Telstra Corporation Act 1991

Act No. 79 of 1991 as amended

This compilation was prepared on 27 March 2006
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The text of any of those amendments not in force
on that date is appended in the Notes section

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

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An Act relating to Telstra Corporation Limited, and for other purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the Telstra Corporation Act 1991.

2 Commencement [see Note 1]

(1) Subject to this section, this Act commences on a day to be fixed by Proclamation.

(2) Part 1 commences on the day on which this Act receives the Royal Assent.

3 Interpretation

In this Act, unless the contrary intention appears:

ACMA means the Australian Communications and Media Authority.

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

authorised person means:

(a) the Minister; or

(b) a person who:

(i) is authorised by the Minister, in writing, for the purposes of the provision in which the expression is used; and

(ii) when the authorisation was given, was, in the Minister’s opinion, suitably qualified, because of the person’s abilities and experience, to perform the functions of an authorised person within the meaning of that provision.

Board means the board of directors of Telstra.
category A hybrid-security issuer company means a hybrid-security issuer company other than a category B hybrid-security issuer company.

category B hybrid-security issuer company has the meaning given by subsection 8AJ(6B).

Communications Fund means the Communications Fund established by a law of the Commonwealth.

constitution, in relation to Telstra, has the same meaning as in the Corporations Act 2001.

entity means:
(a) Telecom; or
(b) OTC; or
(c) a group company.

exempt matter means:
(a) the operation of Part 4; or
(b) giving effect to Part 4; or
(c) making arrangements to achieve, in relation to a set of merging entities (other than Telecom and OTC) and the merged entity in relation to that set, a result that, for commercial purposes, is to a substantial degree similar or analogous to a result achieved, in relation to Telecom, OTC and Telstra, by:
   (i) the operation of Part 4; or
   (ii) giving effect to Part 4;
for example (but without limitation), arrangements for:
(iii) some or all property or rights of the merging entities to become property or rights of the merged entity; or
(iv) the merged entity to otherwise get the benefit of some or all property or rights of the merging entities; or
(v) some or all liabilities of the merging entities to become liabilities of the merged entity; or
(vi) the merged entity to otherwise become responsible for some or all liabilities of the merging entities; or
(vii) the merged entity to become the successor in law, or the commercial successor, of the merging entities.
Federal Court means the Federal Court of Australia.

former telecommunications corporation or former corporation means OTC or Telecom.

Future Fund means the Future Fund established by a law of the Commonwealth.

group company means:
   (a) Telstra; or
   (b) a wholly-owned subsidiary of Telstra.

hybrid-security issuer company has the meaning given by section 8AJ.

instrument includes a document and an oral agreement.

interest, in relation to land, means:
   (a) a legal or equitable estate or interest in the land; or
   (b) a right, power or privilege over, or in relation to, the land.

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

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective, and wherever arising.

merged entity, in relation to a set of merging entities, has the meaning given by section 3A.

merger day, in relation to a set of merging entities and the merged entity in relation to that set, has the meaning given by section 3A.

merging entities has the meaning given by section 3A.


minority-interest sale time means the first time after the commencement of Part 2A when a person other than the Commonwealth becomes the legal owner of any of the voting shares in Telstra.

OTC means OTC Limited.
property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description.

protected body means a group company that is a trading corporation, or a financial corporation, within the meaning of paragraph 51(xx) of the Constitution.

protected business name means any of the following names:
(a) “AOTC”; 
(b) “OTC”; 
(c) “OTC Australia”; 
(d) “OTC International”; 
(e) “OTCI”; 
(f) “Australian and Overseas Telecommunications”; 
(g) “Overseas Telecommunications”; 
(h) “Australian and Overseas Telecommunications Corporation”; 
(i) “Overseas Telecommunications Corporation”.

protected company name means any of the following names:
(a) “Australian and Overseas Telecommunications Corporation Limited”; 
(b) “AOTC Limited”; 
(c) “Overseas Telecommunications Corporation Limited”; 
(d) “OTC Limited”; 
(e) “OTC International Limited”.

protected name means a protected business name or a protected company name.

protection time, in relation to a protected name, means the time immediately before:
(a) in the case of “AOTC”, “Australian and Overseas Telecommunications”, “Australian and Overseas Telecommunications Corporation”, “Australian and Overseas Telecommunications Corporation Limited” and “AOTC Limited”—the succession day; or
(b) in the case of “OTC” and “OTC Australia”—5 February 1979; or
(c) in the case of “OTC International”, “OTCI” and “OTC International Limited”—10 December 1987; or
(d) in any other case—1 April 1989.

**rights** (except in Parts 2, 2A and 2B and the Schedule) means all rights, powers, privileges and immunities, whether actual, contingent or prospective, whether statutory or otherwise, and wherever arising.

**sale-scheme hybrid security** has the meaning given by section 8AJA.

**sale-scheme trust deed** has the meaning given by section 8AJ.

**sale-scheme trustee** has the meaning given by section 8AJ.

**subsidiary** has the meaning given by section 5.

**succession day** means the day fixed under subsection 2(1).

**tax** includes:

(a) sales tax; and

(b) fees payable under the Corporations (Fees) Regulations; and

(c) stamp duty; and

(d) any other tax, fee, duty, levy or charge;

but, except for the purposes of section 28, does not include income tax imposed as such by a law of the Commonwealth.

**Telecom** means the Australian Telecommunications Corporation referred to in the *Australian Telecommunications Corporation Act 1989*.

**Telstra** means the company that:

(a) was incorporated under the Corporations Law of the Australian Capital Territory by the name Australian and Overseas Telecommunications Corporation Limited; and

(b) changed its name under the Corporations Law of the Australian Capital Territory to Telstra Corporation Limited on 13 April 1993.

**Telstra sale scheme** has the meaning given by section 8AJ.

**Telstra subsidiary** means a body corporate that is a subsidiary of Telstra.
transferred employee means a person who, under section 39, is taken to have been engaged as an employee by Telstra.

transitional protection period means the period of 3 months commencing on the succession day.

unacceptable foreign-ownership situation has the meaning given by section 8BG.

voting shares has the same meaning as in the Corporations Act 2001.

wholly-owned subsidiary, in relation to a body corporate (in this definition called the holding body), means a body corporate:

(a) that is a subsidiary of the holding body; and
(b) none of whose members is a person other than:
   (i) the holding body; or
   (ii) a body corporate that is, under any other application or applications of this definition, a wholly-owned subsidiary of the holding body; or
   (iii) a nominee of the holding body or of a body of a kind referred to in subparagraph (ii); and
(c) no share in which is beneficially owned by a person other than:
   (i) the holding body; or
   (ii) a body of a kind referred to in subparagraph (b)(ii).

Note: The Schedule sets out definitions of expressions used in Part 2A (which deals with ownership restrictions).

3A Merging entities; merged entity; merger day

(1) For the purposes of this Act:
   (a) Telecom and OTC are a set of merging entities; and
   (b) Telstra is the merged entity in relation to that set; and
   (c) the succession day is the merger day in relation to that set and that merged entity.

(2) Subject to subsection (3), the regulations may declare that, for the purposes of this Act:
   (a) 2 or more specified entities are a set of merging entities; and

6 Telstra Corporation Act 1991
(b) a specified entity (being one of those entities or a different entity) is the merged entity in relation to that set; and
(c) a specified day that is:
   (i) on or after the day on which the regulation making the declaration takes effect; and
   (ii) after the succession day, but not more than 12 months after that day;

is the merger day in relation to that set and that merged entity.

