



# **Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Act 2024**

**No. 36, 2024**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**No. 36, 2024**

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

*[Assented to 31 May 2024]*

The Parliament of Australia enacts:

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*No. 36, 2024      Telecommunications Legislation Amendment (Enhancing Consumer  
Safeguards and Other Measures) Act 2024      1*

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## 1 Short title

This Act is the *Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Act 2024*.

## 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.

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| Commencement information |   |              |
|--------------------------|---|--------------|
| Column 1                 | Column 2  | Column 3     |
| Provisions               | Commencement                                      | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 1 June 2024  |

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### **Part 1—Amendments**

#### ***Competition and Consumer Act 2010***

##### **1 Paragraph 152BCCB(a)**

After “a standard determined”, insert “, or a benchmark set.”.

##### **2 Paragraph 152BDCB(a)**

After “a standard determined”, insert “, or a benchmark set.”.

##### **3 Subsection 152BEBH(1)**

After “a standard determined”, insert “, or a benchmark set.”.

##### **4 Paragraph 152CBID(a)**

After “a standard determined”, insert “, or a benchmark set.”.

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

##### **5 Section 360**

Omit “publish”, substitute “make available on its website”.

##### **6 Section 360A**

Insert:

***anticipated service area*** has the meaning given by section 360KA.

***associate*** has the meaning given by section 360AB.

***backhaul infrastructure*** has the meaning generally accepted within the telecommunications industry.

***building unit*** has the same meaning as in Part 20A.

***compensation rules*** means rules made under section 360VH.

***compliance audit*** has the meaning given by section 360XAH.

*contractual arrangement* includes a deed, contract, undertaking or any other form of legally binding arrangement.

*control* has a meaning affected by section 360AC.

*designated compensable rule* has the meaning given by subsection 360V(1B).

*designated compensable standard* has the meaning given by subsection 360U(3B).

**7 Section 360A (definition of *designated day*)**

Repeal the definition.

**8 Section 360A (definition of *interim NBN service area*)**

Repeal the definition.

**9 Section 360A**

Insert:

*mobile network* means a telecommunications network that is used principally to supply public mobile telecommunications services.

**10 Section 360A (definition of *nominated service area*)**

After “360H”, insert “, 360HB”.

**11 Section 360A (definition of *provisional interim NBN service area*)**

Repeal the definition.

**12 Section 360A (definition of *provisional nominated service area*)**

After “360H”, insert “or 360HB”.

**13 Section 360A**

Insert:

*radiocommunications fixed voice call* means a voice call provided using a carriage service:



- (a) supplied by means of a telecommunications network other than a fixed-line telecommunications network; and
- (b) marketed to customers, or potential customers, as a carriage service that enables end-users to make and receive voice calls at premises occupied or used by the end-users.

**14 Section 360A (definition of *request*)**

Omit “corporation (in its capacity as a carriage service provider) to itself (in its capacity as a carrier)”, substitute “person to the person”.

**15 Section 360A (paragraph (a) of the definition of *statutory infrastructure provider*)**

Repeal the paragraph.

**16 Section 360A (after paragraph (c) of the definition of *statutory infrastructure provider*)**

Insert:

- (ca) for an anticipated service area—has the meaning given by section 360KB; or

**17 At the end of subsection 360AA(2)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**18 At the end of Division 1 of Part 19**

Add:

**360AB Associate**

- (1) For the purposes of this Part, an *associate* of a person (the *first person*) in relation to control of:
  - (a) a facility; or
  - (b) a company;is:
  - (c) a partner of the first person; or
  - (d) if the first person or another person who is an associate of the first person under another paragraph receives benefits or is

capable of benefiting under a trust—the trustee of the trust;  
or

- (e) a person (whether a company or not) who:
  - (i) acts, or is accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;  
in accordance with the directions, instructions or wishes of,  
or in concert with:
    - (iii) the first person; or
    - (iv) the first person and another person who is an associate of the first person under another paragraph; or
- (f) another company if:
  - (i) the other company is a related body corporate of the first person for the purposes of the *Corporations Act 2001*; or
  - (ii) the first person, or the first person and another person who is an associate of the first person under another paragraph, is or are in a position to exercise control of the other company.

- (2) However, persons are not *associates* of each other if the ACMA is satisfied that:
  - (a) they do not act together in any relevant dealings relating to the facility or company; and
  - (b) neither of them is in a position to exert influence over the business dealings of the other in relation to the facility or company.

### 360AC Control

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

### **360AD Control of a company**

- (1) For the purposes of this Part, the question of whether a person is in a position to exercise control of a company is to be determined under Schedule 1 to the *Broadcasting Services Act 1992*.
- (2) However, in determining that question:
  - (a) the definition of *associate* in subsection 6(1) of the *Broadcasting Services Act 1992* does not apply; and
  - (b) the definition of *associate* in section 360AB of this Act applies instead.

### **360AE When a person is in a position to exercise control of a facility**

- (1) For the purposes of this Part, a person (the *first person*) is in a position to exercise control of a facility if:
  - (a) the first person legally or beneficially owns the facility (whether alone or together with one or more other persons);  
or
  - (b) the first person is in a position, either alone or together with an associate of the first person and whether directly or indirectly:
    - (i) to exercise control of the operation of all or part of the facility; or
    - (ii) to exercise control of the selection of the kinds of services that are supplied using the facility; or
    - (iii) to exercise control of the supply of services using the facility; or
  - (c) a company other than the first person legally or beneficially owns the facility (whether alone or together with one or more other persons), and:
    - (i) the first person is in a position, either alone or together with an associate of the first person, to exercise control of the company; or
    - (ii) the first person, either alone or together with an associate of the first person, is in a position to veto any action taken by the board of directors of the company;  
or

- (iii) the first person, either alone or together with an associate of the first person, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
  - (iv) the first person, either alone or together with an associate of the first person, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
  - (v) the company or more than 50% of its directors act, or are accustomed to act, in accordance with the directions, instructions or wishes of, or in concert with, the first person, the first person and an associate of the first person acting together, or the directors of the first person; or
  - (vi) the company or more than 50% of its directors, under a contract or an arrangement or understanding (whether formal or informal), are intended or expected to act in accordance with the directions, instructions or wishes of, or in concert with, the first person, the first person and an associate of the first person acting together, or the directors of the first person.
- (2) An employee is not, except through an association with another person, to be regarded as being in a position to exercise control of a facility under subsection (1) purely because of being an employee.
- (3) More than one person may be in a position to exercise control of a facility.

## **19 Section 360B**

Repeal the section, substitute:

### **360B Simplified outline of this Division**

- There are 4 types of service area, as follows:
  - (a) the general service area;
  - (b) a nominated service area;
  - (c) an anticipated service area;

- (d) a designated service area.
  - NBN Co is the statutory infrastructure provider for the general service area.
  - A nominated service area is an area that is attributable to:
    - (a) a declaration made by a carrier or carriage service provider; or
    - (b) certain carrier licence conditions declarations made by the Minister.
  - The statutory infrastructure provider for a nominated service area that is attributable to a declaration made by a carrier or carriage service provider will be:
    - (a) the carrier or carriage service provider; or
    - (b) another carrier or carriage service provider declared by the Minister.
  - The statutory infrastructure provider for a nominated service area that is attributable to a carrier licence conditions declaration will be:
    - (a) the carrier to whom the carrier licence conditions declaration applies; or
    - (b) another carrier declared by the Minister.
  - An anticipated service area is an area that is attributable to a notice given by a carrier or carriage service provider.
  - The statutory infrastructure provider for an anticipated service area that is attributable to a notice given by a carrier or carriage service provider will be:
    - (a) the carrier or carriage service provider; or
    - (b) another carrier or carriage service provider declared by the Minister.
  - A designated service area is an area declared by the Minister.
  - The statutory infrastructure provider for a designated service area will be a carrier or carriage service provider declared by the Minister.
-

- Nominated service areas, anticipated service areas and designated service areas are excluded from the general service area.
- Designated service areas are excluded from nominated service areas.

## **20 Section 360C**

Repeal the section, substitute:

### **360C Service area**

For the purposes of this Part, *service area* means:

- (a) the general service area; or
- (b) a nominated service area; or
- (c) an anticipated service area; or
- (d) a designated service area.

## **21 Subdivision A of Division 2 of Part 19**

Repeal the Subdivision.

## **22 Subdivision B of Division 2 of Part 19 (heading)**

Repeal the heading, substitute:

### **Subdivision B—Service areas and statutory infrastructure providers**

## **23 Section 360F**

Omit “For the purposes of the application of this Part after the start of the designated day, the”, substitute “(1) For the purposes of this Part, the”.

## **24 After paragraph 360F(a)**

Insert:

- (aa) a pending area (see subsection (2)); or
- (ab) an anticipated service area; or

**25 At the end of section 360F**

Add:

- (2) For the purposes of this section, if:
- (a) an area (the *notice area*) is specified in a notice under section 360HA or 360HC; and
  - (b) the notice area neither consists of, nor is included in:
    - (i) a nominated service area; or
    - (ii) a designated service area;
- then:
- (c) if NBN Co provides qualifying carriage services to end-users at one or more premises in the area—so much of the notice area as does not include those premises is a *pending area*; or
  - (d) in any other case—the notice area is a *pending area*.

Note: For anticipated service areas, see section 360KA.

**26 Section 360G**

Omit “For the purposes of the application of this Part after the start of the designated day,”, substitute “For the purposes of this Part,”.

**27 Subdivision C of Division 2 of Part 19 (heading)**

Repeal the heading.

**28 Paragraph 360H(1)(a)**

After “this section”, insert “or section 360HB”.

**29 Paragraph 360H(2)(a)**

After “whole”, insert “or a part”.

**30 After paragraph 360H(2)(a)**

Insert:

- (aa) the carrier is not already the statutory infrastructure provider for a service area that consists of, or includes, the project area; and

**31 Paragraph 360H(2)(b)**

After “contract”, insert “with the person responsible for the real estate development project”.

**32 After paragraph 360H(2)(b)**

Insert:

(ba) the infrastructure is not backhaul infrastructure; and

**33 Paragraph 360H(2)(d)**

After “whole”, insert “or the part, as the case requires,”.

**34 At the end of subsection 360H(3)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**35 At the end of subsection 360H(3A)**

Add:

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: See also section 360M.

**36 Paragraph 360H(4)(a)**

After “whole”, insert “or a part”.

**37 After paragraph 360H(4)(a)**

Insert:

(aa) the carrier is not already the statutory infrastructure provider for a service area that consists of, or includes, the project area; and

**38 Paragraph 360H(4)(b)**

After “contract”, insert “with the person responsible for the building redevelopment project”.

