsection: 50 penalty units.

**24 Copying documents—compensation**

A carriage service provider is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph 23(2)(c).

**25 Copies of documents**

- (1) The Secretary may:
  - (a) inspect a document or copy produced under subsection 23(2); and
  - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) The Secretary may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 23(2)(c).

**26 Secretary may retain documents**

- (1) The Secretary may take, and retain for as long as is necessary, possession of a document produced under subsection 23(2).
- (2) The carriage service provider otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.

- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the carriage service provider otherwise entitled to possession of the document, or a person authorised by that carriage service provider, to inspect and make copies of, or take extracts from, the document.

## **27 Law relating to legal professional privilege not affected**

This Subdivision does not affect the law relating to legal professional privilege.

## **28 Disclosure of information**

### *Scope*

- (1) This section applies to information that:
  - (a) was obtained by the Secretary under section 23; or
  - (b) is contained in a document, or a copy of a document, that was produced to the Secretary under section 23.

### *Disclosure*

- (2) The Secretary may disclose the information to a carriage service provider if the disclosure is for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(e).

## **29 Consent to customer contact**

### *Scope*

- (1) This section applies to a carriage service provider if:
  - (a) the Secretary believes on reasonable grounds that, if the carriage service provider were to consent to another person (the **third person**) contacting:
    - (i) the carriage service provider's customers; or
    - (ii) customers included in a particular class of the carriage service provider's customers;for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(e), that consent would be

- likely to facilitate the achievement of the policy objective set out in paragraph 13(1)(e); and
- (b) the carriage service provider is not a contractor in relation to a section 14 contract entered into for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(e); and
  - (c) the carriage service provider is not a grant recipient in relation to a section 14 grant made for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(e).

*Requirement*

- (2) The Secretary may, by written notice given to the carriage service provider, require the carriage service provider:
  - (a) to consent to the third person contacting:
    - (i) if subparagraph (1)(a)(i) applies—the carriage service provider’s customers; or
    - (ii) if subparagraph (1)(a)(ii) applies—customers included in a specified class of the carriage service provider’s customers;for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(e); and
  - (b) to do so within the period and in the manner specified in the notice.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

*Compliance*

- (4) A carriage service provider must comply with a requirement under subsection (2).
- (5) A carriage service provider commits an offence if:
  - (a) the Secretary has given a notice to the carriage service provider under subsection (2); and
  - (b) the carriage service provider engages in conduct; and
  - (c) the carriage service provider’s conduct contravenes a requirement in the notice.

Penalty for contravention of this subsection: 50 penalty units.

**Subdivision B—Access to information or documents held by an NBN corporation**

**30 Access to information or documents held by an NBN corporation**

*Scope*

- (1) This section applies to an NBN corporation if the Minister believes on reasonable grounds that the NBN corporation has information or a document that is relevant to the exercise of any of the Secretary's powers under Division 3.

*Requirement*

- (2) The Minister may, by written notice given to the NBN corporation, require the NBN corporation:
  - (a) to give to the Secretary, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Secretary, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the Secretary, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

*Compliance*

- (4) An NBN corporation must comply with a requirement under subsection (2) to the extent that the NBN corporation is capable of doing so.
- (5) An NBN corporation commits an offence if:
  - (a) the Minister has given a notice to the NBN corporation under subsection (2); and
  - (b) the NBN corporation engages in conduct; and
  - (c) the NBN corporation's conduct contravenes a requirement in the notice.

Penalty for contravention of this subsection: 50 penalty units.

### **31 Copying documents—compensation**

An NBN corporation is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph 30(2)(c).

### **32 Copies of documents**

- (1) The Secretary may:
  - (a) inspect a document or copy produced under subsection 30(2); and
  - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) The Secretary may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 30(2)(c).

### **33 Secretary may retain documents**

- (1) The Secretary may take, and retain for as long as is necessary, possession of a document produced under subsection 30(2).
- (2) The NBN corporation otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the NBN corporation otherwise entitled to possession of the document, or a person authorised by that NBN corporation, to inspect and make copies of, or take extracts from, the document.

### **34 Law relating to legal professional privilege not affected**

This Subdivision does not affect the law relating to legal professional privilege.

### **35 Severability**

- (1) Without limiting its effect apart from this section, this Subdivision also has effect as provided by this section.

*Corporations power*

- (2) This Subdivision also has the effect it would have if:
- (a) subsection (3) had not been enacted; and
  - (b) each reference in this Subdivision to an NBN corporation were, by express provision, confined to an NBN corporation that is a constitutional corporation.

*Communications power*

- (3) This Subdivision also has the effect it would have if:
- (a) subsection (2) had not been enacted; and
  - (b) each reference in this Subdivision to an NBN corporation were, by express provision, confined to an NBN corporation that:
    - (i) carries on; or
    - (ii) proposes to carry on; or
    - (iii) has the object of carrying on;a business that consists of or includes the supply of a carriage service.

### **Subdivision C—Disclosure of information to certain bodies or persons**

#### **36 Disclosure of information to certain bodies or persons**

- (1) The Secretary may disclose information to any of the following bodies or persons:
- (a) the ACMA;
  - (b) the ACCC;
  - (c) the Telecommunications Industry Ombudsman;
  - (d) the Regional Telecommunications Independent Review Committee;
- if:

- (e) the information was obtained under, or for the purposes of, this Division; and
  - (f) the Secretary is satisfied that the information will enable or assist the body or person to perform or exercise any of the functions or powers of the body or person.
- (2) The Secretary may, by writing, impose conditions to be complied with in relation to information disclosed under subsection (1).
  - (3) An instrument made under subsection (2) that imposes conditions relating to one particular disclosure identified in the instrument is not a legislative instrument.
  - (4) Otherwise, an instrument made under subsection (2) is a legislative instrument.

## **Division 5—Public Interest Telecommunications Services Special Account**

### **37 Public Interest Telecommunications Services Special Account**

- (1) The Public Interest Telecommunications Services Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.
- (3) The Account is to be administered by the Secretary.

### **38 Credits to the Account**

There must be credited to the Public Interest Telecommunications Services Special Account:

- (a) an amount equal to an amount paid to the Commonwealth by way of levy; and
- (b) an amount equal to an amount paid to the Commonwealth under a section 14 contract; and
- (c) an amount equal to an amount paid to the Commonwealth by way of damages or compensation for a breach of a section 14 contract; and



- (d) an amount equal to an amount paid to the Commonwealth by way of the repayment of the whole or a part of a section 14 grant.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

### **39 Purposes of the Account**

The purposes of Public Interest Telecommunications Services Special Account are as follows:

- (a) to pay amounts payable by the Commonwealth under a contract entered into under section 14;
- (b) to make grants under section 14;
- (c) to pay the eligible administrative costs of the Commonwealth;
- (d) to make distributions in accordance with section 40;
- (e) to pay refunds under section 62.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

### **40 Distribution of remaining balance of the Account**

- (1) The Secretary, on behalf of the Commonwealth, may distribute to persons who are or were participating persons any balance standing to the credit of the Public Interest Telecommunications Services Special Account that remains after all payments payable by the Commonwealth, in respect of debits from the Account for an eligible levy period, have been paid.
- (2) The Minister may, by legislative instrument, determine rules for making those distributions.
- (3) The Secretary must comply with any rules determined under subsection (2).

## Division 6—Assessment, collection and recovery of levy

### Subdivision A—Overall levy target amount

#### 41 Overall levy target amount

*General rule*

- (1) For the purposes of this Act, the **overall levy target amount** for an eligible levy period (other than the first eligible levy period) is the sum of:
- (a) the total amount paid by the Secretary on behalf of the Commonwealth during the period under contracts made under section 14; and
  - (b) the total amount paid by the Secretary on behalf of the Commonwealth during the period by way of grants made under section 14; and
  - (c) the total amount of the eligible administrative costs of the Commonwealth incurred during the period;
- reduced by the total of the amounts appropriated by Appropriation Acts for the purposes of:
- (d) making payments under section 14 contracts during the period; and
  - (e) making section 14 grants during the period; and
  - (f) the eligible administrative costs of the Commonwealth in relation to the period.