(3) A set of merging entities that is specified in a declaration under subsection (2) must:
   (a) consist of:
      (i) at least one entity that, immediately before the succession day, was a wholly-owned subsidiary of Telecom; and
      (ii) at least one entity that, immediately before that day, was a wholly-owned subsidiary of OTC; or
   (b) consist of Telstra and at least one entity that, immediately before the succession day, was a wholly-owned subsidiary of Telecom or of OTC.

(4) The regulations may make 2 or more different declarations under subsection (2).

(5) Subject to subsection (3), but without limiting the generality of subsection (2), a set of merging entities may include the merged entity in relation to another set of merging entities.

(6) Regulations may be made for the purposes of subsection (2) at any time before the end of the 12 months beginning on the succession day, but not later.

4 Operating under a name

A reference in this Act to a body operating in a State or Territory under a particular name includes a reference to the body engaging in conduct that, for the purposes of a law in force in the State or Territory, constitutes:
   (a) in any case—using the name in the State or Territory; or
   (b) if the name is a body’s name—establishing a place of business, or carrying on business, in the State or Territory; or
Section 5

(c) if paragraph (b) does not apply—carrying on business under the name in the State or Territory.

5 Subsidiaries

For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same manner as that question is determined under the Corporations Act 2001.

6 Extension of Act to external Territories

This Act extends to the external Territories.

6A Application of the Criminal Code

(1) Chapter 2 of the Criminal Code applies to all offences against this Act.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

(2) Despite subsection (1), Part 2.5 of the Criminal Code does not apply to an offence against Part 2 or 2A (within the meaning of section 8CI).

7 Act binds the Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

8 Telstra Corporation Act 1991
Part 2—Commonwealth ownership of Telstra

Division 1—Simplified outline

8AA  Simplified outline

The following is a simplified outline of this Part:

- The Commonwealth may sell its remaining equity interest in Telstra.
- This Part imposes reporting obligations on Telstra.
- This Part sets out rules about how that sale is to be carried out.
Division 3—Telstra’s reporting obligations

8AD Financial statements

(1) The Minister may give Telstra a written direction requiring Telstra to give the Minister a specified financial statement or statements for a specified period or for each specified period.

(2) Telstra must comply with a direction under subsection (1).

(3) The following are examples of periods that may be specified under subsection (1):
(a) the first 3 months of each financial year;
(b) the first 6 months of each financial year;
(c) the first 9 months of each financial year;
(d) each financial year.

(4) The members of the Board must:
(a) prepare each statement in accordance with written guidelines given to the Board by the Minister; and
(b) give the statement to the Minister within 2 months after the end of the period to which the statement relates.

(5) The Minister may grant extensions of time in special circumstances.

(6) In this section:

financial statements includes financial statements for the group consisting of:
(a) Telstra; and
(b) Telstra subsidiaries.

8AE Minister to be notified of significant events

(1) If Telstra, or any Telstra subsidiary, proposes to do any of the following things, the members of the Board must immediately give the Minister written particulars of the proposal:
(a) form a company or participate in the formation of a company;
(b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;
(c) acquire or dispose of a significant shareholding in a company;
(d) acquire or dispose of a significant business;
(e) commence or cease a significant business activity;
(f) make a significant change in the nature or extent of its interests in a partnership, trust, unincorporated joint venture or similar arrangement.

(2) The Minister may, by writing, exempt the members of the Board from the requirement to notify matters covered by paragraph (1)(a). The exemption may be granted subject to conditions.

(3) The Minister may give written guidelines to the Board that are to be used by the members in deciding whether a proposal is covered by paragraph (1)(b), (c), (d), (e) or (f).

8AF Keeping the Minister and the Minister for Finance informed

(1) The members of the Board must:
   (a) keep the Minister informed of the operations of Telstra and Telstra subsidiaries; and
   (b) give the Minister such reports, documents and information in relation to those operations as the Minister requires; and
   (c) give the Minister for Finance such reports, documents and information in relation to those operations as the Minister for Finance requires.

(2) The members of the Board must comply with requirements under paragraphs (1)(b) and (c) within the time limits set by the Minister concerned.

8AG Corporate plan for Telstra

(1) The members of the Board must prepare a corporate plan at least once a year and give it to the Minister.

(2) The plan must cover a period of at least 3 years and not more than 5 years.
Part 2 Commonwealth ownership of Telstra
Division 3 Telstra’s reporting obligations

Section 8AG

(3) If Telstra has subsidiaries, the plan must cover both Telstra and its subsidiaries. In particular, for each subsidiary the plan must include details of the matters in subsection (6), so far as they are applicable.

(4) The members of the Board must keep the Minister informed about changes to the plan.

(5) If the Board becomes aware that a particular matter may affect the achievement of the plan, the Board must give the Minister a written notice:
   (a) setting out particulars of the matter; and
   (b) explaining the effect of the matter on the achievement of the plan.

(6) The plan must include details of the following matters (so far as they are applicable):
   (a) the objectives of the company;
   (b) assumptions about the business environment in which the company operates;
   (c) the business strategies of the company;
   (d) the investment and financing programs of the company, including strategies for managing financial risk;
   (e) financial targets and projections for the company;
   (f) the dividend policy of the company;
   (g) non-financial performance measures for the company;
   (h) community service obligations of the company;
   (i) review of performance against previous corporate plans and targets;
   (j) analysis of factors likely to affect achievement of targets or create significant financial risk for the company or for the Commonwealth;
   (k) price control and quality control strategies for goods or services supplied by the company under a monopoly;
   (l) human resource strategies and industrial relations strategies.

(7) The plan must also cover any other matters required by the Minister (which may include further details about the matters in subsection (6)).
8AH Consequences of contraventions of this Division

A contravention of this Division is not an offence. However, a contravention of this Division is a ground for obtaining an injunction under Division 1 of Part 2B.

8AI This Division has effect despite the Corporations Act etc.

To avoid doubt, the operation of this Division does not result in a contravention of, or give rise to a liability or remedy under:

(a) a provision of the Corporations Act 2001; or

(b) a rule of common law or equity (other than a rule of administrative law).
Part 2  Commonwealth ownership of Telstra
Division 4  Provisions relating to the sale by the Commonwealth of its shares in Telstra

Section 8AJ

Division 4—Provisions relating to the sale by the Commonwealth of its shares in Telstra

8AJ Telstra sale scheme

(1) The object of this section is to define the expressions Telstra sale scheme, sale-scheme trustee, sale-scheme trust deed and hybrid-security issuer company.

(2) For the purposes of this Act, a Telstra sale scheme is a scheme the object of which is to achieve the transfer, or progressive transfer, of the whole or a part of the Commonwealth’s equity in Telstra to other persons.

(3) A Telstra sale scheme must comply with any rules set out in a determination in force under subsection (3A).

(3A) The Minister for Finance may make a written determination setting out rules that are to be complied with by a Telstra sale scheme.

(3B) A determination under subsection (3A) is a legislative instrument for the purposes of the Legislative Instruments Act 2003, but section 42 of that Act does not apply to the determination.

(4) A Telstra sale scheme may involve any or all of the following:
   (a) the transfer by the Commonwealth of any of its shares in Telstra;
   (b) the transfer by the Commonwealth of interests in its shares in Telstra to a company (the sale-scheme trustee) in the company’s capacity as the trustee of a trust established by a trust deed (the sale-scheme trust deed);
   (c) an investor in Telstra initially acquiring a particular interest in shares in Telstra and subsequently acquiring the remaining interests in those shares;
   (d) the payment by Telstra of a dividend;
   (e) the reduction of Telstra’s share capital;
   (f) the cancellation of a particular parcel of shares in Telstra held by the Commonwealth;
   (g) Telstra buying back shares in itself;
   (h) the issue of securities in Telstra;
(i) the redemption of redeemable preference shares in Telstra held by the Commonwealth;
(j) the alteration of Telstra’s constitution;
(k) the issue by the Commonwealth or Telstra of sale-scheme hybrid securities;
(l) an arrangement under which one or more designated companies (each of which is called a hybrid-security issuer company) issue sale-scheme hybrid securities;
(m) the guarantee by the Commonwealth of obligations of a hybrid-security issuer company in relation to sale-scheme hybrid securities (for example, obligations to make payments of interest or dividends);
(n) an agreement of the kind known as a securities lending arrangement, where the securities lending arrangement relates to shares in Telstra.