**39 After paragraph 360H(4)(b)**

Insert:

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(ba) the infrastructure is not backhaul infrastructure; and

**40 Paragraph 360H(4)(d)**

After “whole”, insert “or the part, as the case requires,”.

**41 At the end of subsection 360H(5)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**42 At the end of subsection 360H(5A)**

Add:

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: See also section 360N.

**43 Paragraph 360H(6)(a)**

After “area”, insert “(the *relevant area*)”.

**44 After paragraph 360H(6)(a)**

Insert:

(aa) the carrier is not already the statutory infrastructure provider for a service area that consists of, or includes, the relevant area; and

**45 Paragraphs 360H(6)(b) and (d)**

Omit “the area”, substitute “the relevant area”.

**46 After paragraph 360H(6)(d)**

Insert:

(da) the infrastructure is not backhaul infrastructure; and

**47 Subsection 360H(6)**

Omit “that the area”, substitute “that the relevant area”.

**48 At the end of subsection 360H(7)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**49 Subsections 360H(8) and (9)**

Repeal the subsections, substitute:

*Declaration to be made available*

- (8) If a declaration made by a carrier is in force under this section, the carrier must make a copy of the declaration available on its website.
- (9) If a carrier makes a declaration under this section, the carrier must:
  - (a) give a copy of the declaration to the ACMA; and
  - (b) do so within 10 business days after making the declaration.

**50 At the end of subsection 360H(11)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**51 Subsection 360H(12)**

After “revoked”, insert “except under subsection (12A)”.

**52 After subsection 360H(12)**

Insert:

- (12A) The ACMA may, by writing, revoke a declaration made under this section.

**53 Subsections 360H(14), (15), (16) and (17)**

Repeal the subsections, substitute:

- (14) A carrier may, by writing, vary a declaration made by the carrier under this section, so long as the ACMA has approved the variation under subsection (15).
- (15) The ACMA may, on application made by a carrier, approve the variation of a declaration made by the carrier under this section.
- (16) An application under subsection (15) must:

- (a) be in writing; and
- (b) be in accordance with the form approved in writing by the ACMA; and
- (c) be accompanied by such information (if any) as is specified under subsection (17); and
- (d) be accompanied by such documents (if any) as are specified under subsection (17).

(17) The ACMA may, by legislative instrument:

- (a) specify the information that must accompany an application under subsection (15); or
- (b) specify the documents that must accompany an application under subsection (15).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(17A) If, under subsection (14), a carrier varies a declaration made by the carrier under this section, the carrier must:

- (a) give a copy of the variation to the ACMA; and
- (b) do so within 10 business days after making the variation.

#### **54 Subsection 360H(18) (heading)**

After “*Declaration*”, insert “, *revocation*”.

#### **55 After subsection 360H(18)**

Insert:

(18A) A revocation under subsection (12A) is not a legislative instrument.

#### **56 Paragraph 360HA(1)(a)**

After “whole”, insert “or a part”.

#### **57 Paragraph 360HA(1)(b)**

After “whole”, insert “or the part, as the case requires,”.

#### **58 After subparagraph 360HA(1)(c)(i)**

Insert:

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- (ia) sets out the date on which the contract was entered into;  
and

**59 Paragraph 360HA(1)(d)**

Omit “10 business days”, substitute “20 business days”.

**60 Subparagraph 360HA(1)(c)(ii)**

After “specifies”, insert “the whole or the part, as the case requires, of”.

**61 Paragraph 360HA(2)(a)**

After “whole”, insert “or a part”.

**62 Paragraph 360HA(2)(c)**

After “whole”, insert “or the part, as the case requires,”.

**63 Subparagraph 360HA(2)(d)(ii)**

After “specifies”, insert “the whole or the part, as the case requires, of”.

**64 Paragraph 360HA(3)(a)**

After “whole”, insert “or a part”.

**65 Paragraph 360HA(3)(b)**

After “whole”, insert “or the part, as the case requires,”.

**66 After subparagraph 360HA(3)(c)(i)**

Insert:

- (ia) sets out the date on which the contract was entered into;  
and

**67 Subparagraph 360HA(3)(c)(ii)**

After “specifies”, insert “the whole or the part, as the case requires, of”.

**68 Paragraph 360HA(3)(d)**

Omit “10 business days”, substitute “20 business days”.

**69 Paragraph 360HA(4)(a)**

After “whole”, insert “or a part”.

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**70 Paragraph 360HA(4)(c)**

After “whole”, insert “or the part, as the case requires,”.

**71 After subparagraph 360HA(4)(d)(i)**

Insert:

- (ia) sets out the date on which the contract was entered into;  
and

**72 Subparagraph 360HA(4)(d)(ii)**

After “specifies”, insert “the whole or the part, as the case requires, of”.

**73 At the end of section 360HA**

Add:

*Variation of notice*

- (5) A carrier may, by writing, vary a notice given by the carrier under this section, so long as the ACMA has approved the variation under subsection (6).
- (6) The ACMA may, on application made by a carrier, approve the variation of a notice given by the carrier under this section.
- (7) An application under subsection (6) must:
  - (a) be in writing; and
  - (b) be in accordance with the form approved in writing by the ACMA; and
  - (c) be accompanied by such information (if any) as is specified under subsection (8); and
  - (d) be accompanied by such documents (if any) as are specified under subsection (8).
- (8) The ACMA may, by legislative instrument:
  - (a) specify the information that must accompany an application under subsection (6); or
  - (b) specify the documents that must accompany an application under subsection (6).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (9) If, under subsection (5), a carrier varies a notice given by the carrier under this section, the carrier must:
- (a) give a copy of the variation to the ACMA; and
  - (b) do so within 10 business days after making the variation.

#### 74 After section 360HA

Insert:

#### 360HB Nominated service area—declaration made by a carriage service provider

- (1) For the purposes of this Part, if a provisional nominated service area is attributable to a declaration under this section, so much of the provisional nominated service area as is not:
- (a) the whole or a part of a provisional nominated service area that is attributable to a subsequent declaration under this section or section 360H; or
  - (b) the whole or a part of a designated service area;
- is a ***nominated service area***.

*Provisional nominated service area—real estate development project*

- (2) If:
- (a) on or after 1 July 2024, a facility is installed in, or in proximity to, the project area of a real estate development project; and
  - (b) the facility is not part of the infrastructure of a telecommunications network; and
  - (c) there is no nominated service area that:
    - (i) consists of, or includes, the project area; and
    - (ii) is attributable to a declaration under section 360H or this section; and
  - (d) at a time (the ***relevant time***), a carriage service provider (the ***first carriage service provider***) commences to use the facility:
    - (i) to supply carriage services to end-users at premises in the whole or a part of the project area; or

- (ii) to supply an eligible service to another carriage service provider in order that the other carriage service provider can provide carriage services to end-users at premises in the whole or a part of the project area; and
- (e) any of the following conditions is satisfied:
  - (i) the first carriage service provider is in a position to exercise control of the facility;
  - (ii) the first carriage service provider is an associate of a person who is in a position to exercise control of the facility;
  - (iii) the first carriage service provider has entered into a contractual arrangement with the person responsible for the real estate development project, where the contractual arrangement relates to the facility; and
- (f) the conditions specified in an instrument under subsection (3) are satisfied;

the first carriage service provider must:

- (g) by written instrument, declare that the whole or the part, as the case requires, of the project area is a ***provisional nominated service area*** for the purposes of this Part; and
- (h) do so within 20 business days after the relevant time.

Note: For the format of the description of the area, see section 360LA.

- (3) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(f).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (4) The Minister may, by legislative instrument, exempt a specified real estate development project from subsection (2).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (5) Paragraph (2)(d) does not apply in the circumstances specified in a determination under subsection 360Q(4).

*Provisional nominated service area—building redevelopment project*

- (6) If:
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- (a) on or after 1 July 2024, a facility is installed in, or in proximity to, the project area of a building redevelopment project; and
  - (b) the facility is not part of the infrastructure of a telecommunications network; and
  - (c) there is no nominated service area that:
    - (i) consists of, or includes, the project area; and
    - (ii) is attributable to a declaration under section 360H or this section; and
  - (d) at a time (the *relevant time*), a carriage service provider (the *first carriage service provider*) commences to use the facility:
    - (i) to supply carriage services to end-users at premises in the whole or a part of the project area; or
    - (ii) to supply an eligible service to another carriage service provider in order that the other carriage service provider can provide carriage services to end-users at premises in the whole or a part of the project area; and
  - (e) any of the following conditions is satisfied:
    - (i) the first carriage service provider is in a position to exercise control of the facility;
    - (ii) the first carriage service provider is an associate of a person who is in a position to exercise control of the facility;
    - (iii) the first carriage service provider has entered into a contractual arrangement with the person responsible for the building redevelopment project, where the contractual arrangement relates to the facility; and
  - (f) the conditions specified in an instrument under subsection (3) are satisfied;
- the first carriage service provider must:
- (g) by written instrument, declare that the whole or the part, as the case requires, of the project area is a *provisional nominated service area* for the purposes of this Part; and
  - (h) do so within 20 business days after the relevant time.

Note: For the format of the description of the area, see section 360LA.



- (7) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (6)(f).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (8) The Minister may, by legislative instrument, exempt a specified building redevelopment project from subsection (6).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (9) Paragraph (6)(d) does not apply in the circumstances specified in a determination under subsection 360Q(4).

*Declaration to be made available etc.*

- (10) If a declaration made by a carriage service provider is in force under this section, the carriage service provider must make a copy of the declaration available on its website.
- (11) If a carriage service provider makes a declaration under this section, the carriage service provider must:
- (a) give a copy of the declaration to the ACMA; and
  - (b) do so within 10 business days after making the declaration.

*Principles*

- (12) In making a declaration under this section, a carriage service provider must comply with any principles determined under subsection (13).
- (13) The Minister may, by legislative instrument, determine principles for the purposes of subsection (12).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

*Revocation*

- (14) A declaration made under this section cannot be revoked except under subsection (15).
- (15) The ACMA may, by writing, revoke a declaration made under this section.