Note 1: The first eligible levy period is the 2014-15 financial year (see section 5).

Note 2: See also subsections 61(3) and (4) (set-off).

*First eligible levy period*

- (2) For the purposes of this Act, the **overall levy target amount** for the first eligible levy period is the amount that would have been the overall levy target amount (within the meaning of section 88 of the repealed *Telecommunications Universal Service Management Agency Act 2012*) for the eligible levy period (within the meaning of that section) that began on 1 July 2014 if the 2014-15 financial year were treated as an eligible levy period for the purposes of that section.

## **42 Statement of overall levy target amount**

### *Overall levy target amount*

- (1) After the end of an eligible levy period, the Secretary must prepare a written statement setting out the overall levy target amount for the period.

### *Components of overall levy target amount—general rule*

- (2) After the end of an eligible levy period (other than the first eligible levy period), the Secretary must prepare a written statement setting out the total amount paid by the Secretary on behalf of the Commonwealth during the period under contracts made under section 14.

Note 1: The first eligible levy period is the 2014-15 financial year (see section 5).

Note 2: See also subsection 61(3) (set-off).

- (3) After the end of an eligible levy period (other than the first eligible levy period), the Secretary must prepare a written statement setting out the total amount paid by the Secretary on behalf of the Commonwealth during the period by way of grants made under section 14.

Note 1: The first eligible levy period is the 2014-15 financial year (see section 5).

Note 2: See also subsection 61(4) (set-off).

- (4) After the end of an eligible levy period (other than the first eligible levy period), the Secretary must prepare a written statement setting out:
  - (a) the total amount of the eligible administrative costs of the Commonwealth incurred during the period; and
  - (b) a breakdown of the amount referred to in paragraph (a) into categories specified in the regulations.

Note: The first eligible levy period is the 2014-15 financial year (see section 5).

*Components of overall levy target amount—first eligible levy period*

- (5) After the end of the first eligible levy period, the Secretary must prepare a written statement setting out the total amount paid by the Telecommunications Universal Service Management Agency on behalf of the Commonwealth during the period under contracts made under section 13 of the repealed *Telecommunications Universal Service Management Agency Act 2012*.

Note: The first eligible levy period is the 2014-15 financial year (see section 5).

- (6) After the end of the first eligible levy period, the Secretary must prepare a written statement setting out the total amount paid by the Telecommunications Universal Service Management Agency on behalf of the Commonwealth during the period by way of grants made under section 13 of the repealed *Telecommunications Universal Service Management Agency Act 2012*.

Note: The first eligible levy period is the 2014-15 financial year (see section 5).

- (7) After the end of the first eligible levy period, the Secretary must prepare a written statement setting out:
- (a) the total amount of the Telecommunications Universal Service Management Agency's administrative costs (within the meaning of the repealed *Telecommunications Universal Service Management Agency Act 2012*) incurred during the period; and
  - (b) a breakdown of the amount referred to in paragraph (a) into categories specified in the regulations.

Note: The first eligible levy period is the 2014-15 financial year (see section 5).

*Timing*

- (8) The Secretary must take all reasonable steps to ensure that a statement under this section is prepared within 4 months after the end of the eligible levy period to which the statement relates.

*Other matters*

- (9) The Secretary must give a copy of a statement under this section to the ACMA.
- (10) As soon as practicable after the Secretary gives the ACMA a copy of a statement under this section, the ACMA must cause the copy to be published on the ACMA's website.
- (11) A statement under this section is not a legislative instrument.

**Subdivision B—Eligible revenue of participating persons**

**43 Participating person must lodge return of eligible revenue**

- (1) A participating person for an eligible revenue period (other than the first eligible revenue period) must:
  - (a) give the ACMA a written return of the person's eligible revenue for that period; and
  - (b) do so within the period specified in an instrument in force under subsection (5).
- (2) The return must be in a form approved in writing by the ACMA.
- (3) The approved form may require verification, by a statutory declaration, of statements made in the return.
- (4) The return must set out:
  - (a) the eligible revenue for the eligible revenue period of the participating person; and
  - (b) details of how the eligible revenue was worked out; and
  - (c) such other information (if any) as the approved form of return requires.
- (5) The ACMA may, by legislative instrument, specify a period for the purposes of paragraph (1)(b). The period must begin at or after the end of the eligible revenue period.

Note: See also section 69 (offence of failing to lodge eligible revenue return).

#### 44 Participating person

- (1) For the purposes of this Act, a person is a *participating person* for an eligible revenue period if:
  - (a) the person was a carrier at any time during the eligible revenue period; or
  - (b) both:
    - (i) the Minister makes a written determination that carriage service providers are participating persons for the eligible revenue period; and
    - (ii) the person was a carriage service provider at any time during the eligible revenue period.
- (2) However, a person is not a *participating person* for an eligible revenue period if the person is of a kind, determined in writing by the Minister for the purposes of this subsection, to be exempt from this section.
- (3) A determination under subsection (1) or (2) is a legislative instrument.

#### 45 Eligible revenue

##### *General rule*

- (1) For the purposes of this Act, *eligible revenue* of a person for an eligible revenue period (other than the first eligible revenue period) is the amount ascertained in accordance with a written determination made by the ACMA for the purposes of this subsection.
- (2) Subsection (1) has effect subject to subsection (3).
- (3) The *eligible revenue* of a participating person for an eligible revenue period (other than the first eligible revenue period):
  - (a) is taken to be zero if the person's eligible revenue is less than the amount (the *threshold amount*) determined in writing by the Minister for the purposes of this subsection; or
  - (b) in any other case—must be reduced by the threshold amount.

- (4) To avoid doubt, a determination under subsection (1) may, in providing how to work out the eligible revenue of a person, refer to revenue of other persons.
- (5) A determination under subsection (1) must not provide that:
  - (a) an amount payable under a contract entered into under section 14; or
  - (b) a grant under section 14;is included in a person's eligible revenue.
- (6) A determination under subsection (1) or (3) is a legislative instrument.

*First eligible revenue period*

- (7) For the purposes of this Act, **eligible revenue** of a person for the first eligible revenue period is the person's eligible revenue (within the meaning of the repealed *Telecommunications Universal Service Management Agency Act 2012*) for the eligible revenue period (within the meaning of that Act) that began on 1 July 2013.

Note: The first eligible revenue period is the 2013-14 financial year (see section 5).

#### **46 ACMA may inquire into correctness of return**

The ACMA may make whatever inquiries it thinks necessary or desirable in order to determine whether or not a participating person's eligible revenue return for an eligible revenue period correctly states the person's eligible revenue for that period.

#### **47 ACMA to assess eligible revenue**

- (1) The ACMA must make a written assessment of each participating person's eligible revenue for an eligible revenue period (other than the first eligible revenue period).

Note: The assessment may be included in the same document as any other assessment the ACMA makes under this Division (see section 55).

- (2) The assessment must be based on:
  - (a) the person's eligible revenue return; and
  - (b) the information and documents obtained by the ACMA because of its inquiries into the correctness of the return; and

- (c) any other information or documents that the ACMA has and that it thinks relevant to making the assessment.
- (3) Subsection (2) has effect subject to section 48.
- (4) The ACMA must give a copy of an assessment of a person's eligible revenue to the person concerned.
- (5) The assessment is not a legislative instrument.