(5) In determining whether a scheme is a Telstra sale scheme, regard must be had to the economic and commercial substance of the scheme.

(6) Subsections (4) and (5) do not, by implication, limit subsection (2).

(6A) For the purposes of this section, a designated company is:
(a) a wholly-owned Commonwealth company; or
(b) a body corporate specified in a written declaration made by the Minister for Finance under this paragraph.

(6B) A category B hybrid-security issuer company is a hybrid-security issuer company (other than a wholly-owned Commonwealth company) specified in a written declaration made by the Minister for Finance under this subsection.

(6C) A declaration under paragraph (6A)(b) or subsection (6B) is not a legislative instrument for the purposes of the Legislative Instruments Act 2003.

(6D) For the purposes of this section, if a share in Telstra is an investment of the Future Fund or the Communications Fund, the share is taken to be held by a person other than the Commonwealth.

(7) In this section:
Part 2 Commonwealth ownership of Telstra
Division 4 Provisions relating to the sale by the Commonwealth of its shares in Telstra

Section 8AJA

**designated company** has the meaning given by subsection (6A).

**interest in a share** has the same meaning as it has for the purposes of Part 2A.

**scheme** means:
(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; and
(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

**securities** includes:
(a) shares; and
(b) debentures (within the meaning of the *Corporations Act 2001*).

**transfer**, in relation to an interest in a share, includes the creation of the interest.

**wholly-owned Commonwealth company** has the same meaning as in the *Commonwealth Authorities and Companies Act 1997* (in working out whether a company is covered by this definition, ignore any sale-scheme hybrid securities issued by the company).

**8AJA Sale-scheme hybrid securities**

(1) For the purposes of this Act, a **sale-scheme hybrid security** is:
(a) an interest-bearing security that is issued on the basis that it will or may be redeemed in exchange for a share or shares in Telstra; or
(b) a share that is issued on the basis that it will or may be redeemed in exchange for a share or shares in Telstra; or
(c) any other security or financial product that is issued on the basis that it will or may be redeemed in exchange for a share or shares in Telstra; or
(d) an option to acquire a share or shares in Telstra; or
(e) an interest-bearing security that is issued on the basis that it will or may be converted to a share or shares in Telstra; or
(f) any other security or financial product that is issued on the basis that it will or may be converted to a share or shares in Telstra; or
(g) an interest-bearing security that is issued on the basis that it will or may be exchanged for a share or shares in Telstra; or
(h) any other security or financial product that is issued on the basis that it will or may be exchanged for a share or shares in Telstra; or
(i) a security, or a financial product, that:
   (i) is specified in a written declaration made by the Minister for Finance under this subparagraph; and
   (ii) relates directly or indirectly to Telstra.

(2) A security or financial product covered by a paragraph of subsection (1) may (but need not) include a charge, pledge or lien.

(3) A security covered by paragraph (1)(a), (e) or (g) may be issued in or outside Australia, and may be denominated in:
   (a) Australian currency; or
   (b) a currency other than Australian currency.

(4) A share covered by paragraph (1)(b) may be issued in or outside Australia, and any rights or obligations may be denominated in:
   (a) Australian currency; or
   (b) a currency other than Australian currency.

(5) A security or financial product covered by paragraph (1)(c), (f), (h) or (i) may be issued in or outside Australia, and any rights or obligations may be denominated in:
   (a) Australian currency; or
   (b) a currency other than Australian currency.

(6) An option covered by paragraph (1)(d) may be issued in or outside Australia, and the exercise price may be denominated in:
   (a) Australian currency; or
   (b) a currency other than Australian currency.

(7) A declaration under subparagraph (1)(i)(i) is a legislative instrument for the purposes of the Legislative Instruments Act 2003, but section 42 of that Act does not apply to the declaration.

(8) In this section:

charge has the same meaning as in the Corporations Act 2001.
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financial product has the same meaning as in Chapter 7 of the Corporations Act 2001.

security has the same meaning as in Chapter 7 of the Corporations Act 2001.

8AK Exemption from stamp duty—transfer by the Commonwealth of its shares in Telstra etc.

(1) In this section:

charge has the same meaning as in the Corporations Act 2001.

designated matter means any of the following matters, where the matter relates to the entering into or carrying out of a Telstra sale scheme:

(a) the transfer by the Commonwealth of:
    (i) a share in Telstra held by the Commonwealth; or
    (ii) an interest in such a share;
(b) an agreement relating to a transfer covered by paragraph (a);
(c) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a transfer covered by paragraph (a);
(d) the transfer by the sale-scheme trustee of:
    (i) a share in Telstra held by the trustee; or
    (ii) an interest in such a share;
    where the transfer is in accordance with the sale-scheme trust deed;
(e) an agreement relating to a transfer covered by paragraph (d);
(f) the receipt of money by the sale-scheme trustee, or by a person acting on behalf of the sale-scheme trustee, in respect of a transfer covered by paragraph (d);
(g) the reduction of Telstra’s share capital;
(h) the cancellation of a particular parcel of shares in Telstra held by the Commonwealth;
(i) Telstra buying back shares in itself;
(j) the issue of securities in Telstra;
(k) the redemption of redeemable preference shares in Telstra held by the Commonwealth;
(ka) the issue of sale-scheme hybrid securities;
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(kb) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of the issue of sale-scheme hybrid securities;

(kc) the receipt of money by a hybrid-security issuer company, or by a person acting on behalf of a hybrid-security issuer company, in respect of the issue of sale-scheme hybrid securities;

(kd) the redemption, exchange or conversion of sale-scheme hybrid securities;

(ke) the transfer by a hybrid-security issuer company of a share in Telstra held by the company;

(kf) the grant of a charge, pledge or lien (whether in connection with sale-scheme hybrid securities or otherwise);

(kg) an agreement relating to a matter covered by paragraph (c), (f), (g), (h), (i), (j), (k), (ka), (kb), (kc), (kd), (ke) or (kf);

(kh) an agreement of the kind known as a securities lending arrangement, where the securities lending arrangement relates to shares in Telstra;

(l) any other matter that is specified in the regulations.

*interest in a share* has the same meaning as it has for the purposes of Part 2A.

*securities* includes:

(a) shares; and

(b) debentures (within the meaning of the *Corporations Act 2001*).

*transfer*, in relation to an interest in a share, includes the creation of the interest.

(2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:

(a) a designated matter; or

(b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a designated matter.

(3) However, the rule in subsection (2) does not apply:

(a) in such circumstances as are specified in the regulations; or
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(b) in relation to stamp duty, or other tax, of a kind specified in the regulations; or
(c) in relation to stamp duty, or other tax, of a kind specified in the regulations, in such circumstances as are specified in the regulations.

8AKA  Authorisation of borrowing—issue of sale-scheme hybrid securities

To the extent to which the issue of sale-scheme hybrid securities under a Telstra sale scheme involves a borrowing of money by the Commonwealth, that borrowing is authorised by this section.

Note:  Section 37 of the Financial Management and Accountability Act 1997 provides that an agreement for the borrowing of money by the Commonwealth is of no effect unless the borrowing is authorised by an Act.

8AL  Appropriation—costs incurred in connection with a Telstra sale scheme

(1) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of the payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth in connection with the formulation, entering into, or carrying out, of a Telstra sale scheme.