*Variation*

- (16) A declaration made under this section cannot be varied except under subsection (17).
- (17) A carriage service provider may, by writing, vary a declaration made by the carriage service provider under this section, so long as the ACMA has approved the variation under subsection (18).
- (18) The ACMA may, on application made by a carriage service provider, approve the variation of a declaration made by the carriage service provider under this section.
- (19) An application under subsection (18) must:
- (a) be in writing; and
  - (b) be in accordance with the form approved in writing by the ACMA; and
  - (c) be accompanied by such information (if any) as is specified under subsection (20); and
  - (d) be accompanied by such documents (if any) as are specified under subsection (20).
- (20) The ACMA may, by legislative instrument:
- (a) specify the information that must accompany an application under subsection (18); or
  - (b) specify the documents that must accompany an application under subsection (18).
- Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (21) If, under subsection (17), a carriage service provider varies a declaration made by the carriage service provider under this section, the carriage service provider must:
- (a) give a copy of the variation to the ACMA; and
  - (b) do so within 10 business days after making the variation.

*Declaration, revocation and variation are not legislative instruments*

- (22) A declaration made under this section is not a legislative instrument.
-

- (23) A revocation under subsection (15) is not a legislative instrument.
- (24) A variation under subsection (17) is not a legislative instrument.

**360HC Nominated service area—anticipatory notice to be given to the ACMA by a carriage service provider**

*Nominated service area—real estate development project*

- (1) If:
  - (a) a facility has been, is being, or is to be, installed in, or in proximity to, the project area of a real estate development project; and
  - (b) the facility is not part of the infrastructure of a telecommunications network; and
  - (c) there is no nominated service area that:
    - (i) consists of, or includes, the project area; and
    - (ii) is attributable to a declaration under section 360H or 360HB; and
  - (d) any of the following conditions is satisfied in relation to a carriage service provider (the **first carriage service provider**):
    - (i) the first carriage service provider is or will be in a position to exercise control of the facility;
    - (ii) the first carriage service provider is an associate of a person who is or will be in a position to exercise control of the facility;
    - (iii) the first carriage service provider has entered into a contractual arrangement with the person responsible for the real estate development project, where the contractual arrangement relates to the facility; and
  - (e) if subparagraph (d)(i) or (ii) applies—the facility began to be installed on or after 1 July 2024; and
  - (f) if subparagraph (d)(iii) applies—the contractual arrangement was entered into on or after 1 July 2024; and
  - (g) when the first carriage service provider commences to use the facility:
    - (i) to supply carriage services to end-users at premises in the whole or a part of the project area; or

- (ii) to supply an eligible service to another carriage service provider in order that the other carriage service provider can provide carriage services to end-users at premises in the whole or a part of the project area;

the first carriage service provider will be required, by subsection 360HB(2), to declare that the whole or the part, as the case requires, of the project area is a provisional nominated service area for the purposes of this Part;

the first carriage service provider must:

- (h) give the ACMA a written notice that:
  - (i) if subparagraph (d)(i) or (ii) applies—sets out the day on which the facility began to be installed; and
  - (ii) if subparagraph (d)(iii) applies—sets out the day on which the contractual arrangement was entered into; and
- (iii) specifies the whole or the part, as the case requires, of the project area; and
- (iv) describes the facility; and
- (v) sets out the first carriage service provider’s estimate of the time when the first carriage service provider is likely to commence to use the facility as mentioned in paragraph (g); and
- (i) do so within 20 business days after:
  - (i) if subparagraph (d)(i) or (ii) applies—the day on which the facility began to be installed; or
  - (ii) if subparagraph (d)(iii) applies—the day on which the contractual arrangement was entered into.

Note: For the format of the description of the area, see section 360LA.

*Nominated service area—building redevelopment project*

- (2) If:
  - (a) a facility has been, is being, or is to be, installed in, or in proximity to, the project area of a building redevelopment project; and
  - (b) the facility is not part of the infrastructure of a telecommunications network; and
  - (c) there is no nominated service area that:
    - (i) consists of, or includes, the project area; and

- (ii) is attributable to a declaration under section 360H or 360HB; and
  - (d) any of the following conditions is satisfied in relation to a carriage service provider (the **first carriage service provider**):
    - (i) the first carriage service provider is or will be in a position to exercise control of the facility;
    - (ii) the first carriage service provider is an associate of a person who is or will be in a position to exercise control of the facility;
    - (iii) the first carriage service provider has entered into a contractual arrangement with the person responsible for the real estate development project, where the contractual arrangement relates to the facility; and
  - (e) if subparagraph (d)(i) or (ii) applies—the facility began to be installed on or after 1 July 2024; and
  - (f) if subparagraph (d)(iii) applies—the contractual arrangement was entered into on or after 1 July 2024; and
  - (g) when the first carriage service provider commences to use the facility:
    - (i) to supply carriage services to end-users at premises in the whole or a part of the project area; or
    - (ii) to supply an eligible service to another carriage service provider in order that the other carriage service provider can provide carriage services to end-users at premises in the whole or a part of the project area;the first carriage service provider will be required, by subsection 360HB(6), to declare that the whole or the part, as the case requires, of the project area is a provisional nominated service area for the purposes of this Part;
- the first carriage service provider must:
- (h) give the ACMA a written notice that:
    - (i) if subparagraph (d)(i) or (ii) applies—sets out the day on which the facility began to be installed; and
    - (ii) if subparagraph (d)(iii) applies—sets out the day on which the contractual arrangement was entered into; and
    - (iii) specifies the whole or the part, as the case requires, of the project area; and
    - (iv) describes the facility; and

- (v) sets out the first carriage service provider’s estimate of the time when the first carriage service provider is likely to commence to use the facility as mentioned in paragraph (g); and
- (i) do so within 20 business days after:
  - (i) if subparagraph (d)(i) or (ii) applies—the day on which the facility began to be installed; or
  - (ii) if subparagraph (d)(iii) applies—the day on which the contractual arrangement was entered into.

Note: For the format of the description of the area, see section 360LA.

*Variation of notice*

- (3) A carriage service provider may, by writing, vary a notice given by the carriage service provider under this section, so long as the ACMA has approved the variation under subsection (4).
- (4) The ACMA may, on application made by a carriage service provider, approve the variation of a notice given by the carriage service provider under this section.
- (5) An application under subsection (4) must:
  - (a) be in writing; and
  - (b) be in accordance with the form approved in writing by the ACMA; and
  - (c) be accompanied by such information (if any) as is specified under subsection (6); and
  - (d) be accompanied by such documents (if any) as are specified under subsection (6).
- (6) The ACMA may, by legislative instrument:
  - (a) specify the information that must accompany an application under subsection (4); or
  - (b) specify the documents that must accompany an application under subsection (4).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (7) If, under subsection (3), a carriage service provider varies a notice given by the carriage service provider under this section, the carriage service provider must:
- (a) give a copy of the variation to the ACMA; and
  - (b) do so within 10 business days after making the variation.

## **75 Section 360J**

Before “For the purposes of this Part,”, insert “(1)”.

## **76 At the end of section 360J**

Add:

- (2) Subsection (1) has effect subject to subsections (3) and (4).
- (3) The Minister may, by legislative instrument, declare that a specified development area mentioned in subsection (1) is not a ***nominated service area*** for the purposes of this Part.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (4) The Minister may, by legislative instrument, declare that:
- (a) a specified development area mentioned in subsection (1) is not a ***nominated service area*** for the purposes of this Part; and
  - (b) a specified area is a ***nominated service area*** for the purposes of this Part.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For the format of the description of the area, see section 360LA.

- (5) An area must not be specified in a declaration in accordance with paragraph (4)(b) unless at least one point in the area is also a point in the development area specified in the declaration in accordance with paragraph (4)(a).

## **77 At the end of subsection 360K(2)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

## 78 After subsection 360K(1)

Insert:

*Nominated service area covered by a declaration under section 360HB*

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

(a) an area is a provisional nominated service area because of a declaration made by a carriage service provider under section 360HB; and

(b) the whole or a part of the provisional nominated service area is a nominated service area;

the carriage service provider is the ***statutory infrastructure provider*** for the nominated service area.

(1B) The Minister may, by legislative instrument, declare that:

(a) subsection (1A) does not apply to a specified nominated service area; and

(b) a specified carriage service provider is the ***statutory infrastructure provider*** for the nominated service area for the purposes of this Part.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

## 79 Paragraph 360K(3)(b)

Omit “section 360J”, substitute “subsection 360J(1)”.

## 80 At the end of subsection 360K(4)

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

## 81 At the end of section 360K

Add:

(5) If an area is a nominated service area because of a declaration made by the Minister under subsection 360J(4), the Minister may, by legislative instrument, declare that a specified carrier is the



*statutory infrastructure provider* for the nominated service area,  
for the purposes of this Part.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

## **82 After section 360K**

Insert:

### **360KA Anticipated service area**

*Area specified in an anticipatory notice given by a carrier*

- (1) If:
- (a) a notice is in force under subsection 360HA(1) in relation to the whole or a part of the project area of a real estate development project; and
  - (b) the project involves the construction of one or more building units in the area specified in the notice; and
  - (c) the following conditions are satisfied in relation to at least one of those building units:
    - (i) the construction of the building unit has been completed;
    - (ii) the building unit is occupied; and
  - (d) the area specified in the notice does not consist of, and is not included in:
    - (i) a nominated service area; or
    - (ii) a designated service area;
- the area specified in the notice is an *anticipated service area* for the purposes of this Part.

*Area specified in an anticipatory notice given by a carriage service provider*

- (2) If:
- (a) a notice is in force under subsection 360HC(1) in relation to the whole or a part of the project area of a real estate development project; and
  - (b) the project involves the construction of one or more building units in the area specified in the notice; and

- (c) the following conditions are satisfied in relation to at least one of those building units:
    - (i) the construction of the building unit has been completed;
    - (ii) the building unit is occupied; and
  - (d) the area specified in the notice does not consist of, and is not included in:
    - (i) a nominated service area; or
    - (ii) a designated service area;
- the area specified in the notice is an *anticipated service area* for the purposes of this Part.

**360KB Statutory infrastructure provider for an anticipated service area**

*Area specified in an anticipatory notice given by a carrier*

- (1) For the purposes of this Part, if:
  - (a) an area is specified in a notice given by a carrier under subsection 360HA(1) in relation to a real estate development project; and
  - (b) the area is an anticipated service area;the carrier is the *statutory infrastructure provider* for the anticipated service area.
- (2) The Minister may, by legislative instrument, declare that:
  - (a) subsection (1) does not apply to a specified anticipated service area; and
  - (b) a specified carrier is the *statutory infrastructure provider* for the anticipated service area for the purposes of this Part.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

*Area specified in an anticipatory notice given by a carriage service provider*

- (3) For the purposes of this Part, if:
-

- (a) an area is specified in a notice given by a carriage service provider under subsection 360HC(1) in relation to a real estate development project; and
  - (b) the area is an anticipated service area;  
the carriage service provider is the *statutory infrastructure provider* for the anticipated service area.
- (4) The Minister may, by legislative instrument, declare that:
- (a) subsection (3) does not apply to a specified anticipated service area; and
  - (b) a specified carriage service provider is the *statutory infrastructure provider* for the anticipated service area for the purposes of this Part.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

### **83 Section 360L**

Before “The Minister”, insert “(1)”.