#### **48 Assessment based on estimate of eligible revenue**

- (1) If a participating person fails to give the ACMA an eligible revenue return for an eligible revenue period (other than the first eligible revenue period), the ACMA may:
  - (a) estimate the person's eligible revenue for that period; and
  - (b) make a written assessment under section 47 of the person's eligible revenue for that period based on that estimate.
- (2) The ACMA must give the person at least 14 days' written notice of:
  - (a) the amount of eligible revenue proposed to be assessed; and
  - (b) the ACMA's proposal to make the assessment based on the estimate.
- (3) However, the ACMA is not required to:
  - (a) give the person a notice under subsection (2); or
  - (b) make a written assessment under section 47 of the person's eligible revenue for the period based on the estimate;if the estimate is nil.
- (4) The ACMA must not make an assessment based on an estimate after receiving an eligible revenue return for the period from the person concerned.
- (5) However, if the ACMA has made an assessment based on the estimate, the ACMA is not required to change it if an eligible revenue return is later given to the ACMA.



#### **49 Levy contribution factor**

- (1) The rule in subsection (2) applies if the ACMA has assessed the eligible revenue of participating persons for an eligible revenue period.
- (2) For the eligible levy period starting immediately after the eligible revenue period, the ACMA must work out a levy contribution factor for each of those participating persons.

Note: The levy contribution factor is used to work out the levy amount of a participating person (see section 50).

- (3) For the purposes of this Act, the **levy contribution factor** of a person for an eligible levy period is the amount worked out using the following formula:

$$\frac{\text{Individual eligible revenue}}{\text{Total eligible revenue}}$$

where:

**individual eligible revenue** means the assessed eligible revenue of the person for the eligible revenue period ending immediately before the eligible levy period.

**total eligible revenue** means the total assessed eligible revenue, for the eligible revenue period ending immediately before the eligible levy period, of all the participating persons for the eligible revenue period.

#### **Subdivision C—Levy amount**

#### **50 Levy amount of a participating person**

- (1) If a person is a participating person for an eligible revenue period (the **relevant eligible revenue period**), then, for the purposes of this Act, the **levy amount** of the person for the eligible levy period starting immediately after the relevant eligible revenue period is the amount worked out using the formula:

$$\text{Levy contribution factor} \times \text{Overall levy target amount}$$

where:

**levy contribution factor** means the person's levy contribution factor for the eligible levy period worked out under section 49.

**overall levy target amount** means the overall levy target amount for the eligible levy period worked out under section 41.

Note: The *Telecommunications (Industry Levy) Act 2012* imposes levy on the levy amount.

- (2) The Minister may, by legislative instrument, modify the formula in subsection (1).

## **51 ACMA to make written assessment**

- (1) For each eligible levy period, the ACMA must make a written assessment setting out the matters in subsection (2).
- (2) For each participating person for the eligible revenue period ending immediately before the eligible levy period, the assessment must set out:
- (a) the person's levy amount under section 50 for the eligible levy period; and
  - (b) the levy payable by the person on that amount.

Note: Section 56 sets out when the levy is payable.

- (3) The ACMA must act expeditiously in preparing its assessment. However, a failure to comply with this subsection does not affect the validity of the assessment.
- (4) The assessment is not a legislative instrument.

## **52 Publication of assessment**

As soon as practicable after making an assessment under section 51, the ACMA must:

- (a) publish a copy of the assessment on the ACMA's website; and
- (b) give a copy of the assessment to the participating person to whom the assessment relates.

## **Subdivision D—Assessments**

### **53 Variation of assessments**

- (1) The ACMA may vary an assessment made under this Division by making such alterations and additions as it thinks necessary, even if levy has been paid in respect of an assessment.
- (2) Unless the contrary intention appears, an amended assessment is taken, for the purposes of this Division, to be an assessment under section 47 or 51, as the case may be.

### **54 ACMA may accept statements**

Despite anything in this Division, the ACMA may, for the purposes of making an assessment under this Division, partly or completely accept a statement in an eligible revenue return.

### **55 Multiple assessments in the same document**

The ACMA may include in the same document more than one assessment made under this Division.

## **Subdivision E—Collection and recovery of levy**

### **56 When levy payable**

- (1) Levy assessed under section 51 becomes due and payable on:
  - (a) the 28th day; or
  - (b) such later day as is determined in writing by the ACMA; after the ACMA gives a copy of the assessment to the participating person to whom the assessment relates.
- (2) A copy of a determination under paragraph (1)(b) must be published on the ACMA's website.
- (3) A determination under paragraph (1)(b) is not a legislative instrument.

### **57 Recovery of levy**

Levy:

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- (a) is a debt due to the ACMA on behalf of the Commonwealth;  
and
- (b) may be recovered by the ACMA, on behalf of the Commonwealth, in a court of competent jurisdiction.

### **58 Validity of assessment**

The validity of an assessment under this Division is not affected by a contravention of this Division.

### **59 Evidence of assessment**

#### *Scope*

- (1) This section applies if a document that purports to be a copy of an assessment under section 51 is produced in a proceeding.

#### *Evidence*

- (2) Except so far as the contrary is established, it must be presumed:
  - (a) that the document is a copy of the assessment; and
  - (b) that the ACMA has duly made the assessment; and
  - (c) that the amounts and other particulars set out in the assessment are correct.

### **60 Onus of establishing incorrectness of assessment**

In any proceeding, the onus of establishing that an assessment under section 51 is incorrect is on the party making that assertion.

### **61 Set-off**

- (1) If:
  - (a) an amount of levy (the ***first amount***) is payable by a person;  
and
  - (b) an amount (the ***second amount***) is payable by the Commonwealth to the person:
    - (i) under a section 14 contract; or
    - (ii) as a section 14 grant;

the ACMA may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

- (2) Before doing so, the ACMA must consult the Secretary.

*Overall levy target amount*

- (3) For the purposes of sections 41 and 42, if the second amount is payable by the Commonwealth to the person under a section 14 contract, the amount set off is taken to have been paid by the Secretary, on behalf of the Commonwealth, under a section 14 contract.
- (4) For the purposes of sections 41 and 42, if the second amount is payable by the Commonwealth to the person as a section 14 grant, the amount set off is taken to have been paid by the Secretary, on behalf of the Commonwealth, by way of a section 14 grant.

*Grant taken to be payable by the Commonwealth*

- (5) For the purposes of this section, if a person is eligible to receive a section 14 grant, the amount of the grant is taken to be an amount payable by the Commonwealth to the person.

## **62 Refund of overpayment of levy**

If there is an overpayment of levy, the overpayment is to be refunded by the Secretary on behalf of the Commonwealth.

Note: For the appropriation for the refund, see section 77 of the *Public Governance, Performance and Accountability Act 2013*.

## **63 Cancellation of certain exemptions from levy**

- (1) This section cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay levy.
- (2) The cancellation does not apply if the provision of the other Act is enacted after the commencement of this section and refers specifically to levy imposed by the *Telecommunications (Industry Levy) Act 2012*.

#### **64 Commonwealth not liable to levy**

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

#### **65 Performance bonds and guarantees**

- (1) The Minister may, by written determination, require a person who has a liability to pay levy, or an anticipated liability to pay levy, to obtain, in accordance with the determination, performance bonds or guarantees in respect of the person's liability or anticipated liability.
- (2) The person must comply with the determination.
- (3) A determination under this section is a legislative instrument.
- (4) In this section:  
*performance bond* has the meaning given by the determination.

#### **Subdivision F—Disclosure of information**

#### **66 Public may request information**

- (1) A person may request the ACMA to make available to the person:
    - (a) specified information or documents on the basis of which the ACMA may make, or has made, its assessment under section 51 for an eligible levy period; or
    - (b) specified information about how the ACMA may work out, or has worked out, the matters mentioned in paragraphs 51(2)(a) and (b).
  - (2) The ACMA must comply with a request as provided in section 68. This subsection has effect subject to subsection (3).
  - (3) The ACMA must not make available under this section:
    - (a) information (other than information prescribed for the purposes of this paragraph):
-

- (i) that was obtained from, or relates to, a person who is a participating person for an eligible revenue period; and
  - (ii) the making available of which under this section can reasonably be expected to cause substantial damage to the person's commercial or other interests; or
- (b) information prescribed for the purposes of this paragraph; or
- (c) so much of a document as sets out information of a kind referred to in paragraph (a) or (b).