(2) The costs, expenses and obligations covered by subsection (1) include (but are not limited to) the following:

(a) legal and accounting fees;
(b) costs of undertaking due diligence inquiries;
(c) underwriting fees;
(d) costs associated with an offer document;
(e) marketing expenses;
(f) other administrative and logistical expenses;
(g) calls on indemnities granted by the Commonwealth;
(h) calls on guarantees given by the Commonwealth;
(i) obligations to make payments of amounts in relation to sale-scheme hybrid securities issued by the Commonwealth (for example, payments of interest).
8AQ Assistance given by Telstra or the Board in connection with a Telstra sale scheme

(1) Telstra may, on its own initiative, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of a Telstra sale scheme.

(2) A member of the Board may, on the member’s own initiative, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of a Telstra sale scheme.

(3) Telstra must, when requested in writing by the Minister or the Minister for Finance to do so, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of a Telstra sale scheme. The assistance is to be given within the period, and in the form and manner, specified in the request.

(4) The Board must, when requested in writing by the Minister or the Minister for Finance to do so, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of a Telstra sale scheme. The assistance is to be given within the period, and in the form and manner, specified in the request.

(4A) The Minister or the Minister for Finance may, by written notice given to Telstra, give directions to Telstra about the exercise of Telstra’s powers under subsection (1). Telstra must comply with the direction.

(4B) The Minister or the Minister for Finance may, by written notice given to a member of the Board, give directions to the member about the exercise of the member’s powers under subsection (2). The member must comply with the direction.

(5) To avoid doubt, the giving of assistance as mentioned in subsection (1), (2), (3) or (4), the making of a request under subsection (3) or (4), or the giving of a direction under subsection (4A) or (4B), does not result in a contravention of, or give rise to a liability or remedy under:

(a) a provision of the Corporations Act 2001; or

(ab) if Telstra is a listed disclosing entity—the listing rules of a listing market in relation to Telstra; or

(b) a rule of common law or equity (other than a rule of administrative law).
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(6) A contravention of subsection (3), (4), (4A) or (4B) is not an offence. However, a contravention of subsection (3), (4), (4A) or (4B) is a ground for obtaining an injunction under Division 1 of Part 2B.

(7) In this section:

listed disclosing entity has the same meaning as it is given by section 9 of the Corporations Act 2001.

listing market, in relation to a listed disclosing entity, has the same meaning as it is given by section 9 of the Corporations Act 2001.

listing rules of a market has the same meaning as it is given by section 9 of the Corporations Act 2001.

8AR  Giving of assistance—ancillary provisions

(1) The assistance mentioned in subsection 8AQ(1), (2), (3) or (4) may take the form of:

(a) the giving of information; or

(b) the giving of financial assistance (within the meaning of Part 2J.3 of the Corporations Act 2001); or

(c) the giving of a financial benefit to a related party (within the meaning of Chapter 2E of the Corporations Act 2001); or

(d) the provision, by Telstra’s directors or employees, of facilities, information and other assistance in connection with the conduct of:

(i) a due diligence procedure or a similar process; or

(ii) a market briefing or a similar process.

(4) Subsection (1) does not, by implication, limit the forms in which assistance may be given.

(5) Section 8AQ does not, by implication, limit any rights that are conferred on shareholders by other laws.

(6) Section 8AQ does not authorise the imposition of taxation (within the meaning of section 55 of the Constitution).

(7) Section 8AQ does not, by implication, limit:

(a) the executive power of the Commonwealth to enter into an agreement; or
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(b) the capacity of Telstra, or of a member of the Board, to enter into an agreement with the Commonwealth.

Note: This ensures, for example, that the Commonwealth can enter into a co-operation agreement with Telstra or with a member of the Board.

(8) Section 8AQ extends to the giving of assistance outside Australia, whether or not in a foreign country.

8AS Reimbursement of expenses incurred in giving assistance

(1) This section applies if:
   (a) assistance is given under section 8AQ; and
   (b) Telstra or a member of the Board incurs expenses in relation to the giving of that assistance.

(2) The Minister for Finance may authorise the payment by the Commonwealth to Telstra, or to the member, as the case may be, of an amount equal to so much of those expenses as the Minister for Finance considers reasonable.

(3) The Consolidated Revenue Fund is appropriated for the purposes of making payments under subsection (2).

(4) This section does not, by implication, limit the executive power of the Commonwealth to make a payment to Telstra or to a member of the Board.

8AT Commonwealth to be bound by Chapters 6CA, 6D and 7 of the Corporations Act

(1) Despite subsection 5A(4) of the Corporations Act 2001 (but subject to subsection 5A(5) of that Act), Chapters 6CA, 6D and 7 of the Corporations Act 2001 bind the Crown in right of the Commonwealth to the extent to which those Chapters deal with the formulation, entering into, or carrying out, of a Telstra sale scheme.

(2) Subsection (1) has effect despite anything in the Corporations Act 2001.

(4) For the purposes of subsection (1), if Chapter 6CA, 6D or 7 of the Corporations Act 2001 is repealed and replaced by another provision of that Act that deals with fundraising or securities.
regulation, the reference in that subsection to that Chapter of that Act is to be read as a reference to the replacement provision.

**Chinese wall arrangements**

(5) The Commonwealth does not contravene subsection 1043A(1) of the *Corporations Act 2001* by entering into a transaction or agreement at any time in relation to:

(a) shares in Telstra; or
(b) sale-scheme hybrid securities; or
(c) a Telstra sale scheme;

merely because of information in the possession of an officer or employee of the Commonwealth if:

(d) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer or employee; and

(e) it had in operation at that time arrangements that could reasonably be expected to ensure that:

(i) the information was not communicated to the person or persons who made the decision; and

(ii) no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and

(f) the information was not so communicated and no such advice was given.

(6) A reference in subsection (5) to an officer of the Commonwealth includes a reference to the holder of an office under a law of the Commonwealth.

**8AU Alterations of Telstra’s constitution before the minority-interest sale time**

(1) This section applies to an alteration of Telstra’s constitution if:

(a) the alteration occurs before the minority-interest sale time; and

(b) the alteration relates to the formulation, entering into, or carrying out, of a Telstra sale scheme.

(2) A notice of a general meeting specifying an intention to propose a resolution for the alteration does not have to be given to:

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24 Telstra Corporation Act 1991
8AUA Alteration of Telstra’s constitution after the minority-interest sale time

(1) The Minister may, by written instrument, alter Telstra’s constitution if:
   (a) the alteration relates to the formulation, entering into, or carrying out, of a Telstra sale scheme; and
   (b) the effect of the alteration is to:
      (i) remove, restrict or limit any rights, privileges or immunities of the Commonwealth or the Minister; or
      (ii) remove a provision that prohibits an act or thing without the consent of the Commonwealth; or
      (iii) in the case of a provision that prohibits an act or thing without the consent of the Commonwealth—remove the requirement to obtain that consent; or
      (iv) remove a provision that prohibits an act or thing without the consent of the Minister; or
      (v) in the case of a provision that prohibits an act or thing without the consent of the Minister—remove the requirement to obtain that consent; or
      (vi) remove a provision that prohibits an act or thing unless the Commonwealth directs otherwise; or

(3) A court is not empowered to cancel the alteration.

(4) Subsections (2) and (3) have effect despite anything in section 172 of the Corporations Act 2001.

(5) For the purposes of subsection (4), if section 172 of the Corporations Act 2001 is repealed and replaced by another provision of the Corporations Act 2001 that deals with the alteration of a company’s constitution, the reference in that subsection to section 172 is to be read as a reference to the replacement provision.