### **84 Paragraph 360L(b)**

After “carrier”, insert “or carriage service provider”.

### **85 Section 360L (before the note)**

Insert:

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

### **86 Section 360L (note)**

After “Note”, insert “2”.

### **87 At the end of section 360L**

Add:

*Designated service area—multiple statutory infrastructure providers*

- (2) The Minister may, by legislative instrument, declare that:
- (a) a specified area is a designated service area for the purposes of this Part; and

- (b) each of 2 or more specified persons is a **statutory infrastructure provider** for the designated service area for the purposes of this Part.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For the format of the description of the area, see section 360LA.

- (3) The Minister must not specify a person in a declaration under subsection (2) unless the person is a carrier or carriage service provider.
- (4) If:
- (a) an obligation is imposed by or under this Part on a statutory infrastructure provider for a designated service area; and
  - (b) there are 2 or more statutory infrastructure providers for the designated service area;
- then:
- (c) that obligation is imposed on each of those statutory infrastructure providers, but may be discharged by any of those statutory infrastructure providers; and
  - (d) if the obligation is complied with by any of those statutory infrastructure providers—the obligation is taken to have been complied with by the other statutory infrastructure provider or providers.

## **88 Paragraphs 360LA(1)(a) and (b)**

Repeal the paragraphs.

## **89 Paragraph 360LA(1)(f)**

Repeal the paragraph, substitute:

- (f) subsection 360HB(2); or
- (fa) subsection 360HB(6); or
- (fb) subsection 360J(3); or
- (fc) subsection 360J(4); or
- (fd) subsection 360L(1); or
- (fe) subsection 360L(2);

## **90 Paragraphs 360LA(1)(g) and (h)**

Repeal the paragraphs, substitute:

- (g) using:
  - (i) if no coordinate system is determined under subsection (2A)—the GDA94 coordinate system; or
  - (ii) if a coordinate system is determined under subsection (2A)—the coordinate system determined under subsection (2A); and
- (h) if a format is determined under subsection (3)—in that format; and
- (i) if no format is determined under subsection (3)—in a TAB vector format.

## **91 After paragraph 360LA(2)(d)**

Insert:

- or (da) subsection 360HC(1); or
- (db) subsection 360HC(2);

## **92 Paragraphs 360LA(2)(e) and (f)**

Repeal the paragraphs, substitute:

- (e) using:
  - (i) if no coordinate system is determined under subsection (2A)—the GDA94 coordinate system; or
  - (ii) if a coordinate system is determined under subsection (2A)—the coordinate system determined under subsection (2A); and
- (f) if a format is determined under subsection (3)—in that format; and
- (g) if no format is determined under subsection (3)—in a TAB vector format.

## **93 After subsection 360LA(2)**

Insert:

(2A) The ACMA may, by legislative instrument, determine a coordinate system for the purposes of paragraphs (1)(g) and (2)(e).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2B) If a coordinate system is determined under subsection (2A), the determination does not apply to a declaration made, or a notice given, before the commencement of the determination.

**94 At the end of subsection 360LA(3)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**95 At the end of section 360LA**

Add:

- (4) If a format is determined under subsection (3), the determination does not apply to a declaration made, or a notice given, before the commencement of the determination.

**96 At the end of Division 2 of Part 19**

Add:

**Subdivision E—Exempt projects**

**360M Exempt real estate development projects**

*Projects to be supplied with public mobile telecommunications services*

- (1) A real estate development project is exempt from subsection 360H(2) if:
- (a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area of the project that will enable the supply of eligible services to premises in the whole of the project area of the project; and
  - (b) the telecommunications network infrastructure was fully installed on or after 1 July 2020; and
  - (c) the telecommunications network infrastructure was installed in accordance with a contractual arrangement that:
    - (i) was entered into by a carrier and the person responsible for the real estate development project; and

- (ii) does not require the carrier to supply qualifying carriage services within all or any part of the project area of the project; and
- (d) at the time of installation, the telecommunications network infrastructure formed part of a mobile network owned or operated by the carrier.

*Projects to be served by radiocommunications fixed voice calls*

- (2) A real estate development project is exempt from subsection 360H(2) if:
  - (a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area of the project that will enable the supply of eligible services to premises in the whole of the project area of the project; and
  - (b) the telecommunications network infrastructure was fully installed on or after 1 July 2020; and
  - (c) the telecommunications network infrastructure was installed in accordance with a contractual arrangement that:
    - (i) was entered into by a carrier and the person responsible for the real estate development project; and
    - (ii) does not require the carrier to supply qualifying carriage services within all or any part of the project area of the project; and
  - (d) the telecommunications network infrastructure is capable of being used to supply, to end-users at premises in the project area of the project, carriage services that enable those end-users to make and receive radiocommunications fixed voice calls.

**360N Exempt building redevelopment projects**

*Projects to be supplied with public mobile telecommunications services*

- (1) A building redevelopment project is exempt from subsection 360H(4) if:
  - (a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area of the

- project that will enable the supply of eligible services to premises in the whole of the project area of the project; and
- (b) the telecommunications network infrastructure was fully installed on or after 1 July 2020; and
  - (c) the telecommunications network infrastructure was installed in accordance with a contractual arrangement that:
    - (i) was entered into by a carrier and the person responsible for the building redevelopment project; and
    - (ii) does not require the carrier to supply qualifying carriage services within all or any part of the project area of the project; and
  - (d) at the time of installation, the telecommunications network infrastructure formed part of a mobile network owned or operated by the carrier.

*Projects to be served by radiocommunications fixed voice calls*

- (2) A building redevelopment project is exempt from subsection 360H(4) if:
  - (a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area of the project that will enable the supply of eligible services to premises in the whole of the project area of the project; and
  - (b) the telecommunications network infrastructure was fully installed on or after 1 July 2020; and
  - (c) the telecommunications network infrastructure was installed in accordance with a contractual arrangement that:
    - (i) was entered into by a carrier and the person responsible for the building redevelopment project; and
    - (ii) does not require the carrier to supply qualifying carriage services within all or any part of the project area of the project; and
  - (d) the telecommunications network infrastructure is capable of being used to supply, to end-users at premises in the project area of the project, carriage services that enable those end-users to make and receive radiocommunications fixed voice calls.



### **360NA Proximity to a project area**

For the purposes of this Subdivision, telecommunications network infrastructure forming part of a mobile network is in proximity to a project area if, and only if, once fully deployed and operational, the infrastructure is technically capable of being used to supply carriage services within the whole of the project area.

### **97 At the end of subsection 360P(3)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

### **98 After subsection 360P(3)**

Insert:

*Special obligation of NBN Co*

- (3A) The Minister may, by legislative instrument, determine that, if the conditions specified in the determination are satisfied, this section has effect as if:
- (a) the area specified in the determination were a service area; and
  - (b) NBN Co were the statutory infrastructure provider for that area.

### **99 At the end of subsection 360P(5)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

### **100 Paragraph 360P(8)(c)**

Omit “published”, substitute “made available”.

### **101 Subparagraph 360P(8)(d)(ii)**

Omit “published”, substitute “made available”.

### **102 Subsection 360P(8) (note)**

Omit “For publication, see”, substitute “See also”.

**103 Subsection 360P(9)**

Omit “published”, substitute “made available”.

**104 Subsection 360P(9) (note)**

Omit “For publication, see”, substitute “See also”.

**105 At the end of subsection 360P(10)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**106 At the end of subsection 360P(11B)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**107 Subparagraph 360P(12)(c)(i)**

After “refusal”, insert “, and the reasons for the refusal,”.

**108 Paragraph 360Q(1)(b)**

Omit “published”, substitute “made available”.

**109 Subsection 360Q(1) (note)**

Omit “For publication, see”, substitute “See also”.

**110 Subsections 360Q(2) and (2A)**

Repeal the subsections, substitute:

*Special obligation of NBN Co*

- (2) The Minister may, by legislative instrument, determine that, if the conditions specified in the determination are satisfied, this section has effect as if:
- (a) the area specified in the determination were a service area;  
and
  - (b) NBN Co were the statutory infrastructure provider for that area.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

*Adjustment*

(2A) The Minister may, by legislative instrument, determine that, if the conditions specified in the determination are satisfied, the statutory infrastructure provider for the service area specified in the determination is taken to have complied with the statutory infrastructure provider's obligations under subsection (1) in relation to the service area.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2B) The Minister may, by legislative instrument, determine that, if the conditions specified in the determination are satisfied, the statutory infrastructure provider is taken to have complied with the statutory infrastructure provider's obligations under subsection (1).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**111 Before subsection 360Q(3)**

Insert:

*Exception*

**112 At the end of subsection 360Q(4)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**113 At the end of subsection 360Q(6)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**114 Paragraph 360Q(9)(c)**

Omit "published", substitute "made available".

**115 Subparagraph 360Q(9)(d)(ii)**

Omit “published”, substitute “made available”.

**116 Subsection 360Q(9) (note)**

Omit “For publication, see”, substitute “See also”.

**117 Subsection 360Q(10)**

Omit “published”, substitute “made available”.

**118 Subsection 360Q(10) (note)**

Omit “For publication, see”, substitute “See also”.

**119 At the end of section 360Q**

Add:

*Response to request*

- (11) If a carriage service provider makes a request as mentioned in subsection (1):
- (a) the statutory infrastructure provider must:
    - (i) notify the carriage service provider that the statutory infrastructure provider will fulfil the request; or
    - (ii) refuse the request; and
  - (b) do so within:
    - (i) 10 business days after receiving the request; or
    - (ii) if a longer period is specified under subsection (12)—that longer period.
- (12) The Minister may, by legislative instrument, specify a period for the purposes of subparagraph (11)(b)(ii).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

*Notification of refusal of request*

- (13) If:
- (a) a carriage service provider makes a request as mentioned in subsection (1); and

- (b) the fulfilment of the request would affect an end-user at particular premises; and
  - (c) the statutory infrastructure provider refuses the request;
- then:
- (d) the statutory infrastructure provider must:
    - (i) give written notice of the refusal, and the reasons for the refusal, to the carriage service provider; and
    - (ii) do so within 5 business days after the refusal; and
  - (e) if the carriage service provider receives the notice—the carriage service provider must:
    - (i) give a copy of the notice to the end-user; and
    - (ii) do so within 5 business days after receiving the notice.