### **67 Request for information that is unavailable under section 66**

- (1) A person who is a participating person for an eligible revenue period may request the ACMA to make available to the person specified information or documents of a kind referred to in subsection 66(1) that subsection 66(3) prevents the ACMA from making available to the person under section 66.
- (2) The ACMA must comply with a request as provided for in section 68. This subsection has effect subject to subsection (3) of this section.
- (3) The ACMA must not, under this section, make available to a person (the *first person*) information, or so much of a document as sets out information:
- (a) that was obtained from, or relates to, another person (the *second person*) who is a participating person for an eligible revenue period; and
  - (b) the making available of which to the first person can reasonably be expected to cause substantial damage to the second person's commercial or other interests;
- unless the ACMA is satisfied:
- (c) that the information could be obtained by the first person lawfully, and without the second person's consent, from a source other than the ACMA; or
  - (d) that:
    - (i) the first person has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, the ACMA made the assessment concerned; and
    - (ii) having regard to the policy objectives in section 13, the first person's interest in being able to examine that basis

and those methods in order to see how its liability to pay levy has been assessed outweighs the second person's interest in avoiding the damage referred to in paragraph (b) of this subsection.

- (4) In determining the question referred to in paragraph (3)(b), the ACMA must have regard to:
- (a) whether any undertakings have been given under subsection (5) and, if so, the nature of those undertakings; and
  - (b) such other matters (if any) as the ACMA considers relevant.
- (5) For the purposes of this section, a person may give the ACMA a written undertaking that, if specified information, or the whole or a part of a specified document, is made available to the person under this section, the person will not:
- (a) disclose the information, or the contents of the document, except to one or more specified persons; or
  - (b) use the information, or the document, except for the purpose of informing itself about the basis on which, or the methods by which, the ACMA made the assessment concerned.
- Note: Information, documents or persons may be specified by name, by inclusion in a class or in any other way.
- (6) If a person gives an undertaking under subsection (5), the person must comply with the undertaking.

## **68 How the ACMA is to comply with a request**

- (1) The ACMA may comply with a request by a person under section 66 or 67 by:
- (a) communicating information to the person in writing or in some other form; or
  - (b) making documents available for inspection by the person or by an employee, agent or professional adviser of the person; or
  - (c) giving to the person copies of, extracts from, or summaries of, documents.
- (2) In this section:
- document*** includes a part of a document.



## **Subdivision G—Other matters**

### **69 Offence of failing to lodge eligible revenue return**

- (1) A person commits an offence if:
  - (a) the person is subject to a requirement under section 43; and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the requirement.

Penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

### **70 Late payment penalty**

- (1) If an amount of levy that is payable by a person remains unpaid after the day on which it becomes due and payable, the person is liable to pay a penalty (*late payment penalty*) on the unpaid amount for each day until all of the levy has been paid.
- (2) The late payment penalty rate is 20% per year, or such lower rate as the ACMA determines in writing for the purposes of this subsection.
- (3) The ACMA may remit the whole or part of a late payment penalty that a person is liable to pay under subsection (2).
- (4) The late payment penalty for a day is due and payable at the end of that day.
- (5) Late payment penalty:
  - (a) is a debt due to the ACMA on behalf of the Commonwealth; and
  - (b) may be recovered by the ACMA, on behalf of the Commonwealth, in a court of competent jurisdiction.

- (6) If the amount of the late payment penalty for a day is not an amount of whole dollars, the late payment penalty is rounded to the nearest dollar (rounding 50 cents upwards).
- (7) A determination under subsection (2) is a legislative instrument.

## **Division 7—Other matters**

### **71 Register of Public Interest Telecommunications Contracts**

- (1) The Secretary is to maintain a register, to be known as the Register of Public Interest Telecommunications Contracts, in which the Secretary includes the following for each section 14 contract that is in force:
  - (a) the name of the contractor;
  - (b) the duration of the contract;
  - (c) a summary of the actions to be undertaken by the contractor under the contract;
  - (d) a description of the services, facilities or customer equipment to be supplied by the contractor in accordance with the contract;
  - (e) one of the following:
    - (i) the total amount paid or to be paid by the Commonwealth under the contract;
    - (ii) an estimate of the total amount paid or to be paid by the Commonwealth under the contract;
    - (iii) the method of working out the total amount paid or to be paid by the Commonwealth under the contract.
- (2) The Register of Public Interest Telecommunications Contracts is to be maintained by electronic means.
- (3) The Register of Public Interest Telecommunications Contracts is to be made available for inspection on the Department's website.
- (4) The Register of Public Interest Telecommunications Contracts is not a legislative instrument.

## **72 Register of Public Interest Telecommunications Grants**

- (1) The Secretary is to maintain a register, to be known as the Register of Public Interest Telecommunications Grants, in which the Secretary includes the following for each section 14 grant that has been made:
  - (a) the name of the grant recipient;
  - (b) a summary of the terms and conditions of the grant that require action to be undertaken by the grant recipient;
  - (c) a description of the services, facilities or customer equipment to be supplied by the grant recipient in accordance with the terms and conditions of the grant;
  - (d) either:
    - (i) the amount of the grant; or
    - (ii) the method for working out the amount of the grant.
- (2) The Register of Public Interest Telecommunications Grants is to be maintained by electronic means.
- (3) The Register of Public Interest Telecommunications Grants is to be made available for inspection on the Department's website.
- (4) The Register of Public Interest Telecommunications Grants is not a legislative instrument.

## **73 Delegation by the Minister**

- (1) The Minister may, by writing, delegate any or all of his or her functions or powers under this Part to a member of the staff of the ACMA who is:
  - (a) an SES employee; or
  - (b) an acting SES employee.

Note: The expressions **SES employee** and **acting SES employee** are defined in the *Acts Interpretation Act 1901*.

- (2) A delegate must comply with any written directions of the Minister.

#### **74 Delegation by the Secretary**

- (1) The Secretary may, by writing, delegate any or all of his or her functions or powers under this Part to an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Secretary.

#### **124 Paragraphs 106(3A)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) in compliance with the obligations under a contract entered into under section 14 for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(a); or
- (c) in compliance with the terms and conditions of a grant made under section 14 for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(a).

#### **125 Subsections 107(6) and (6A)**

Repeal the subsections.

#### **126 Subparagraphs 109(1)(a)(i), (b)(i), (c)(i) and (d)(i)**

Omit “universal service contractor or universal service grant recipient”, substitute “contractor or grant recipient”.

#### **127 Paragraph 109(3)(b)**

Omit “for that area”.

#### **128 Paragraph 109(4)(b)**

Repeal the paragraph, substitute:

- (b) the provider is a contractor in relation to a contract entered into under section 14 for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(a); and

#### **129 Paragraph 109(4)(c)**

Omit “universal service”.

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**130 Paragraph 109(4)(c)**

Omit “in the area”.

**131 Subsection 109(4)**

Omit “universal service” (last occurring).

**132 Paragraph 109(5)(b)**

Repeal the paragraph, substitute:

- (b) the provider is a grant recipient in relation to a grant made under section 14 for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(a); and

**133 Paragraph 109(5)(c)**

Omit “universal service”.

**134 Paragraph 109(5)(c)**

Omit “in the area”.

**135 Subsection 109(5)**

Omit “universal service” (last occurring).

**136 Paragraphs 120(7)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) in compliance with the obligations under a contract entered into under section 14 for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(a); or
- (c) in compliance with the terms and conditions of a grant made under section 14 for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(a).