(6) In this section:

debenture has the same meaning as in the Corporations Act 2001.
(vii) in the case of a provision that prohibits an act or thing unless the Commonwealth directs otherwise—remove that power of direction; or
(viii) remove a provision that prohibits an act or thing unless the Minister directs otherwise; or
(ix) in the case of a provision that prohibits an act or thing unless the Minister directs otherwise—remove that power of direction; and
(c) the instrument is made during the period:
   (i) beginning on the commencement of this section; and
   (ii) ending at the time of the repeal of Division 3 of Part 2.

(2) Before making an instrument under subsection (1), the Minister must consult the members of the Board.

(3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(4) To avoid doubt, the making of an instrument under subsection (1) does not result in a contravention of, or give rise to a liability or remedy under:
   (a) a provision of the Corporations Act 2001; or
   (b) if Telstra is a listed disclosing entity—the listing rules of a listing market in relation to Telstra; or
   (c) a rule of common law or equity (other than a rule of administrative law).

(5) If Telstra’s constitution is altered by an instrument under subsection (1), this Act does not prevent the further alteration of that constitution.

(6) In this section:

listed disclosing entity has the same meaning as it is given by section 9 of the Corporations Act 2001.

listing market, in relation to a listed disclosing entity, has the same meaning as it is given by section 9 of the Corporations Act 2001.

listing rules of a market has the same meaning as it is given by section 9 of the Corporations Act 2001.
8AV Reduction of Telstra’s share capital

(1) This section applies to a reduction of Telstra’s share capital if:
   (a) the reduction relates to the formulation, entering into, or carrying out, of a Telstra sale scheme; and
   (b) the reduction is part of an overall arrangement or plan that involves:
       (i) the replacement of a particular type of share with one or more other types of share; and
       (ii) the replacement of the reduced share capital.

(2) Notice of the reduction does not have to be given to Telstra’s creditors.

(3) Telstra’s creditors are not entitled to object to the reduction.

(4) The reduction does not have to be confirmed by a court.

(5) Subsections (2), (3) and (4) have effect despite anything in Part 2J.1 of the Corporations Act 2001.
Division 5—Miscellaneous

8AW Use by the Commonwealth of information obtained from Telstra or the Board

(1) This section applies to information obtained under Division 3 or section 8AQ.

(2) The Commonwealth, or an associated person, may use the information for a purpose in connection with the formulation, entering into, or carrying out, of a Telstra sale scheme.

(3) The Commonwealth, or an associated person, may disclose the information for a purpose in connection with the formulation, entering into, or carrying out, of a Telstra sale scheme.

(4) If subsection (2) or (3) does not apply, the Commonwealth, or an associated person, may use or disclose the information for a purpose in connection with the Commonwealth’s capacity as a shareholder in Telstra, so long as the use or disclosure does not involve giving the information to a person who is not an associated person.

(5) To avoid doubt, the use or disclosure of information as mentioned in subsection (2), (3) or (4) does not result in a contravention of, or give rise to a liability or remedy under:
   (a) a provision of the Corporations Act 2001; or
   (ab) if Telstra is a listed disclosing entity—the listing rules of a listing market in relation to Telstra; or
   (b) a rule of common law or equity (other than a rule of administrative law).

(6) In this section:

   associated person means:
   (a) a Minister; or
   (b) an individual who holds an office under, or is employed by, the Commonwealth; or
   (c) a person appointed or engaged under the Public Service Act 1999; or
(d) a person who performs services for or on behalf of the Commonwealth in connection with:
   (i) the formulation, entering into, or carrying out, of a Telstra sale scheme; or
   (ii) the Commonwealth’s capacity as a shareholder in Telstra.

listed disclosing entity has the same meaning as it is given by section 9 of the Corporations Act 2001.

listing market, in relation to a listed disclosing entity, has the same meaning as it is given by section 9 of the Corporations Act 2001.

listing rules of a market has the same meaning as it is given by section 9 of the Corporations Act 2001.

8AX Agreements relating to the protection of information obtained from Telstra or the Board

(1) The Minister for Finance may, on behalf of the Commonwealth, enter into an agreement with Telstra, or with one or more members of the Board, relating to the protection of information:
   (a) that is obtained under Division 3 or section 8AQ; and
   (b) the publication of which might be expected to prejudice substantially Telstra’s commercial interests.

(2) The agreement may be enforced as if it were a contract.

(3) This section does not, by implication, limit the executive power of the Commonwealth to enter into agreements.

8AY Telstra’s obligations to disclose information

(1) To avoid doubt, the mere fact that particular information was requested, required or given under Division 3 or section 8AQ is not a ground on which Telstra can be required to disclose or notify that, or any other, information under:
   (a) a provision of the Corporations Act 2001; or
   (b) if Telstra is a listed disclosing entity—the listing rules of a listing market in relation to Telstra.

(2) In this section:
Section 8AYA

listed disclosing entity has the same meaning as it is given by section 9 of the Corporations Act 2001.

listing market, in relation to a listed disclosing entity, has the same meaning as it is given by section 9 of the Corporations Act 2001.

listing rules of a market has the same meaning as it is given by section 9 of the Corporations Act 2001.

8AYA Minister for Finance may direct Telstra not to dilute the Commonwealth’s equity in Telstra etc.

Equity-dilution conduct

(1) For the purposes of this section, equity-dilution conduct is conduct that:
   (a) will result, or is likely to result, in a dilution of the Commonwealth’s equity in Telstra; and
   (b) is not carried out under a Telstra sale scheme.

(2) In determining whether conduct is equity-dilution conduct, regard must be had to the economic and commercial substance of the conduct.

(3) Subsection (2) does not, by implication, limit subsection (1).

Security-issue conduct

(4) For the purposes of this section, security-issue conduct is conduct that consists of the issue of a security or a financial product.

Notification of proposal to engage in equity-dilution conduct or security-issue conduct

(5) Before engaging in particular equity-dilution conduct or security-issue conduct, Telstra must give the Minister for Finance a written notice:
   (a) setting out details of Telstra’s proposal to engage in that conduct; and
   (b) giving Telstra’s reasons for that proposal.

(6) A notice under subsection (5) must be given to the Minister for Finance not later than:

30 Telstra Corporation Act 1991
(a) 30 days before engaging in the equity-dilution conduct or security-issue conduct; or
(b) if the Minister for Finance allows a shorter period—the beginning of that shorter period.

Direction not to engage in equity-dilution conduct or security-issue conduct

(7) The Minister for Finance may, by written notice given to Telstra, direct Telstra not to engage in specified equity-dilution conduct or specified security-issue conduct.

Note: For specification by class, see subsection 46(3) of the Acts Interpretation Act 1901.

(8) Telstra must comply with a direction under subsection (7).

Sanction

(9) A breach of this section is not an offence. However, a breach of this section is a ground for obtaining an injunction under Division 1 of Part 2B.

Future Fund and Communications Fund

(10) For the purposes of this section, if a share in Telstra is an investment of the Future Fund or the Communications Fund, the share is taken to be held by a person other than the Commonwealth.

Direction

(11) A direction under subsection (7) is not a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Definitions

(12) In this section:

financial product has the same meaning as in Chapter 7 of the Corporations Act 2001.

security has the same meaning as in Chapter 7 of the Corporations Act 2001.
Part 2  Commonwealth ownership of Telstra  
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Section 8AYB

_the Commonwealth_ includes a category A hybrid-security issuer company.

8AYB  Telstra to give information to the Minister about the level of non-Commonwealth ownership of shares in Telstra

Direction to give information

(1) The Minister may, by written notice given to Telstra, direct Telstra to give to the Minister, within the period specified in the notice, specified information that is relevant to determining either or both of the following:

(a) whether or not a particular day is the first day after the commencement of this section on which a majority of the voting shares in Telstra are held by a person, or persons, other than the Commonwealth;

(b) whether or not a particular day is the first day after the commencement of this section on which 85% of the voting shares in Telstra are held by a person, or persons, other than the Commonwealth.