**120 Subsection 360R(1)**

Omit “carrier (the *first carrier*)”, substitute “person (the *first person*)”.

**121 After paragraph 360R(1)(a)**

Insert:

- (aa) an anticipated service area; or

**122 Subsection 360R(2)**

Omit “carrier” (first occurring), substitute “person”.

**123 Subsection 360R(2)**

Omit “it will”, substitute “the first person will”.

**124 Subsection 360R(2)**

Omit “its”, substitute “the first person’s”.

**125 Subsection 360R(2)**

Omit “carrier” (second occurring), substitute “person”.

**126 At the end of paragraph 360R(2)(a)**

Add:

- (iii) the first person’s customers; and

**127 Paragraph 360R(2)(b)**

Repeal the paragraph, substitute:

(b) do so:

- (i) if it is reasonably practicable for the notice to be given at least 12 months before the time when the first person will become no longer able to fulfil the first person's obligations under section 360P or 360Q—at least 12 months before that time; or
- (ii) in any other case—not later than 10 business days after the time when the first person becomes no longer able to fulfil the first person's obligations under section 360P or 360Q.

**128 After subsection 360R(2)**

Insert:

- (2A) A notice under subsection (2) must be in accordance with the form approved in writing by the ACMA.

**129 Paragraph 360R(3)(b)**

Omit “carrier” (first occurring), substitute “person”.

**130 Paragraph 360R(3)(b)**

Omit “carrier” (second occurring), substitute “person (being a carrier or carriage service provider)”.

**131 Subsection 360R(3)**

Omit “carrier” (third occurring), substitute “person”.

**132 At the end of paragraph 360R(3)(c)**

Add:

- (iii) the first person's customers; and

**133 Paragraph 360R(3)(d)**

Repeal the paragraph, substitute:

(d) do so:

- (i) if it is reasonably practicable for the notice to be given at least 90 days before the time when the first person

becomes no longer able to fulfil the first person's obligations under section 360P or 360Q—at least 90 days before that time; or

- (ii) in any other case—not later than 10 business days after the time when the other person becomes the statutory infrastructure provider for the area.

### **134 At the end of section 360R**

Add:

- (4) A notice under subsection (3) must be in accordance with the form approved in writing by the ACMA.

### **135 After section 360R**

Insert:

#### **360RA Rules may impose additional notification obligations on a statutory infrastructure provider**

- (1) The ACMA may, by legislative instrument, make rules that:
- (a) apply to a statutory infrastructure provider that is subject to an obligation under subsection 360R(2) or (3); and
  - (b) impose one or more additional notification obligations on the statutory infrastructure provider.
- (2) A notification obligation imposed by rules under subsection (1) may involve the provision of information prescribed by the rules.
- (3) Subsection (2) does not limit subsection (1).
- (4) Rules under subsection (1) may be of general application or may be limited as provided in the rules.
- (5) Subsection (4) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

#### *Compliance*

- (6) A statutory infrastructure provider must comply with rules under subsection (1).

**360RB Statutory infrastructure provider must have a website**

A statutory infrastructure provider must have a website.

**136 After Division 3 of Part 19**

Insert:

**Division 3A—Notification obligations of carriage service provider**

**360SA Notification obligations of carriage service provider**

*Scope*

- (1) This section applies if:
  - (a) a carriage service provider receives written notice from a person under subsection 360R(2) or (3) of a matter relating to a service area; and
  - (b) the matter is likely to result in a change to, or the disruption of, qualifying carriage services provided by the carriage service provider to end-users at premises in the service area.

*Obligation*

- (2) The carriage service provider must:
  - (a) give written notice of the matter to each of those end-users; and
  - (b) do so within 5 business days after receiving the notice under subsection 360R(2) or (3).

**360SB Rules may impose additional notification obligations on a carriage service provider**

- (1) The ACMA may, by legislative instrument, make rules that:
  - (a) apply to a carriage service provider that is subject to an obligation under subsection 360SA(2); and
  - (b) impose one or more additional notification obligations on the carriage service provider.



- (2) A notification obligation imposed by rules under subsection (1) may involve the provision of information prescribed by the rules.
- (3) Subsection (2) does not limit subsection (1).
- (4) Rules under subsection (1) may be of general application or may be limited as provided in the rules.
- (5) Subsection (4) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Compliance*

- (6) A carriage service provider must comply with rules under subsection (1).

**137 Paragraph 360U(1)(a)**

After “terms or conditions”, insert “(whether or not relating to price or a method of ascertaining price)”.

**138 At the end of subsection 360U(1)**

Add:

- Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- Note 2: See also section 589 (instruments under this Act may provide for matters by reference to other instruments).

**139 After subsection 360U(3A)**

Insert:

- (3B) A determination under subsection (1) may declare that a specified standard set out in the determination is a designated compensable standard for the purposes of this Part.
- (3C) A determination under subsection (1) may declare that a specified number of days is the relevant number of days for the purposes of the application of subsection 360VE(1) to a specified designated compensable standard.
- (3D) Subsection (1) does not, by implication, limit the power to make rules under subsection 360V(1).

**140 At the end of subsection 360U(6)**

Add:

- Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- Note 2: See also section 589 (instruments under this Act may provide for matters by reference to other instruments).

**141 Subsection 360U(9) (heading)**

Omit “*minimum*”, substitute “*performance*”.

**142 At the end of section 360U**

Add:

- (10) However, a statutory infrastructure provider is not required to comply with a benchmark set under subsection (6) to the extent that the benchmark is inconsistent with an access agreement to which the statutory infrastructure provider is a party, so long as:
- (a) the agreement was entered into before the commencement of the benchmark; and
  - (b) the agreement has not been varied after the commencement of the benchmark.

*Other benchmarks*

- (11) The Minister may, by legislative instrument, set minimum benchmarks that must be complied with by statutory infrastructure providers in relation to either or both of the following matters:
- (a) the supply or proposed supply of an eligible service to a carriage service provider in order that the carriage service provider can provide qualifying carriage services to an end-user at premises in a relevant service area;
  - (b) the connection of premises in a relevant service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: See also section 589 (instruments under this Act may provide for matters by reference to other instruments).

- (12) An instrument under subsection (11) may be of general application or may be limited as provided in the instrument.
- (13) Subsection (12) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (14) Benchmarks set under subsection (11) may make provision for or in relation to a matter by conferring a power on the ACMA to make a legislative instrument.

*Provider must meet or exceed other benchmarks*

- (15) A statutory infrastructure provider must meet or exceed a minimum benchmark set by an instrument under subsection (11).
- (16) However, a statutory infrastructure provider is not required to comply with a benchmark set under subsection (11) to the extent that the benchmark is inconsistent with an access agreement to which the statutory infrastructure provider is a party, so long as:
  - (a) the agreement was entered into before the commencement of the benchmark; and
  - (b) the agreement has not been varied after the commencement of the benchmark.

### **143 After paragraph 360V(1)(a)**

Insert:

- (aa) the terms and conditions (whether or not relating to price or a method of ascertaining price) of the supply of an eligible service to a carriage service provider in order that the carriage service provider can provide qualifying carriage services to an end-user at premises in a relevant service area;

### **144 At the end of subsection 360V(1)**

Add:

- ; (e) giving the ACMA information or a report in relation to a matter mentioned in any of the above paragraphs.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**145 After subsection 360V(1)**

Insert:

- (1AA) Rules under subsection (1) may be of general application or may be limited as provided in the rules.
- (1AB) Subsection (1AA) of this section does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

**146 After subsection 360V(1A)**

Insert:

- (1B) Rules under subsection (1) may declare that a specified rule set out in those rules is a designated compensable rule for the purposes of this Part.
- (1C) Rules under subsection (1) may declare that a specified number of days is the relevant number of days for the purposes of the application of subsection 360VE(1) to a specified designated compensable rule.
- (1D) Subsection (1) does not, by implication, limit the power to determine standards under subsection 360U(1).

**147 After Division 4 of Part 19**

Insert:

**Division 4A—Compensation**

**Subdivision A—Introduction**

**360VA Simplified outline**

The following is a simplified outline of this Division:

- If a statutory infrastructure provider contravenes a designated compensable standard determined under subsection 360U(1), the statutory infrastructure provider is liable to pay damages to the customer for the contravention.

- If a statutory infrastructure provider contravenes a designated compensable rule made under subsection 360V(1), the statutory infrastructure provider is liable to pay damages to the customer for the contravention.
- The Telecommunications Industry Ombudsman may issue an evidentiary certificate in relation to:
  - (a) a contravention of a designated compensable standard determined under subsection 360U(1); or
  - (b) a contravention of a designated compensable rule made under subsection 360V(1).

### **360VB Definitions**

In this Division:

*customer* includes prospective customer.

*damages* includes punitive damages.

### **360VC Meaning of certain expressions**

In determining the meaning that the expressions *customer* and *damages* have when used in:

- (a) a provision of this Act other than this Division; or
- (b) a provision of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;

section 360VB is to be disregarded.

### **Subdivision B—Damages for breach of standards or rules by statutory infrastructure providers**

#### **360VD Damages for breach of a designated compensable standard or designated compensable rule**

- (1) If:
  - (a) a statutory infrastructure provider contravenes a designated compensable standard; and
  - (b) the standard is determined under subsection 360U(1); and

- (c) the contravention relates to a particular customer;  
the statutory infrastructure provider is liable to pay damages to the customer for the contravention.
- (2) If:
- (a) a statutory infrastructure provider contravenes a designated compensable rule; and
  - (b) the rule is made under subsection 360V(1); and
  - (c) the contravention relates to a particular customer;
- the statutory infrastructure provider is liable to pay damages to the customer for the contravention.
- (3) The amount of damages payable under subsection (1) or (2) for a particular contravention is ascertained in accordance with the compensation rules.
- (4) However, if:
- (a) the statutory infrastructure provider:
    - (i) credits an amount to an account that the customer has with the provider; or
    - (ii) pays an amount to the customer; and
  - (b) the credit or payment was made as a result of a right or remedy that:
    - (i) was available to the customer otherwise than under this Division; and
    - (ii) arose out of the same event or transaction as the contravention;
- the amount of damages payable for the contravention is to be reduced (but not below zero) by the amount of the credit or payment.
- (5) The customer may recover the amount of the damages by action against the statutory infrastructure provider in a court of competent jurisdiction.
- (6) The liability of the statutory infrastructure provider under this section may be discharged:
- (a) by giving the customer a credit in an account the customer has with the statutory infrastructure provider; or

- (b) in any other manner agreed between the statutory infrastructure provider and the customer.
- (7) An action under this section must be instituted within 2 years after:
  - (a) in the case of a contravention that continued throughout a period—the time when the contravention began; or
  - (b) in any other case—the time when the contravention occurred.
- (8) If the customer is an individual and the customer dies, a reference in this section to the *customer* includes a reference to the legal personal representative of the customer.