**137 Subsection 147(9A)**

Omit “TUSMA”, substitute “the Secretary”.

## Part 4—Application and transitional provisions

### Division 1—Preliminary

#### 138 Definitions

In this Part:

**contractor** has the same meaning as in the repealed *Telecommunications Universal Service Management Agency Act 2012*.

**grant recipient** has the same meaning as in the repealed *Telecommunications Universal Service Management Agency Act 2012*.

**Secretary** means the Secretary of the Department.

**TUSMA** means the Telecommunications Universal Service Management Agency.

**transition time** means the commencement of this Part.

### Division 2—Abolition of TUSMA

#### 139 Transfer of records to the Department

- (1) This item applies to any records or documents that were in the possession of TUSMA immediately before the transition time.
- (2) The records and documents are to be transferred to the Department after the transition time.

Note: The records and documents are Commonwealth records for the purposes of the *Archives Act 1983*.

#### 140 Transfer of Ombudsman investigations

If:

- (a) before the transition time, a complaint was made to the Ombudsman, or the Ombudsman began an investigation, under the *Ombudsman Act 1976* in relation to an action taken by TUSMA; and
- (b) immediately before the transition time, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;

the *Ombudsman Act 1976* applies after the transition time as if that action had been taken by the Department.

## **141 Reporting obligations**

### *Final annual report*

- (1) After the end of the 2014-15 financial year, the Secretary must prepare and give an annual report to the Minister, for presentation to the Parliament, on TUSMA's activities during that financial year.
- (2) The annual report must be given to the Minister by:
  - (a) 15 October 2015; or
  - (b) the end of any further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.
- (3) The annual report is taken to be TUSMA's annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013*.

Note: The annual report must include the TUSMA's annual performance statements and annual financial statements (see paragraph 39(1)(b) and subsection 43(4) of the *Public Governance, Performance and Accountability Act 2013*).

- (4) The annual report must comply with any requirements prescribed by rules made for the purposes of subsection 46(3) of the *Public Governance, Performance and Accountability Act 2013*.
- (5) The annual report must set out the matters mentioned in section 75 of the repealed *Telecommunications Universal Service Management Agency Act 2012*, so far as those matters concern the 2014-15 financial year.

### *Final monitoring report—performance of contractors and grant recipients*

- (6) After the end of the 2014-15 financial year, the Secretary must prepare a report on all significant matters relating to:
  - (a) the performance of contractors; and
  - (b) the performance of grant recipients;during that financial year.
- (7) The report must set out the matters mentioned in subsection 29(2) of the repealed *Telecommunications Universal Service Management Agency Act 2012*.
- (8) Subitem (7) does not limit subitem (6).

- (9) A report under subitem (6) for a financial year must be included in the annual report prepared by the Secretary and given to the Minister under subitem (1).

*Monitoring report—performance of carriers and carriage service providers*

- (10) Despite the repeal of paragraphs 105(3)(eb) and (ec) of the *Telecommunications Act 1997* by this Schedule, those paragraphs continue to apply, in relation to a report for the 2014-15 financial year, as if that repeal had not happened.

**142 Final financial statements and final annual performance statements**

- (1) The obligations under section 42 of the *Public Governance, Performance and Accountability Act 2013* to:
- (a) prepare financial statements for TUSMA for the 2014-15 financial year; and
  - (b) give those statements to the Auditor-General;
- are imposed on the Secretary instead of the accountable authority of TUSMA.
- (2) The obligations under section 39 of the *Public Governance, Performance and Accountability Act 2013* to:
- (a) prepare an annual performance statement for TUSMA for the 2014-15 financial year; and
  - (b) include a copy of the annual performance statement in TUSMA's annual report;
- are imposed on the Secretary instead of the accountable authority of TUSMA.

**143 Safety, Rehabilitation and Compensation Act 1988—rehabilitation provisions**

- (1) This item applies if, before the transition time, an employee of TUSMA suffered an injury resulting in an incapacity for work or an impairment.
- (2) Sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988* apply after the transition time, in relation to the injury, as if the employee were employed by the Commonwealth in the Department.
-



Note: The main effect of subitem (2) is that sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988* apply in relation to the employee's injury as if the principal officer of the Department were the rehabilitation authority.

- (3) After the transition time, the Commonwealth is, for the purposes of section 40 of the *Safety, Rehabilitation and Compensation Act 1988*, taken to be the relevant employer of the employee.
- (4) For the purposes of this item, *employee of TUSMA* means a member of the staff of TUSMA.

## **Division 3—Investigations and enforcement**

### **144 Investigations**

Despite the amendments of sections 508 and 510 of the *Telecommunications Act 1997* made by this Schedule, those sections continue to apply, in relation to a contravention that occurred before the transition time, as if those amendments had not been made.

### **145 Forfeiture**

Despite the amendment of section 551 of the *Telecommunications Act 1997* made by this Schedule, that section continues to apply, in relation to an offence committed before the transition time, as if that amendment had not been made.

### **146 Civil penalties**

Despite the amendment of section 570 of the *Telecommunications Act 1997* made by this Schedule, that section continues to apply, in relation to a contravention that occurred before the transition time, as if that amendment had not been made.

### **147 Infringement notices**

Despite the amendment of section 572E of the *Telecommunications Act 1997* made by this Schedule, that section continues to apply, in relation to a contravention that occurred before the transition time, as if that amendment had not been made.

### 148 Vicarious liability

Despite the amendment of section 574A of the *Telecommunications Act 1997* made by this Schedule, that section continues to apply, in relation to conduct that was engaged in before the transition time, as if that amendment had not been made.

### 149 Penalties for continuing offences

Despite the amendment of section 583 of the *Telecommunications Act 1997* made by this Schedule, that section continues to apply, in relation to an offence committed before the transition time, as if that amendment had not been made.

### 150 Partnerships

Despite the amendment of section 585 of the *Telecommunications Act 1997* made by this Schedule, that section continues to apply, in relation to a matter that arose before the transition time, as if that amendment had not been made.

## Division 4—Industry levy

### 151 Industry levy

- (1) The objects of this item are:
- (a) to ensure that levy liabilities relating to:
    - (i) the 2012-13 financial year; or
    - (ii) the 2013-14 financial year;can be administered, collected and recovered after the transition time; and
  - (b) to ensure that assessments of eligible revenue for the 2013-14 financial year continue to have effect after the transition time.

Note: See also subsection 45(7) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

- (2) Despite the repeal of the *Telecommunications Universal Service Management Agency Act 2012* by this Schedule, that Act continues in force, subject to:
- (a) this Part; and
  - (b) the modifications set out in the following table;
- as if that repeal had not happened.

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**Modifications of the *Telecommunications Universal Service Management Agency Act 2012***

<b>Item</b>	<b>Provision</b>	<b>Modification</b>
1	section 3	Omit the section.
2	section 4 (definition of <i>eligible levy period</i> )	Omit the definition, substitute: <i>eligible levy period</i> means: (a) the 2012-13 financial year; or (b) the 2013-14 financial year.
3	section 4 (definition of <i>eligible revenue period</i> )	Omit the definition, substitute: <i>eligible revenue period</i> means: (a) the 2011-12 financial year; or (b) the 2012-13 financial year; or (c) the 2013-14 financial year.
4	section 4 (definition of <i>levy</i> )	After “by”, insert “section 6 of”.
5	section 4 (definitions of <i>access, Australia, carriage service, CEO, Chair, constitutional corporation, contractor, customer cabling, customer equipment, designated transitional contract, disability, emergency call service, engage in conduct, facility, grant recipient, national broadband network, National Relay Service, NBN corporation, payphone, standard telephone service, supply, telecommunications industry, Telecommunications Industry Ombudsman, Telecommunications Universal Service</i> )	Omit the definitions.