(2) Telstra must comply with a direction under subsection (1).

Sanction

(3) A breach of this section is not an offence. However, a breach of this section is a ground for obtaining an injunction under Division 1 of Part 2B.

Future Fund and Communications Fund

(4) For the purposes of this section, if a share in Telstra is an investment of the Future Fund or the Communications Fund, the share is taken to be held by a person other than the Commonwealth.

Securities lending arrangements

(5) For the purposes of this section, if, under an agreement of the kind known as a securities lending arrangement:

(a) at a particular time (the _disposal time_), the Commonwealth disposed of a share in Telstra (the _borrowed share_) to another person (the _borrower_); and
(b) the Commonwealth may come under an obligation to:
   (i) re-acquire the borrowed share from the borrower at a later time; or
   (ii) acquire an identical share from the borrower at a later time;
   the borrowed share is taken to be held by the Commonwealth during the period:
   (c) beginning at the disposal time; and
   (d) ending when the obligation mentioned in paragraph (b) is discharged or can no longer arise.

Direction

(6) A direction under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Definition

(7) In this section:

   the Commonwealth includes a category A hybrid-security issuer company.

**8AYC Application of the Ombudsman Act 1976 to Telstra**

In determining whether Telstra is a prescribed authority for the purposes of the *Ombudsman Act 1976*, assume that each reference to the Commonwealth in the definition of *Commonwealth-controlled company* in subsection 3(1) of that Act includes a reference to a category A hybrid-security issuer company.

**8AYD Controlling interest in Telstra**

In determining, for the purposes of a law of the Commonwealth (other than this Act), whether the Commonwealth has a controlling interest in Telstra, if a share in Telstra is an investment of the Future Fund or the Communications Fund, assume that any voting rights associated with the share were held by a person other than the Commonwealth.
Section 8AZ

8AZ Rights of Telstra’s shareholders, debenture holders and creditors to be subject to this Act

(1) The rights of Telstra’s shareholders, debenture holders and creditors are subject to this Act.

(2) In this section:

*debenture* has the same meaning as in the *Corporations Act 2001*.

8BA Compensation—constitutional safety net

(1) If:

(a) apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms; and

(b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) The Consolidated Revenue Fund is appropriated for the purposes of making payments under this section.

8BB Delegation

(1) The Minister may, by writing, delegate to:

(a) the Secretary to the Department; or

(b) an SES employee or acting SES employee whether or not in the Department;

(c) a person who is appointed by the Governor-General under section 67 of the Constitution and has responsibilities in relation to the sale of Commonwealth assets;

all or any of the Minister’s powers under this Part.

(2) The Minister for Finance may, by writing, delegate to:

(a) the Secretary to the Department of Finance; or
(b) an SES employee or acting SES employee whether or not in the Department of Finance;

(c) a person who is appointed by the Governor-General under section 67 of the Constitution and has responsibilities in relation to the sale of Commonwealth assets;

all or any of the powers conferred on the Minister for Finance by this Part.

8BC Provision to attract the corporations power and the communications power

This Part does not apply to Telstra unless Telstra:

(a) is a corporation to which paragraph 51(xx) of the Constitution applies; or

(b) carries on a business that consists of or includes the supply of a carriage service (within the meaning of the Telecommunications Act 1997).
Part 2A—Restrictions on ownership of Telstra

Division 1—Simplified outline

8BD Simplified outline

The following is a simplified outline of this Part:

- Telstra is subject to the following ownership restrictions:
  - (a) a limit on total foreign ownership;
  - (b) a limit on individual foreign ownership.

- The regulations may require information to be given for purposes relating to those limits.

- Telstra’s head office, base of operations and place of incorporation are to remain in Australia.

- Telstra’s Chairperson, and a majority of Telstra’s directors, must be Australian citizens.
Division 2—Definitions in Schedule

8BE Definitions in Schedule

The Schedule sets out definitions of expressions used in this Part.

Note 1: The limits on the ownership of Telstra relate to a person’s stake in Telstra.

Note 2: Stake is defined in the Schedule.

Note 2A: A person’s stake is calculated on the assumption that the only shares in Telstra are shares held by persons other than the Commonwealth—see clause 12 of the Schedule.

Note 3: A person’s stake includes the interests of the person’s associates.

Note 4: There are 4 different types of stake. The main types are the percentage of total paid-up share capital and the percentage of voting power.

Note 5: The ownership restrictions will be breached if any type of stake goes over the relevant limit.
Division 3—Extra-territorial operation

8BF Extra-territorial operation

The following provisions extend to acts, omissions, matters and things outside Australia, whether or not in a foreign country:

(a) this Part and the Schedule;
(b) Part 2B, to the extent to which it relates to this Part.
Division 4—Limit on foreign ownership

8BG Meaning of unacceptable foreign-ownership situation

For the purposes of this Act, an unacceptable foreign-ownership situation exists in relation to Telstra if:

(a) there is a group of foreign persons who hold, in total, a particular type of stake in Telstra of more than 35%; or

(b) there is or are one or more foreign persons each of whom holds a particular type of stake in Telstra of more than 5%.

Note 1: A person’s stake is calculated on the assumption that the only shares in Telstra are shares held by persons other than the Commonwealth—see clause 12 of the Schedule.

Note 2: A person’s stake includes the interests of the person’s associates—see the Schedule.

8BH Acquisitions of shares

If:

(a) a person, or 2 or more persons under an arrangement, acquire shares in a company; and

(b) the acquisition has the result, in relation to Telstra, that:

(i) an unacceptable foreign-ownership situation comes into existence in relation to Telstra; or

(ii) if an unacceptable foreign-ownership situation already exists in relation to Telstra because there is a group of foreign persons who hold, in total, a particular type of stake in Telstra of more than 35%—there is an increase in the total of any type of stake held by any group of foreign persons in Telstra; or

(iii) if an unacceptable foreign-ownership situation already exists in relation to Telstra because there is or are one or more foreign persons each of whom holds a particular type of stake in Telstra of more than 5%—there is an increase in any type of stake held by any of those foreign persons; and

(c) the person or persons mentioned in paragraph (a) knew, or were reckless as to whether, the acquisition would have that result;
Part 2A Restrictions on ownership of Telstra
Division 4 Limit on foreign ownership

Section 8BI

the person or persons mentioned in paragraph (a) are guilty of an offence punishable on conviction by a fine not exceeding 400 penalty units.

Note: A person’s stake is calculated on the assumption that the only shares in Telstra are shares held by persons other than the Commonwealth—see clause 12 of the Schedule.

8BI Compliance by Telstra

(1) Telstra must take all reasonable steps to ensure that an unacceptable foreign-ownership situation does not exist in relation to Telstra.

(2) Telstra is guilty of an offence if:

(a) Telstra engages in conduct; and

(b) that conduct contravenes subsection (1).

Penalty: 500 penalty units.

(3) In this section:

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

8BJ Remedial orders

(1) If an unacceptable foreign-ownership situation exists in relation to Telstra, the Federal Court may, on application by the Minister or Telstra, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.

(2) The Federal Court’s orders include:

(a) an order directing the disposal of shares; or

(b) an order restraining the exercise of any rights attached to shares; or

(c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or

(d) an order that any exercise of rights attached to shares be disregarded.

(3) Subsection (2) does not, by implication, limit subsection (1).
(4) In addition to the Federal Court’s powers under subsections (1) and (2), the court:

(a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and

(b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.