### **360VE Time for payment of damages**

#### *Decision whether to accept liability for damages*

- (1) If, at a particular time, a statutory infrastructure provider first has reason to believe that an event has occurred that is reasonably likely to result in the statutory infrastructure provider being liable to pay damages to a particular customer under section 360VD, the statutory infrastructure provider must:
  - (a) decide whether to accept that liability; and
  - (b) do so:
    - (i) within 14 days after that time; or
    - (ii) if another number of days is the relevant number of days for the purposes of the application of this subsection to the designated compensable rule or designated compensable standard to which the liability relates—within the relevant number of days after that time.
- (2) In making a decision under subsection (1), the statutory infrastructure provider must have regard to whether there is any reasonable basis for the statutory infrastructure provider to dispute the liability.
- (3) If a statutory infrastructure provider makes a decision under subsection (1) not to accept a liability to pay damages to a particular customer, the statutory infrastructure provider must give the customer written notification of the decision within 14 weeks after the decision is made.

*Crediting customer account*

(4) If:

- (a) a statutory infrastructure provider makes a decision under subsection (1) to accept a liability to pay damages to a particular customer; and
- (b) the liability is to be discharged by giving the customer a credit in an account the customer has with the statutory infrastructure provider;

the liability must be discharged within the period of 14 weeks after the decision is made and:

- (c) if it is practicable for the statutory infrastructure provider to give the customer the credit within that 14-week period and in time for the customer to be notified of the credit in the first bill sent to the customer during that period—by giving the customer the credit in time for the customer to be notified of the credit in that bill; or
- (d) if paragraph (c) does not apply, but it is practicable for the statutory infrastructure provider to give the customer the credit within that 14-week period and in time for the customer to be notified of the credit in the second bill sent to the customer during that period—by giving the customer the credit in time for the customer to be notified of the credit in that bill.

*Other manner of discharging liability*

(5) If:

- (a) a statutory infrastructure provider makes a decision under subsection (1) to accept a liability to pay damages to a particular customer; and
- (b) the liability is not to be discharged by giving the customer a credit in an account the customer has with the statutory infrastructure provider;

the liability must be discharged within 14 weeks after the decision is made.



*Customer*

- (6) If the customer is an individual and the customer dies, a reference in this section to the *customer* includes a reference to the legal personal representative of the customer.

**360VF Evidentiary certificate issued by the Telecommunications Industry Ombudsman**

- (1) The Telecommunications Industry Ombudsman may:
- (a) issue a written certificate that:
    - (i) states that a specified statutory infrastructure provider has contravened a designated compensable standard determined under subsection 360U(1); and
    - (ii) sets out particulars of that contravention; or
  - (b) issue a written certificate that:
    - (i) states that a specified statutory infrastructure provider has contravened a designated compensable rule made under subsection 360V(1); and
    - (ii) sets out particulars of that contravention.
- (2) In any proceedings under this Division, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be a certificate and to have been properly given.
- (4) Subsection (1) does not apply to the Telecommunications Industry Ombudsman unless the Telecommunications Industry Ombudsman gives the Minister a written notice consenting to the conferral of the powers conferred by that subsection.
- (5) If no notice is in force under subsection (4), subsection (1) has effect as if the reference in that subsection to the Telecommunications Industry Ombudsman were a reference to the ACMA.
- (6) The Minister must cause a copy of a notice under subsection (4) to be published on the Department's website.

- (7) The continuity of a notice under subsection (4) is not affected by:
- (a) a change in the occupancy of the position of Telecommunications Industry Ombudsman; or
  - (b) a vacancy in the position of Telecommunications Industry Ombudsman that does not continue for more than 4 months.

### **Subdivision C—Miscellaneous**

#### **360VG Savings of other laws and remedies**

- (1) This Division is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- (2) This Division does not limit, restrict or otherwise affect any right or remedy a person would have if this Division had not been enacted.
- (3) This Division does not limit, restrict or otherwise affect the operation of the Telecommunications Industry Ombudsman scheme. In particular, this Division does not affect a customer’s right to complain to the Telecommunications Industry Ombudsman.
- (4) Subsection (3) does not, by implication, limit subsection (2).

#### **360VH Compensation rules**

The Minister may, by legislative instrument, make rules (*compensation rules*) prescribing matters required or permitted by this Division to be prescribed by the compensation rules.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

#### **148 Division 5 of Part 19 (heading)**

Omit “**Publication of offers**”, substitute “**Offers to be made available**”.

#### **149 Section 360W (heading)**

Omit “**Publication of offer**”, substitute “**Offer to be made available**”.

**150 Subsection 360W(1)**

Omit “publish”, substitute “make available”.

**151 Subsection 360W(4)**

Omit “published”, substitute “made available”.

**152 Section 360X (heading)**

Omit “**Publication of offer**”, substitute “**Offer to be made available**”.

**153 Subsection 360X(1)**

Omit “publish”, substitute “make available”.

**154 Subsection 360X(4)**

Omit “published”, substitute “made available”.

**155 After Division 5 of Part 19**

Insert:

**Division 5A—Information-gathering powers**

**360XAA Secretary may obtain information and documents from carriers and carriage service providers**

*Scope*

- (1) This section applies to a carrier or carriage service provider if the Secretary has reason to believe that the carrier or carriage service provider has information or a document that is relevant to the exercise of the Minister’s powers under section 360L.

*Requirement*

- (2) The Secretary may, by written notice given to the carrier or carriage service provider, require the carrier or 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 carrier or carriage service provider must comply with a requirement under subsection (2) to the extent that the carrier or carriage service provider is capable of doing so.

**360XAB Copying documents—compensation**

A carrier or carriage service provider is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph 360XAA(2)(c).

**360XAC Copies of documents**

- (1) The Secretary may:
  - (a) inspect a document or copy produced under subsection 360XAA(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 360XAA(2)(c).

**360XAD Secretary may retain documents**

- (1) The Secretary may take, and retain for as long as is necessary, possession of a document produced under subsection 360XAA(2).
- (2) The carrier or 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 carrier or carriage service provider otherwise entitled to possession of the document, or a person authorised by that carrier or carriage service provider, to inspect and make copies of, or take extracts from, the document.

### **360XAE Law relating to legal professional privilege not affected**

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

### **360XAF Disclosure of information to the ACMA**

#### *Scope*

- (1) This section applies to information that:
- (a) was obtained by the Secretary under section 360XAA; or
  - (b) is contained in a document, or a copy of a document, that was produced to the Secretary under section 360XAA.

#### *Disclosure*

- (2) The Secretary may disclose the information to the ACMA if the Secretary is satisfied that the information will enable or assist the ACMA to perform or exercise:
- (a) any of its functions or powers; or
  - (b) any functions or powers delegated to it under a law of the Commonwealth.

### **360XAG Delegation by the Secretary**

- (1) The Secretary may, in writing, delegate any or all of the Secretary's powers under this Division to:
- (a) the ACMA; or
  - (b) an SES employee, or acting SES employee, in the Department.

Note: The expressions **SES employee** and **acting SES employee** are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) In exercising a delegated power, the delegate must comply with any written directions of the Secretary.

*Sub-delegation by the ACMA*

- (3) The ACMA may, by writing, delegate to:
- (a) a member of the ACMA; or
  - (b) a person who is:
    - (i) a member of the staff of the ACMA; and
    - (ii) an SES employee or acting SES employee; or
  - (c) a person who:
    - (i) is a member of the staff of the ACMA; and
    - (ii) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position;
- any or all of the powers that have been delegated by the Secretary to the ACMA under subsection (1).
- (4) If the ACMA delegates to a person (the *second delegate*) a power that has been delegated by the Secretary to the ACMA under subsection (1), then that power, when exercised by the second delegate, is taken for the purposes of this Act to have been exercised by the Secretary.
- (5) If the ACMA is subject to directions in relation to the exercise of a power delegated by the Secretary to the ACMA under subsection (1), then:
- (a) the ACMA must give corresponding written directions to the second delegate; and
  - (b) the ACMA may give other written directions (not inconsistent with those corresponding directions) to the second delegate in relation to the exercise of that power.
- (6) In exercising a delegated power, the second delegate must comply with any directions of the ACMA.

**156 Before section 360XA**

Insert:

### **360XAH Compliance audits**

- (1) The ACMA may conduct an audit of a statutory infrastructure provider for the purpose of determining whether the statutory infrastructure provider is complying, or has complied, with this Part.
- (2) An audit conducted under subsection (1) is to be known as a *compliance audit*.
- (3) If a compliance audit of a statutory infrastructure provider is being conducted by the ACMA, the statutory infrastructure provider must:
  - (a) cooperate fully with the ACMA in relation to the compliance audit; and
  - (b) provide the ACMA with all reasonable facilities and assistance in relation to the compliance audit.
- (4) This section does not limit any of the ACMA's other powers or functions.

### **360XAI Additional functions of the ACMA**

- (1) The ACMA may make available on the ACMA's website information or reports given to the ACMA in accordance with rules made under subsection 360V(1).
- (2) The ACMA may give the Minister copies of information or reports given to the ACMA in accordance with rules made under subsection 360V(1).
- (3) The ACMA may make available on the ACMA's website information, or explanatory material, that is likely to assist statutory infrastructure providers in complying with this Part.
- (4) The Minister may, by legislative instrument, make rules to be complied with by the ACMA in relation to any or all of the following matters:
  - (a) the making available on the ACMA's website of information or reports given to the ACMA in accordance with rules made under subsection 360V(1);
  - (b) giving the Minister copies of such information or reports;

(c) the making available on the ACMA’s website of information, or explanatory material, that is likely to assist statutory infrastructure providers in complying with this Part.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(5) This section does not limit any of the ACMA’s other powers or functions.

**157 At the end of subsection 360XA(1)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**158 Subsection 360XA(5)**

After “limit”, insert “subsection 360V(1), section 360XAA or”.

**159 At the end of subsection 360Y(3)**

Add:

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

**160 Paragraph 360Z(1)(c)**

Before “a copy”, insert “subject to subsections (4) and (5),”.

**161 Paragraph 360Z(1)(c)**

After “a carrier”, insert “or carriage service provider”.