**Schedule 1** Public interest telecommunications services  
**Part 4** Application and transitional provisions

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**Modifications of the *Telecommunications Universal Service Management Agency Act 2012***

<b>Item</b>	<b>Provision</b>	<b>Modification</b>
	<i>Special Account, Telstra, TUSMA member, vacancy and voice customer migration policy objective</i>	
6	sections 5, 6 and 7	Omit the sections.
7	Parts 2, 3, 4 and 5	Omit the Parts.
8	section 111	Omit “TUSMA”, substitute “the Secretary of the Department”.
9	sections 122 and 123	Omit the sections.

Note: The *Telecommunications (Industry Levy) Amendment Act 2015* contains a transitional provision relating to levy imposed by section 6 of the *Telecommunications (Industry Levy) Act 2012*.

**152 Public Interest Telecommunications Services Special Account**

There must be credited to the Public Interest Telecommunications Services Special Account:

- (a) an amount equal to the balance (if any) of the Telecommunications Universal Service Special Account immediately before the transition time; and
- (b) an amount equal to an amount paid to the Commonwealth after the transition time by way of levy imposed by section 6 of the *Telecommunications (Industry Levy) Act 2012*.

**Division 5—Information management**

**153 Authorised disclosure information**

Despite the amendment of the definition of *authorised disclosure information* in section 3 of the *Australian Communications and Media Authority Act 2005* made by this Schedule, that definition continues to apply, in relation to information that was obtained by the ACMA before the transition time, as if that amendment had not been made.

## **154 Access to information or documents held by a carriage service provider**

### *Scope*

- (1) This item applies to a notice if:
- (a) the notice was given to a carriage service provider under section 29A of the *Telecommunications Universal Service Management Agency Act 2012* before the transition time; and
  - (b) the carriage service provider had not complied with the notice before the transition time.

### *Requirement*

- (2) Despite the repeal of Subdivision A of Division 4A of Part 2 of the *Telecommunications Universal Service Management Agency Act 2012* by this Schedule, that Subdivision continues to apply, in relation to the notice, as if:
- (a) a requirement in the notice to give information to TUSMA were a requirement in the notice to give the information to the Secretary; and
  - (b) a requirement in the notice to produce documents to TUSMA were a requirement to produce the documents to the Secretary; and
  - (c) a requirement in the notice to produce copies to TUSMA were a requirement to produce the copies to the Secretary; and
  - (d) a reference in section 29B of that Act to TUSMA were a reference to the Commonwealth; and
  - (e) a reference in section 29C or 29D of that Act to TUSMA were a reference to the Secretary; and
  - (f) that repeal had not happened.

## **155 Access to information or documents held by an NBN corporation**

### *Scope*

- (1) This item applies to a notice if:
-

- (a) the notice was given to an NBN corporation under section 78 of the *Telecommunications Universal Service Management Agency Act 2012* before the transition time; and
- (b) the NBN corporation had not complied with the notice before the transition time.

**Requirement**

- (2) Despite the repeal of Part 4 of the *Telecommunications Universal Service Management Agency Act 2012* by this Schedule, that Part continues to apply, in relation to the notice, as if:
  - (a) a requirement in the notice to give information to TUSMA were a requirement in the notice to give the information to the Secretary; and
  - (b) a requirement in the notice to produce documents to TUSMA were a requirement to produce the documents to the Secretary; and
  - (c) a requirement in the notice to produce copies to TUSMA were a requirement to produce the copies to the Secretary; and
  - (d) a reference in section 79 of that Act to TUSMA were a reference to the Commonwealth; and
  - (e) a reference in section 80 or 81 of that Act to TUSMA were a reference to the Secretary; and
  - (f) that repeal had not happened.

**156 Disclosure of information obtained by TUSMA under section 29A of the repealed *Telecommunications Universal Service Management Agency Act 2012***

**Scope**

- (1) This item applies to information that:
  - (a) was obtained by TUSMA before the transition time under section 29A of the repealed *Telecommunications Universal Service Management Agency Act 2012*; or
  - (b) is contained in a document, or a copy of a document, that was produced to TUSMA under that section.

*Disclosure*

- (2) The Secretary may disclose the information to a carriage service provider if the disclosure is for a purpose relating to the achievement of the policy objective set out in paragraph 13(1)(e) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**157 Disclosure of information to certain bodies or persons**

- (1) If information was obtained by TUSMA, the Secretary may disclose the information to any of the following bodies or persons if the Secretary is satisfied that the information will enable or assist the body or person to perform or exercise any of the functions or powers of the body or person:
- (a) the ACMA;
  - (b) the ACCC;
  - (c) the Telecommunications Industry Ombudsman;
  - (d) the Regional Telecommunications Independent Review Committee.
- (2) The Secretary may, by writing, impose conditions to be complied with in relation to information disclosed under subitem (1).
- (3) An instrument made under subitem (2) that imposes conditions relating to one particular disclosure identified in the instrument is not a legislative instrument.
- (4) Otherwise, an instrument made under subitem (2) is a legislative instrument.

**158 Protection of information**

If:

- (a) before the transition time, information was disclosed to a person under subsection 122(1) of the *Telecommunications Universal Service Management Agency Act 2012*; and
- (b) immediately before the transition time, a person was subject to a condition under subsection 122(2) of that Act in relation to the information disclosed;

the person continues to be subject to the condition after the transition time.

## 159 Consent to customer contact

### *Scope*

- (1) This item applies if:
  - (a) a notice (the *relevant notice*) was given under subsection 29G(2) of the repealed *Telecommunications Universal Service Management Agency Act 2012* to a carriage service provider before the transition time; and
  - (b) the notice was in force immediately before the transition time.

### *Requirement*

- (2) Despite the repeal of section 29G of the *Telecommunications Universal Service Management Agency Act 2012* by this Schedule, that section continues to apply, in relation to the relevant notice, as if that repeal had not happened.
- (3) The Secretary may, by written notice given to the carriage service provider, revoke or vary the relevant notice.

## Division 6—ACCC’s reporting obligations

### 160 Report by the ACCC under section 151CM of the *Competition and Consumer Act 2010*

Despite the amendments of section 151CM of the *Competition and Consumer Act 2010* made by this Schedule, that section continues to apply, in relation to a report for the 2014-15 financial year, as if those amendments had not been made.

## Division 7—Miscellaneous

### 161 Delegation by Secretary

- (1) The Secretary may, by writing, delegate all or any of his or her powers and functions under this Part to an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.



- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

### **162 Compensation for acquisition of property**

- (1) If the operation of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

### **163 Transitional rules**

The Minister may, by legislative instrument, make rules in relation to transitional matters arising out of the amendments and repeals made by this Schedule.

## Schedule 2—Telephone sex services

### *Australian Communications and Media Authority Act 2005*

#### **1 Subparagraph 8(1)(j)(iv)**

Omit “(other than subsection 158F(1))”.

#### **2 Subparagraph 10(1)(o)(vi)**

Repeal the subparagraph.

### *Export Market Development Grants Act 1997*

#### **3 Section 57B**

Before “Expenses of”, insert “(1)”.

#### **4 Section 57B (note)**

Repeal the note.

#### **5 At the end of section 57B**

Add:

- (2) For the purposes of this Act, a *telephone sex service* is a commercial service supplied using a standard telephone service, where:
- (a) the supply is by way of a voice call made using the standard telephone service; and
  - (b) having regard to:
    - (i) the way in which the service is advertised or promoted; and
    - (ii) the content of the service;it would be concluded that a majority of persons who call the service are likely to do so with the sole or principal object of deriving sexual gratification from the call.
- (3) However, a service is not a telephone sex service if it is a therapeutic or counselling service provided by a person registered or licensed as a medical practitioner, or as a psychologist, under a law of a State or Territory.

- (4) An expression used in subsection (2) that is also used in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* has the same meaning in that subsection as it has in that Act.