(5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

(6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.
Division 6—Anti-avoidance

8BM Anti-avoidance

(1) If:
   
   (a) one or more persons enter into, begin to carry out or carry out a scheme; and
   
   (b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of Division 4 in relation to any person or persons (whether or not mentioned in paragraph (a)); and
   
   (c) as a result of the scheme or a part of the scheme, a person (the stakeholder) increases the stakeholder’s stake in Telstra; the Minister may give the stakeholder a written direction to cease holding that stake within a specified time.

(2) A person who intentionally contravenes a direction under subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 400 penalty units.
Division 7—Record-keeping and giving of information

8BN  Record-keeping and giving of information

(1) The regulations may make provision for and in relation to requiring a person:
   (a) to keep and retain records, where the records are relevant to an ownership matter; and
   (b) to give information to the Minister that is relevant to an ownership matter; and
   (c) to give information to Telstra, where the information is relevant to an ownership matter.

Note: Ownership matter is defined by subsection (6).

Statutory declarations

(2) The regulations may provide that information given in accordance with a requirement covered by paragraph (1)(b) or (c) must be verified by statutory declaration.

No self-incrimination

(3) An individual is not required to give information in accordance with a requirement covered by paragraph (1)(b) or (c) if the information might tend to incriminate the individual or expose the individual to a penalty.

Offence

(4) A person must not intentionally contravene a requirement covered by paragraph (1)(a), (b) or (c).

Penalty: 50 penalty units.

Regulations may confer discretionary powers on the Minister

(5) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the Minister. For example, the regulations could provide that the Minister may, by written notice given to Telstra, require Telstra to
Section 8BO

give the Minister, within the period and in the manner specified in the notice, specified information about an ownership matter.

Definition

(6) For the purposes of this section, each of the following matters is an ownership matter:
(a) whether a person holds a particular type of stake in Telstra;
(b) if a person holds a particular type of stake in Telstra—the level of that stake.

8BO Incorrect records

(1) A person must not, in purported compliance with a requirement covered by paragraph 8BN(1)(a), make a record of any matter or thing in such a way that it does not correctly record the matter or thing.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 6 months.
Division 8—Head office, base of operations and place of incorporation of Telstra

8BQ  Head office to be in Australia

(1) Telstra must ensure that the central management and control of Telstra is ordinarily exercised at a place in Australia.

(2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Division 1 of Part 2B.

(3) A contravention of subsection (1) does not affect the validity of any transaction.

8BR  Base of operations to be in Australia

(1) Telstra must ensure that it maintains a substantial business and operational presence in Australia.

(2) This section does not limit Telstra’s capacity to engage in activities outside Australia.

(3) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Division 1 of Part 2B.

(4) A contravention of subsection (1) does not affect the validity of any transaction.

8BS  Telstra to remain incorporated in Australia

(1) Telstra must ensure that it is incorporated under the Corporations Act 2001.

(2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Division 1 of Part 2B.

(3) A contravention of subsection (1) does not affect the validity of any transaction.
Part 2A  Restrictions on ownership of Telstra
Division 9  Citizenship of Chairperson and directors of Telstra

Section 8BT

Division 9—Citizenship of Chairperson and directors of Telstra

8BT  Chairperson must be an Australian citizen

(1) Telstra must ensure that its Chairperson (however described) is an Australian citizen.

(2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Division 1 of Part 2B.

(3) A contravention of subsection (1) does not affect the validity of any transaction.

8BU  Majority of directors must be Australian citizens

(1) Telstra must ensure that a majority of its directors are Australian citizens.

(2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Division 1 of Part 2B.

(3) A contravention of subsection (1) does not affect the validity of any transaction.

8BUA  At least 2 directors must have knowledge of, or experience in, the communications needs of regional, rural or remote areas

(1) Telstra must ensure that at least 2 of its directors have knowledge of, or experience in, the communications needs of regional, rural or remote areas.

(2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Division 1 of Part 2B.

(3) A contravention of subsection (1) does not affect the validity of any transaction.
Division 10—Miscellaneous

8BW Concurrent operation of State/Territory laws

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Part.

8BX Validity of acts done in contravention of this Part

An act is not invalidated by the fact that it constitutes an offence against this Part.

8BY Winding-up of Telstra not prevented by this Act

This Act does not, by implication, prevent Telstra being wound up in accordance with the Corporations Act 2001.

8BZ Acquisition of property

The Federal Court must not make an order under this Part if:
(a) the order would result in the acquisition of property from a person otherwise than on just terms; and
(b) the order would be invalid because of paragraph 51(xxxi) of the Constitution.

8CA Review of decisions by Administrative Appeals Tribunal

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by the Minister under:
(a) subsection 8BM(1); or
(b) subclause 9(2) or (3) of the Schedule.

(2) If the Minister:
(a) makes a decision of a kind covered by subsection (1); and
(b) gives to the person or persons whose interests are affected by the decision written notice of the making of the decision; that notice is to include a statement to the effect that, subject to the Administrative Appeals Tribunal Act 1975, application may be

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made to the Administrative Appeals Tribunal for review of the decision.

(3) A failure to comply with subsection (2) does not affect the validity of a decision.

(4) In this section:

*decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

### 8CB Delegation

(1) The Minister may, by writing, delegate to:

(a) the Secretary to the Department; or

(b) an SES employee or acting SES employee whether or not in the Department;

(ba) a person who is appointed by the Governor-General under section 67 of the Constitution and has responsibilities in relation to the sale of Commonwealth assets;

all or any of the Minister’s powers under:

(c) this Part; or

(d) the Schedule; or

(e) regulations made for the purposes of section 8BN.

(2) The Minister for Finance may, by writing, delegate to:

(a) the Secretary to the Department of Finance; or

(b) an SES employee or acting SES employee whether or not in the Department of Finance;

(c) a person who is appointed by the Governor-General under section 67 of the Constitution and has responsibilities in relation to the sale of Commonwealth assets;

all or any of the powers conferred on the Minister for Finance by this Part.

### 8CC Provision to attract the corporations power and the communications power

This Part does not apply to Telstra unless Telstra:

(a) is a corporation to which paragraph 51(xx) of the Constitution applies; or
(b) carries on a business that consists of or includes the supply of a carriage service (within the meaning of the *Telecommunications Act 1997*).
**Part 2AA—Anti-avoidance**

8CCA Anti-avoidance

(1) Telstra must not, either alone or together with one or more other persons, enter into, begin to carry out or carry out a scheme if it would be concluded that Telstra did so for the sole or dominant purpose of avoiding the application of any provision of this Act in relation to Telstra.

(2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Division 1 of Part 2B.

(3) A contravention of subsection (1) does not affect the validity of any transaction.

(4) In this section:

   *scheme* means:

   (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

   (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.
Part 2B—Remedial provisions relating to Telstra

Division 1—Injunctions

8CD Injunctions

Restraining injunctions

(1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of Part 2, 2A or 2AA, the Federal Court may, on the application of the Minister, grant an injunction:
   (a) restraining the person from engaging in the conduct; and
   (b) if, in the court’s opinion, it is desirable to do so—requiring the person to do something.

(2) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of section 8BH, the Federal Court may, on the application of Telstra, grant an injunction:
   (a) restraining the person from engaging in the conduct; and
   (b) if, in the court’s opinion, it is desirable to do so—requiring the person to do something.

Performance injunctions

(3) If:
   (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
   (b) the refusal or failure was, is or would be a contravention of Part 2 or 2A;
   the Federal Court may, on the application of the Minister, grant an injunction requiring the person to do that act or thing.

(4) If:
   (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
   (b) the refusal or failure was, is or would be a contravention of subsection 8BN(4) that relates to a requirement covered by paragraph 8BN(1)(c);
the Federal Court may, on the application of Telstra, grant an
injunction requiring the person to do that act or thing.