**162 At the end of paragraph 360Z(1)(c)**

Add:

; or (v) subsection 360HC(1); or  
(vi) subsection 360HC(2).

**163 At the end of section 360Z**

Add:



- (4) If an area specified in a notice given under a provision mentioned in paragraph (1)(c) consists of, or is included in, a nominated service area, the ACMA may:
- (a) annotate the copy of the notice that is included in the Register with a statement to the effect that the area specified in the notice consists of, or is included in, a specified nominated service area; or
  - (b) remove the notice from the Register.
- (5) If an area specified in a notice given under a provision mentioned in paragraph (1)(c) consists of, or is included in, an anticipated service area, the ACMA may:
- (a) annotate the copy of the notice that is included in the Register with a statement to the effect that the area specified in the notice consists of, or is included in, a specified anticipated service area; or
  - (b) remove the notice from the Register.

**164 Paragraph 360ZA(1)(a)**

Repeal the paragraph.

**165 After paragraph 360ZA(1)(e)**

Insert:

- (ea) subsection 360HB(3);
- (eb) subsection 360HB(7);
- (ec) subsection 360K(1B);
- (ed) subsection 360K(2);
- (ee) subsection 360K(4);
- (ef) subsection 360K(5);
- (eg) subsection 360KB(2);
- (eh) subsection 360KB(4);
- (ei) subsection 360L(1);
- (ej) subsection 360L(2);

**166 Subsections 360ZA(3) and (4)**

Repeal the subsections, substitute:

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*Sub-delegation by the ACMA*

- (3) The ACMA may, by writing, delegate to:
- (a) a member of the ACMA; or
  - (b) a person who is:
    - (i) a member of the staff of the ACMA; and
    - (ii) an SES employee or acting SES employee; or
  - (c) a person who:
    - (i) is a member of the staff of the ACMA; and
    - (ii) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position;
- any or all of the powers that have been delegated by the Minister to the ACMA under subsection (1).
- (4) If the ACMA delegates to a person (the *second delegate*) a power that has been delegated by the Minister to the ACMA under subsection (1), then that power, when exercised by the second delegate, is taken for the purposes of this Act to have been exercised by the Minister.
- (5) If the ACMA is subject to directions in relation to the exercise of a power delegated by the Minister to the ACMA under subsection (1), then:
- (a) the ACMA must give corresponding written directions to the second delegate; and
  - (b) the ACMA may give other written directions (not inconsistent with those corresponding directions) to the second delegate in relation to the exercise of that power.
- (6) In exercising a delegated power, the second delegate must comply with any directions of the ACMA.

*Delegation to SES employees, or acting SES employees, in the Department*

- (7) The Minister may, by writing, delegate any or all of the Minister's powers under the provisions mentioned in subsection (1) to an SES employee, or an acting SES employee, in the Department.
- (8) In exercising a delegated power, the delegate must comply with any written directions of the Minister.
-

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

**167 After subsection 128(5)**

Insert:

(5A) The scheme may also provide for the Telecommunications Industry Ombudsman to:

- (a) investigate; and
- (b) make determinations relating to; and
- (c) give directions relating to;

complaints about the connection of premises to a qualifying telecommunications network, where the connection is:

- (d) by a statutory infrastructure provider for a service area; and
- (e) in order that a carriage service provider can provide qualifying carriage services to an end-user at premises in the service area.

(5B) For the purposes of subsection (5A), the following expressions have the same meaning as in Part 19 of the *Telecommunications Act 1997*:

- (a) ***qualifying carriage service***;
- (b) ***qualifying telecommunications network***;
- (c) ***service area***;
- (d) ***statutory infrastructure provider***.

**168 At the end of subsection 129(2)**

Add:

- ; (d) whether the carrier or provider is a statutory infrastructure provider (within the meaning of Part 19 of the *Telecommunications Act 1997*).

**169 At the end of subsection 130(3)**

Add:

- ; (d) whether the provider is a statutory infrastructure provider (within the meaning of Part 19 of the *Telecommunications Act 1997*).

**170 At the end of subsection 131(3)**

Add:

- ; (d) whether members of that class are statutory infrastructure providers (within the meaning of Part 19 of the *Telecommunications Act 1997*).

## **Part 2—Application and transitional provisions**

### **171 Application—declarations made under section 360H of the *Telecommunications Act 1997***

The amendments of subsections 360H(1), (2), (4) and (6) of the *Telecommunications Act 1997* made by this Schedule apply in relation to a declaration made after the commencement of this item.

### **172 Application—notices given under section 360HA of the *Telecommunications Act 1997***

The amendments of subsections 360HA(1), (2), (3) and (4) of the *Telecommunications Act 1997* made by this Schedule apply in relation to a notice given after the commencement of this item.

### **173 Application—requests mentioned in subsection 360P(1) of the *Telecommunications Act 1997***

The amendment of subsection 360P(12) of the *Telecommunications Act 1997* made by this Schedule applies in relation to a request made after the commencement of this item.

### **174 Transitional—determination made under subsection 360LA(3) of the *Telecommunications Act 1997***

The amendments of section 360LA of the *Telecommunications Act 1997* made by this Schedule do not affect the continuity of a determination made under subsection 360LA(3) of the *Telecommunications Act 1997* before the commencement of this item.

### **175 Transitional—rules made under subsection 360V(1) of the *Telecommunications Act 1997***

Subsections 360V(1AA) and (1AB) of the *Telecommunications Act 1997* (as amended by this Schedule) do not, by implication, affect the application of subsection 33(3A) of the *Acts Interpretation Act 1901* to rules made under subsection 360V(1) of the *Telecommunications Act 1997* before the commencement of this item.

## Schedule 2—Deployment of optical fibre

### *Telecommunications Act 1997*

#### 1 Section 7

Insert:

*remedial notice* means a notice under subsection 372JA(2).

#### 2 After Subdivision B of Division 3 of Part 20A

Insert:

### Subdivision C—Remedial notices

#### 372JA Remedial notices

##### *Scope*

- (1) This section applies if the ACMA reasonably believes that a person:
  - (a) is contravening a designated civil penalty provision; or
  - (b) has contravened a designated civil penalty provision in circumstances that make it likely that the contravention will continue or be repeated; or
  - (c) is likely to contravene a designated civil penalty provision.

Note: For *designated civil penalty provision*, see section 372JH.

##### *Remedial notice*

- (2) The ACMA may give the person a written notice requiring the person to:
  - (a) remedy the contravention; or
  - (b) prevent the likely contravention from occurring; or
  - (c) remedy the things or operations causing the contravention or likely contravention.
- (3) A notice under subsection (2) is to be known as a *remedial notice*.

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**372JB Contents of remedial notices**

- (1) A remedial notice given to a person by the ACMA must state:
- (a) that the ACMA reasonably believes that the person:
    - (i) is contravening a designated civil penalty provision; or
    - (ii) has contravened a designated civil penalty provision in circumstances that make it likely that the contravention will continue or be repeated; or
    - (iii) is likely to contravene a designated civil penalty provision; and
  - (b) the provision the ACMA believes is being, has been, or is likely to be, contravened; and
  - (c) briefly, how the provision is being, has been, or is likely to be, contravened; and
  - (d) the period within which the person must comply with the notice.

Note: For *designated civil penalty provision*, see section 372JH.

- (2) The remedial notice may include directions concerning the measures to be taken to:
- (a) remedy the contravention; or
  - (b) prevent the likely contravention from occurring; or
  - (c) remedy the things or operations causing the contravention or likely contravention.
- (3) The period stated for compliance with the remedial notice must be reasonable in all the circumstances.

**372JC Compliance with remedial notice**

- (1) A person must comply with a remedial notice.

*Ancillary contraventions*

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or

- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
- (d) conspire with others to effect a contravention of subsection (1).

*Civil penalty provisions*

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

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

**372JD Extension of time for compliance with remedial notices**

*Scope*

- (1) This section applies if a person has been given a remedial notice.

*Extension of compliance period*

- (2) The ACMA may, by written notice given to the person, extend the compliance period for the remedial notice.
- (3) However, the ACMA may extend the compliance period only if the period has not ended.
- (4) In this section, ***compliance period*** means the period stated in the remedial notice under section 372JB, and includes that period as extended under this section.

**372JE Variation of remedial notices**

*Scope*

- (1) This section applies if a person has been given a remedial notice.

*Variation*

- (2) The ACMA may, by written notice given to the person, vary the notice.
- (3) The ACMA may also, in accordance with section 372JD, extend the compliance period for a remedial notice.



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**372JF Revocation of remedial notices**

- (1) If:
- (a) a person has been given a remedial notice; and
  - (b) at a time during the compliance period for the notice, the ACMA forms a reasonable belief that the notice is no longer required for the purposes of requiring the person to:
    - (i) remedy a contravention of a designated civil penalty provision; or
    - (ii) prevent a likely contravention of a designated civil penalty provision from occurring; or
    - (iii) remedy the things or operations causing a contravention, or likely contravention, of a designated civil penalty provision;
- the ACMA must, by written notice given to the person, revoke the notice.
- (2) In this section, ***compliance period*** means the period stated in the remedial notice under section 372JB, and includes that period as extended under section 372JD.

**372JG Formal irregularities or defects in remedial notices**

A remedial notice is not invalid only because of:

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person.

**372JH Designated civil penalty provision**

For the purposes of this Subdivision, each of the following provisions is a ***designated civil penalty provision***:

- (a) subsection 372E(2);
- (b) subsection 372F(2);
- (c) subsection 372G(2);
- (d) subsection 372G(2A);
- (e) subsection 372G(3);

- (f) subsection 372G(4);
- (g) subsection 372G(4A);
- (h) subsection 372G(5).

### **3 After paragraph 1(o) of Schedule 4**

Insert:

- (oa) a decision to give a remedial notice under section 372JA;
- (ob) a decision under section 372JE to vary a remedial notice;
- (oc) a decision to under section 372JF to refuse to revoke a remedial notice;

## **Schedule 3—Disclosure of information**

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

#### **1 After subsection 59B(1)**

Insert:

- (1A) For the purpose of advising the Minister, an ACMA official must, if requested to do so by:
- (a) the Secretary of the Department; or
  - (b) an APS employee in the Department who is authorised, in writing, by the Secretary of the Department for the purposes of this subsection;
- disclose authorised disclosure information to the Secretary of the Department or the APS employee, as the case requires.

#### **2 Subsection 59B(3)**

After “(1)”, insert “or (1A)”.