**6 Subsection 107(1) (definition of telephone sex service)**

Omit all the words after “by”, substitute “subsection 57B(2)”.

***Telecommunications (Consumer Protection and Service Standards) Act 1999***

**7 Section 4**

Omit:

- |  |
|--|
| <ul style="list-style-type: none"><li>• This Act regulates telephone sex services.</li></ul> |
|--|

**8 Part 9A**

Repeal the Part.

## **Schedule 3—Do Not Call Register**

### ***Do Not Call Register Act 2006***

#### **1 Paragraph 17(1)(b)**

Repeal the paragraph, substitute:

- (b) unless sooner removed from the Do Not Call Register in accordance with a determination under subsection 18(1), remains in force indefinitely.

#### **2 Subsections 17(1A) and (2)**

Repeal the subsections.

## **Schedule 4—E-marketing**

### ***Telecommunications Act 1997***

#### **1 Section 5**

Omit “the e-marketing industry,” (wherever occurring).

#### **2 Section 7 (definition of e-marketing industry)**

Repeal the definition.

#### **3 Section 106**

Omit “the e-marketing industry,” (wherever occurring).

#### **4 Sections 109A, 110A and 111A**

Repeal the sections.

#### **5 Subsection 112(1A)**

Repeal the subsection.

#### **6 Subsection 112(2)**

Omit “the e-marketing industry,”.

#### **7 Subsection 112(3B)**

Repeal the subsection.

#### **8 Subsection 113(2)**

Omit “the e-marketing industry,”.

#### **9 Paragraph 117(1)(a)**

Omit “the e-marketing industry,”.

#### **10 Paragraph 117(1)(b)**

Omit “e-marketing activities,”.

#### **11 Subparagraph 117(1)(k)(iii)**

Omit “the e-marketing industry,”.

**12 Subsection 118(1)**

Omit “the e-marketing industry,”.

**13 Paragraph 118(1)(a)**

Omit “e-marketing activities,”.

**14 Subsection 118(3)**

Omit “the e-marketing industry,”.

**15 Paragraph 118(4A)(c)**

Omit “the e-marketing industry,”.

**16 Section 119 (heading)**

Repeal the heading, substitute:

**119 Publication of notice where no body or association represents a section of the telecommunications industry, the telemarketing industry or the fax marketing industry**

**17 Subsection 119(1)**

Omit “the e-marketing industry,”.

**18 Paragraph 119(1)(b)**

Omit “e-marketing activities,”.

**19 Subparagraph 119A(1)(b)(i)**

Omit “the e-marketing industry,”.

**20 Subparagraph 119A(1)(b)(ii)**

Omit “e-marketing activities,”.

**21 Subparagraph 119A(1)(k)(iii)**

Omit “the e-marketing industry,”.

**22 Paragraph 121(1)(a)**

Omit “the e-marketing industry,”.

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**23 Subsection 122(1)**

Omit “the e-marketing industry,”.

**24 Subparagraph 123(1)(a)(i)**

Omit “the e-marketing industry,”.

**25 Subparagraph 123(1)(a)(ii)**

Omit “e-marketing activities,”.

**26 Paragraph 124(1)(a)**

Omit “the e-marketing industry,”.

**27 Subparagraph 124(1)(c)(ii)**

Omit “e-marketing activities,”.

**28 Subparagraph 125(1)(a)(i)**

Omit “the e-marketing industry,”.

**29 Subparagraph 125(1)(a)(ii)**

Omit “e-marketing activities,”.

**30 Subsection 125(7)**

Omit “the e-marketing industry,”.

**31 Subsection 125(7)**

Omit “e-marketing activities,”.

**32 Subsections 128(1) and 129(1)**

Omit “the e-marketing industry,”.

**33 Section 130**

Omit “the e-marketing industry,”.

**34 Paragraphs 130(a) and (b)**

Omit “e-marketing activities,”.

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## Schedule 6—Pre-selection

### *Telecommunications Act 1997*

#### 1 Section 5

Omit:

- The ACMA must require certain carriers and carriage service providers to provide *pre-selection* in favour of carriage service providers.

substitute:

- The ACMA may require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a standard telephone service.
- The ACMA must require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a declared carriage service.

#### 2 Subsections 22(1) and (4)

After “30,” insert “349.”

#### 3 Section 348

Omit:

- The ACMA must require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers.

substitute:

- The ACMA may require certain carriers and carriage service providers to provide pre-selection in favour of carriage service



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providers in relation to calls made using a standard telephone service.

- The ACMA must require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a declared carriage service.

#### **4 Subsection 349(1)**

Omit “must”, substitute “may”.

#### **5 Subsection 349(1)**

Omit “a standard” (wherever occurring), substitute “an eligible standard”.

#### **6 After subsection 349(5)**

Insert:

(5A) A reference in this section to a *standard telephone service* does not include a reference to a service that:

(a) is supplied using:

- (i) a designated radiocommunications facility owned or operated by a carrier or carriage service provider; and
- (ii) a line that runs directly between the facility and the premises occupied or used by an end-user; and

(b) if an instrument is in force under subsection (5B)—satisfies the conditions set out in the instrument.

(5B) The Minister may, by legislative instrument, set out conditions for the purposes of paragraph (5A)(b).

#### **7 At the end of section 349**

Add:

- (9) The ACMA must take all reasonable steps to ensure that a determination is in force under subsection (1) at all times before the start of the designated day (within the meaning of section 577A).

*Eligible standard telephone service*

- (10) For the purposes of this section, ***eligible standard telephone service*** means a standard telephone service that is supplied using a local access line (other than an exempt line) to premises occupied or used by an end-user, where:
- (a) the local access line forms part of the infrastructure of:
    - (i) a public switched telephone network (other than a designated network) that was in existence immediately before the commencement of this subsection (even if it is subsequently extended); or
    - (ii) an integrated services digital network (other than a designated network) that was in existence immediately before the commencement of this subsection (even if it is subsequently extended); or
    - (iii) a telecommunications network specified in an instrument in force under subsection (11); or
  - (b) the following conditions are satisfied:
    - (i) the service is a public switched telephone service supplied by a carriage service provider;
    - (ii) the local access line is part of the infrastructure of a designated network (other than a hybrid fibre-coaxial network);
    - (iii) the carriage service provider is in a position to exercise control over the designated network;
    - (iv) such other conditions (if any) as are set out in an instrument in force under subsection (11A); or
  - (c) the following conditions are satisfied:
    - (i) the service is an integrated services digital service supplied by a carriage service provider;
    - (ii) the local access line is part of the infrastructure of a designated network (other than a hybrid fibre-coaxial network);
    - (iii) the carriage service provider is in a position to exercise control over the designated network;
    - (iv) such other conditions (if any) as are set out in an instrument in force under subsection (11B); or
  - (d) the following conditions are satisfied:
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- (i) the service is a PSTN pass-through service supplied in conjunction with a telecommunications network covered by paragraph (b) of the definition of ***optical fibre network*** in subsection (16);
  - (ii) such other conditions (if any) as are set out in an instrument in force under subsection (11C).
- (11) The Minister may, by legislative instrument, specify a telecommunications network for the purposes of subparagraph (10)(a)(iii).
- (11A) The Minister may, by legislative instrument, set out one or more conditions for the purposes of subparagraph (10)(b)(iv).
- (11B) The Minister may, by legislative instrument, set out one or more conditions for the purposes of subparagraph (10)(c)(iv).
- (11C) The Minister may, by legislative instrument, set out one or more conditions for the purposes of subparagraph (10)(d)(ii).

*Exempt line*

- (12) For the purposes of this section, ***exempt line*** means a line specified in an instrument in force under subsection (13).
- (13) The Minister may, by legislative instrument, specify a line for the purposes of subsection (12).

*Designated network*

- (14) For the purposes of this section, ***designated network*** means:
- (a) an optical fibre network; or
  - (b) a hybrid fibre-coaxial network; or
  - (c) a telecommunications network specified in an instrument in force under subsection (15).
- (15) The Minister may, by legislative instrument, specify a telecommunications network for the purposes of paragraph (14)(c).
- (15A) For the purposes of this section:
- (a) the question of whether a carriage service provider is in a position to exercise control over a designated network is to be determined under Division 7 of Part 33; and

- (b) in determining that question for a carriage service provider other than Telstra, that Division applies in relation to the carriage service provider in a corresponding way to the way in which that Division applies in relation to Telstra.

*Review of determination*

(15B) The ACMA must:

- (a) conduct a review of whether a determination in force under subsection (1) of this section should be varied or revoked; and
- (b) do so at least 2 months before the start of the designated day (within the meaning of section 577A).

*Definitions*

(16) In this section:

***integrated services digital network*** has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

***integrated services digital service*** has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

***local access line*** has the same meaning as in section 141D.

***non-optical-fibre cable*** means a line other than an optical fibre line.

***optical fibre network*** means:

- (a) a telecommunications network the line component of which consists of optical fibre lines; or
- (b) a telecommunications network the line component of which consists of optical fibre lines to connecting nodes, supplemented by either or both of the following:
  - (i) non-optical-fibre cable connections from the nodes to premises occupied or used by end-users;
  - (ii) non-optical-fibre cable connections from the nodes to main distribution frames, and non-optical-fibre cable connections from main distribution frames to premises occupied or used by end-users.

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***PSTN pass-through service*** has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

***public switched telephone network*** has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

***public switched telephone service*** has the meaning generally accepted within the telecommunications industry immediately before the commencement of this subsection.

## **8 Subsection 352(1)**

Omit “by notice in the *Gazette*”, substitute “by writing”.

## **9 At the end of section 352**

Add:

- (5) The ACMA must publish a copy of a declaration under this section on the ACMA’s website.
- (6) A declaration under this section is not a legislative instrument if:
  - (a) the declaration specifies a carrier by name; or
  - (b) the declaration specifies a carriage service provider by name.
- (7) A declaration under this section is a legislative instrument if:
  - (a) the declaration specifies a class of carriers; or
  - (b) the declaration specifies a class of carriage service providers.

## **10 Transitional—determinations under subsection 349(1) of the *Telecommunications Act 1997***

*Scope*

- (1) This item applies to a determination that:
  - (a) was made under subsection 349(1) of the *Telecommunications Act 1997*; and
  - (b) was in force immediately before the commencement of this item.

*Continuity of determination*

- (2) The amendments made by this Schedule do not affect the continuity of the determination.
- (3) Subitem (2) has effect subject to subitem (4).

*Modification of determination*

- (4) The determination does not apply to a standard telephone service unless the service is an eligible standard telephone service (within the meaning of section 349 of the *Telecommunications Act 1997* as amended by this Schedule).

**11 Transitional—determinations under subsection 349(2) of the *Telecommunications Act 1997***

*Scope*

- (1) This item applies to a determination that:
  - (a) was made under subsection 349(2) of the *Telecommunications Act 1997*; and
  - (b) was in force immediately before the commencement of this item.

*Modification of determination*

- (2) The determination does not apply to a declared carriage service unless the service is supplied using a local access line (other than an exempt line) to premises occupied or used by an end-user, where:
  - (a) the local access line forms part of the infrastructure of:
    - (i) a public switched telephone network (other than a designated network) that was in existence immediately before the commencement of this item (even if it is subsequently extended); or
    - (ii) an integrated services digital network (other than a designated network) that was in existence immediately before the commencement of this item (even if it is subsequently extended); or
    - (iii) a telecommunications network specified in an instrument in force under subsection 349(11) of the *Telecommunications Act 1997*; or

- 
- (b) the following conditions are satisfied:
- (i) the service is a public switched telephone service supplied by a carriage service provider;
  - (ii) the local access line is part of the infrastructure of a designated network (other than a hybrid fibre-coaxial network);
  - (iii) the carriage service provider is in a position to exercise control over the designated network;
  - (iv) such other conditions (if any) as are set out in an instrument in force under subsection 349(11A) of the *Telecommunications Act 1997*; or
- (c) the following conditions are satisfied:
- (i) the service is an integrated services digital service supplied by a carriage service provider;
  - (ii) the local access line is part of the infrastructure of a designated network (other than a hybrid fibre-coaxial network);
  - (iii) the carriage service provider is in a position to exercise control over the designated network;
  - (iv) such other conditions (if any) as are set out in an instrument in force under subsection 349(11B) of the *Telecommunications Act 1997*; or
- (d) the following conditions are satisfied:
- (i) the service is a PSTN pass-through service supplied in conjunction with a telecommunications network covered by paragraph (b) of the definition of ***optical fibre network*** in subsection 349(16) of the *Telecommunications Act 1997*;
  - (ii) such other conditions (if any) as are set out in an instrument in force under subsection 349(11C) of the *Telecommunications Act 1997*.
- (3) The determination does not apply to a declared carriage service if the service:
- (a) is supplied using:
    - (i) a designated radiocommunications facility owned or operated by a carrier or carriage service provider; and
    - (ii) a line that runs directly between the facility and the premises occupied or used by an end-user; and

- (b) if an instrument is in force under subitem (4)—satisfies the conditions set out in the instrument.
- (4) The Minister may, by legislative instrument, set out conditions for the purposes of paragraph (3)(b).
- (5) An expression used in subitem (2) has the same meaning as in section 349 of the *Telecommunications Act 1997* as amended by this Schedule.

**12 Application—declaration under subsection 352(1) of the *Telecommunications Act 1997***

The amendments of section 352 of the *Telecommunications Act 1997* made by this Schedule apply in relation to a declaration made after the commencement of this item.



## **Schedule 7—Telecommunications Industry Ombudsman**

### ***Telecommunications (Consumer Protection and Service Standards) Act 1999***

#### **1 Subsection 119(6)**

Omit “in the *Gazette*”, substitute “on the Department’s website”.

#### **2 Subsection 129(1)**

Omit “by notice in the *Gazette*”, substitute “by writing”.

#### **3 At the end of section 129**

Add:

- (5) The ACMA must publish a copy of a declaration under this section on the ACMA’s website.
- (6) A declaration under this section is not a legislative instrument if:
  - (a) the declaration specifies a carrier by name; or
  - (b) the declaration specifies an eligible carriage service provider by name.
- (7) A declaration under this section is a legislative instrument if:
  - (a) the declaration specifies a class of carriers; or
  - (b) the declaration specifies a class of eligible carriage service providers.

#### **4 Subsection 131(1)**

Omit “may make a written determination”, substitute “may, by legislative instrument, determine”.

#### **5 Subsection 131(2)**

Repeal the subsection.

**6 Application—notice under subsection 119(6) of the  
*Telecommunications (Consumer Protection and  
Service Standards) Act 1999***

The amendment of subsection 119(6) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* made by this Schedule does not apply in relation to a notice if a copy of the notice was published under that subsection before the commencement of this item.

**7 Application—declaration under subsection 129(1) of the  
*Telecommunications (Consumer Protection and  
Service Standards) Act 1999***

The amendments of section 129 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* made by this Schedule apply in relation to a declaration made after the commencement of this item.

## **Schedule 8—Customer service guarantee**

### ***Telecommunications (Consumer Protection and Service Standards) Act 1999***

#### **1 Subsection 117A(3)**

Omit “to accept, or not to accept,”, substitute “not to accept”.

#### **2 Application—notification under subsection 117A(3) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999***

The amendment of subsection 117A(3) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* made by this Schedule applies in relation to a decision made after the commencement of this item.

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*[Minister’s second reading speech made in—  
House of Representatives on 22 October 2014  
Senate on 1 December 2014]*

(229/14)

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