#### **3 After section 59D**

Insert:

#### **59DA Disclosure of information that relates to the affairs of a carrier or carriage service provider**

- (1) An ACMA official authorised by the Chair, in writing, for the purposes of this section may disclose authorised disclosure information if:
- (a) the authorised disclosure information relates to the affairs of a carrier or carriage service provider; and
  - (b) the authorised disclosure information relates to any of the following matters:
    - (i) customer complaints;
    - (ii) customers experiencing financial hardship;
    - (iii) customer service;
    - (iv) faults and service difficulties;
    - (v) rectification of faults and service difficulties;

- (vi) service activation and provisioning;
  - (vii) service connection;
  - (viii) performance characteristics of services;
  - (ix) customer appointment keeping;
  - (x) a matter determined under subsection (4).
- (2) An ACMA official authorised by the Chair, in writing, for the purposes of this section may disclose summaries of authorised disclosure information if:
- (a) the authorised disclosure information relates to the affairs of a carrier or carriage service provider; and
  - (b) the summaries relate to any of the following matters:
    - (i) customer complaints;
    - (ii) customers experiencing financial hardship;
    - (iii) customer service;
    - (iv) faults and service difficulties;
    - (v) rectification of faults and service difficulties;
    - (vi) service activation and provisioning;
    - (vii) service connection;
    - (viii) performance characteristics of services;
    - (ix) customer appointment keeping;
    - (x) a matter determined under subsection (4).
- (3) An ACMA official authorised by the Chair, in writing, for the purposes of this section may disclose statistics derived from authorised disclosure information if:
- (a) the authorised disclosure information relates to the affairs of a carrier or carriage service provider; and
  - (b) the statistics relate to any of the following matters:
    - (i) customer complaints;
    - (ii) customers experiencing financial hardship;
    - (iii) customer service;
    - (iv) faults and service difficulties;
    - (v) rectification of faults and service difficulties;
    - (vi) service activation and provisioning;
    - (vii) service connection;
    - (viii) performance characteristics of services;
-

- (ix) customer appointment keeping;
  - (x) a matter determined under subsection (4).
- (4) The Minister may, by legislative instrument, determine one or more matters for the purposes of subparagraphs (1)(b)(x), (2)(b)(x) and (3)(b)(x).
- Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (5) A disclosure under subsection (1), (2) or (3) may involve disclosing the identity of a carrier or carriage service provider.
- (6) Subsection (5) does not, by implication, limit what can be disclosed under a provision of this Part other than this section.
- (7) Subsections (1), (2) and (3) do not authorise the disclosure of anything that is likely to enable the identification of an end-user of a carriage service.
- (8) For the purposes of this section:
- (a) an ACMA official authorised by the Chair, in writing, for the purposes of this section is taken to disclose information if the information is published by the ACMA:
    - (i) on the ACMA’s website; or
    - (ii) in any other way; and
  - (b) an ACMA official authorised by the Chair, in writing, for the purposes of this section is taken to disclose summaries or statistics if the summaries or statistics are published by the ACMA:
    - (i) on the ACMA’s website; or
    - (ii) in any other way.
- (9) Subsection (8) is enacted for the avoidance of doubt.
- (10) For the purposes of this section, *customer* includes prospective customer.

**4 Section 59E**

Before “An ACMA official”, insert “(1)”.

**5 At the end of section 59E**

Add:

- (2) For the purposes of this section, an ACMA official is taken to disclose information if the information is published by the ACMA:
  - (a) on the ACMA’s website; or
  - (b) in any other way.
- (3) Subsection (2) is enacted for the avoidance of doubt.

**6 Section 59F**

Before “An ACMA official”, insert “(1)”.

**7 At the end of section 59F**

Add:

- (2) For the purposes of this section, an ACMA official is taken to disclose information if the information is published by the ACMA:
  - (a) on the ACMA’s website; or
  - (b) in any other way.
- (3) Subsection (2) is enacted for the avoidance of doubt.

**8 Section 59G**

Before “An ACMA official”, insert “(1)”.

**9 At the end of section 59G**

Add:

- (2) For the purposes of this section, an ACMA official is taken to disclose summaries or statistics if the summaries or statistics are published by the ACMA:
  - (a) on the ACMA’s website; or
  - (b) in any other way.
- (3) Subsection (2) is enacted for the avoidance of doubt.

## **Schedule 4—Primary universal service providers**

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

#### **1 Section 8A**

Insert:

*general Australian service area* means the service area consisting of Australia.

*service area* has the meaning given by section 8C.

#### **2 After section 8BA**

Insert:

#### **8C Meaning of *service area***

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

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

#### **3 Subsection 12A(1)**

Before “in respect of a service obligation”, insert “for a service area”.

#### **4 Paragraph 12A(2)(a)**

After “obligations”, insert “for the same service area”.

#### **5 Paragraph 12A(2)(b)**

After “provider”, insert “for one or more service areas”.

#### **6 Subsection 12A(3)**

Repeal the subsection, substitute:

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- (3) In exercising the Minister’s powers under this section in relation to a service obligation, the Minister must ensure that at all times each point in Australia is within a service area for which there is at least one primary universal service provider in respect of that service obligation.

**7 Subsection 12C(1)**

Before “in respect of a service obligation”, insert “for a service area”.

**8 Subsection 12C(1)**

After “that service obligation”, insert “, so far as it relates to that area,”.

**9 Subsection 12C(2)**

Before “in respect of a service obligation”, insert “for a service area”.

**10 Paragraphs 12C(2)(a) and (b)**

After “obligation” (wherever occurring), insert “, so far as it relates to that area,”.

**11 Section 12D (heading)**

Omit “**Transitional: when**”, substitute “**When**”.

**12 Subsection 12D(1)**

Omit “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”, substitute “The Minister”.

**13 Subsection 12D(1)**

After “provider” (last occurring), insert “for so much of the general Australian service area as is not a special determined area in relation to that service obligation”.

**14 At the end of section 12D**

Add:

- (4) The following provisions have effect:
- (a) subsection (1) does not prevent the Minister from making a determination under subsection 12A(1) that a person (other
-



- than Telstra Limited) is the primary universal service provider for a service area in respect of a service obligation;
- (b) if such a determination is in force—that area is a *special determined area* in relation to that service obligation.
- (5) The following provisions have effect:
- (a) subsection (1) does not prevent the Minister from making a determination under subsection 12A(2A) that each of 2 or more persons is a primary universal service provider for a service area in respect of a service obligation;
- (b) if such a determination is in force—that area is a *special determined area* in relation to that service obligation.
- (6) The following provisions have effect:
- (a) subsection (1) does not prevent the Minister from making a determination under subsection 12A(1) that a person (other than Telstra Limited) is the primary universal service provider for the general Australian service area in respect of a service obligation;
- (b) if such a determination is in force—subsection (1) does not apply to that service obligation.
- (7) The following provisions have effect:
- (a) subsection (1) does not prevent the Minister from making a determination under subsection 12A(2A) that each of 2 or more persons is a primary universal service provider for the general Australian service area in respect of a service obligation;
- (b) if such a determination is in force—subsection (1) does not apply to that service obligation.

**15 Paragraph 12E(1)(a)**

Before “in respect of a service obligation”, insert “for a service area”.

**16 Paragraph 12E(1)(b)**

Before “in respect of the obligation”, insert “for the service area”.

**17 Subparagraphs 12E(2)(a)(i) and (ii)**

Before “in respect of a service obligation”, insert “for a service area”.

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**18 Paragraph 12E(2)(b)**

Before “in respect of that obligation”, insert “for the service area”.

## **Schedule 5—Technical amendments**

### *Telecommunications Act 1997*

#### **1 Section 7 (at the end of the definition of *authorised infringement notice officer*)**

Add:

- ; or (c) the Chairperson of the ACCC; or
- (d) a member of the staff of the ACCC appointed under section 572L.

#### **2 Subparagraph 87(3)(a)(iii)**

Repeal the subparagraph.

#### **3 After paragraph 570(3)(a)**

Insert:

- (aaa) in the case of a contravention of a civil penalty provision in Part 8 (local access lines)—\$10 million for each contravention; or

#### **4 After paragraph 570(3)(ab)**

Insert:

- (ac) in the case of a contravention of subsection 97(1), (1A) or (2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*—\$10 million for each contravention; or

#### **5 Paragraph 570(4)(a)**

Repeal the paragraph, substitute:

- (a) in the case of a contravention of subsection 97(1), (1A) or (2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*—10,000 penalty units for each contravention; or

#### **6 Section 572M**

Repeal the section, substitute:

## **572M Guidelines relating to infringement notices**

### *ACMA guidelines*

- (1) If an authorised infringement notice officer is the Chair of the ACMA, or a member of the staff of the ACMA appointed under section 572L, the officer must, in exercising a power conferred on the officer by this Part, have regard to any relevant guidelines in force under subsection (2).
- (2) The ACMA may, by legislative instrument, formulate guidelines for the purposes of subsection (1).

Note: For consultation requirements, see section 17 (consultation) of the *Legislation Act 2003*.

- (3) An authorised infringement notice officer mentioned in subsection (1) must not give an infringement notice to a person unless guidelines are in force under subsection (2).

### *ACCC guidelines*

- (4) If an authorised infringement notice officer is the Chairperson of the ACCC, or a member of the staff of the ACCC appointed under section 572L, the officer must, in exercising a power conferred on the officer by this Part, have regard to any relevant guidelines in force under subsection (5).
- (5) The ACCC may, by legislative instrument, formulate guidelines for the purposes of subsection (4).

Note: For consultation requirements, see section 17 (consultation) of the *Legislation Act 2003*.

- (6) An authorised infringement notice officer mentioned in subsection (4) must not give an infringement notice to a person unless guidelines are in force under subsection (5).

## **7 Application—amendments of section 570 of the *Telecommunications Act 1997***

The amendments of section 570 of the *Telecommunications Act 1997* made by this Schedule apply in relation to a contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurs wholly on or after the day this item commences.

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**8 Saving—guidelines under subsection 572M(2) of the  
*Telecommunications Act 1997***

- (1) This item applies to guidelines that are in force under subsection 572M(2) of the *Telecommunications Act 1997* immediately before the commencement of this item.
- (2) The guidelines continue in force (and may be dealt with), on and after that commencement, as if they had been made under subsection 572M(2) of the *Telecommunications Act 1997* as substituted by this Schedule.

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

**9 Subsection 76A(5)**

After “section 22”, insert “of the *Telecommunications Act 1997*”.

**10 Subsection 76A(5)**

After “30”, insert “of that Act”.

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[Minister’s second reading speech made in—  
House of Representatives on 7 December 2023  
Senate on 26 February 2024]

(149/23)

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