8CE Interim injunctions

Grant of interim injunction

(1) If an application is made to the court for an injunction under
section 8CD, the court may, before considering the application,
grant an interim injunction restraining a person from engaging in
conduct of a kind referred to in that section.

No undertakings as to damages

(2) The court is not to require an applicant for an injunction under
section 8CD, as a condition of granting an interim injunction, to
give any undertakings as to damages.

8CF Discharge etc. of injunctions

The court may discharge or vary an injunction granted under this
Division.

8CG Certain limits on granting injunctions not to apply

Restraining injunctions

(1) The power of the court under this Division to grant an injunction
restraining a person from engaging in conduct of a particular kind
may be exercised:

(a) if the court is satisfied that the person has engaged in conduct
of that kind—whether or not it appears to the court that the
person intends to engage again, or to continue to engage, in
conduct of that kind; or

(b) if it appears to the court that, if an injunction is not granted, it
is likely that the person will engage in conduct of that kind—
whether or not the person has previously engaged in conduct
of that kind and whether or not there is an imminent danger
of substantial damage to any person if the person engages in
conduct of that kind.
Performance injunctions

(2) The power of the court under this Division to grant an injunction requiring a person to do an act or thing may be exercised:

(a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

8CH Other powers of the court unaffected

The powers conferred on the court under this Division are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.
Division 2—Prosecutions

8CI Prosecutions of corporations

State of mind

(1) If, in proceedings for an offence against Part 2A in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:
   (a) a director, employee or agent of the corporation engaged in that conduct; and
   (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
   (c) the director, employee or agent had that state of mind.

Conduct

(2) If:
   (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
   (b) the conduct is within the scope of his or her actual or apparent authority;
the conduct is taken, for the purposes of a prosecution for an offence against Part 2A, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

Extended meaning of state of mind

(3) A reference in subsection (1) to the state of mind of a person includes a reference to:
   (a) the knowledge, intention, opinion, belief or purpose of the person; and
   (b) the person’s reasons for the intention, opinion, belief or purpose.
Extended meaning of director

(4) A reference in this section to a director of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Extended meaning of engaging in conduct

(5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Extended meaning of offence against Part 2A

(6) A reference in this section to an offence against Part 2A includes a reference to an offence created by section 6 of the Crimes Act 1914 or Part 2.4 of the Criminal Code that relates to Part 2A of this Act.

8CJ Prosecutions of persons other than corporations

State of mind

(1) If, in proceedings for an offence against Part 2A in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:
   (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
   (b) the employee or agent had that state of mind.

Conduct

(2) If:
   (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and
   (b) the conduct is within the employee’s or agent’s actual or apparent authority;
   the conduct is taken, for the purposes of a prosecution for an offence against Part 2A, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
Section 8CK

Limitation on imprisonment

(3) Despite any other provision of Part 2A, if:
   (a) a person is convicted of an offence; and
   (b) the person would not have been convicted of the offence if
       subsections (1) and (2) had not been in force;
   the person is not liable to be punished by imprisonment for that
   offence.

Extended meaning of state of mind

(4) A reference in subsection (1) to the state of mind of a person
   includes a reference to:
   (a) the knowledge, intention, opinion, belief or purpose of the
       person; and
   (b) the person’s reasons for the intention, opinion, belief or
       purpose.

Extended meaning of engaging in conduct

(5) A reference in this section to engaging in conduct includes a
   reference to failing or refusing to engage in conduct.

Extended meaning of offence against Part 2A

(6) A reference in this section to an offence against Part 2A includes a
   reference to an offence created by section 6 of the Crimes Act 1914
   or Part 2.4 of the Criminal Code that relates to Part 2A of this Act.

8CK Service of summons or process on foreign corporations—
criminal proceedings

(1) This section applies to a summons or process in any criminal
   proceedings under Part 2A, where:
   (a) the summons or process is required to be served on a body
       corporate incorporated outside Australia; and
   (b) the body corporate does not have a registered office or a
       principal office in Australia; and
   (c) the body corporate has an agent in Australia.

(2) Service of the summons or process may be effected by serving it
    on the agent.
(3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*. 

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

(4) In this section:

*criminal proceeding* includes a proceeding to determine whether a person should be tried for an offence.

### 8CL Indictable offences

An offence against Division 4 or 6 of Part 2A is an indictable offence.
Part 2C—Re-affirmation of the universal service obligation, the digital data service obligation and the customer service guarantee

Section 8CM

Part 2C—Re-affirmation of the universal service obligation, the digital data service obligation and the customer service guarantee

8CM Re-affirmation of universal service obligation and digital data service obligation

(1) The Parliament re-affirms its intention:
   (a) that all people in Australia, wherever they reside or carry on business, will continue to have reasonable access, on an equitable basis, to standard telephone services, payphones and digital data services; and
   (b) that:
      (i) the universal service obligation described in section 9 of the Telecommunications (Consumer Protection and Service Standards) Act 1999; and
      (ii) the digital data service obligation described in section 10 of that Act;
       should be fulfilled as efficiently and economically as practicable.

(2) An expression used in this section and in Part 2 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 has the same meaning in this section as it has in that Part.

8CN Re-affirmation of the customer service guarantee

(1) The Parliament re-affirms its intention that the Minister will take all reasonable steps to ensure that:
   (a) the ACMA continues to make performance standards to be complied with by carriage service providers in relation to customer service; and
   (b) if a carriage service provider contravenes a performance standard, the carriage service provider will continue to be liable to pay damages to the customer for the contravention.

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Section 8CN

(2) An expression used in this section and in Part 5 of the
Telecommunications (Consumer Protection and Service Standards) 
Act 1999 has the same meaning in this section as it has in that Part.
Part 3—Operation of Telstra

9 Minister may give directions to Telstra

(1) Subject to subsection (2), the Minister may, after consultation with the Board, give to Telstra such written directions in relation to the exercise of the powers of Telstra as appear to the Minister to be necessary in the public interest.

(2) Subject to subsection (3), the Minister must not give a direction under subsection (1) in relation to the amounts to be charged for work done, or services, goods or information supplied, by Telstra.

(3) Subsection (2) does not affect the Minister’s powers under Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

(4) Any directions given by the Minister under subsection (1) have effect despite any direction given, or determination made, by the ACMA under the *Telecommunications Act 1997*.

(5) Where the Minister gives a direction under subsection (1), the Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.

(6) The Minister is not taken to be a director of Telstra for the purposes of the *Corporations Act 2001* because of the powers in relation to Telstra that are conferred on the Minister by this Act.

(7) It is the duty of the Board to ensure that Telstra complies with any direction given to Telstra under subsection (1).

(8) The Minister must cause a copy of the memorandum of association and articles of association of Telstra to be laid before each House of the Parliament within 15 sitting days of that House after the later of:

   (a) the commencement of this section; or

   (b) the incorporation of Telstra.
Part 4—Telstra to be successor of Telecom and OTC

10 Extra-territorial operation of Part

It is the intention of the Parliament that the operation of this Part should, as far as possible, include operation in relation to the following:

(a) property and things situated outside Australia;
(b) acts, transactions and matters done, entered into or occurring outside Australia;
(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a foreign country.

11 Vesting of property, rights and liabilities

On the succession day:

(a) all property and rights of Telecom and OTC, wherever located, vest in Telstra; and
(b) all liabilities of Telecom and OTC, wherever located, become liabilities of Telstra; and
(c) Telstra becomes the successor in law of Telecom and OTC.

12 Determination of Telstra’s initial capital

(1) The Minister shall, as soon as practicable after the commencement of this Act and after consultation with the Board, determine the amount of Telstra’s initial capital under this Act.

(2) In making this determination, the Minister shall have regard to any relevant advice that the Board has given to the Minister.

(3) A determination made under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.
Part 4  Telstra to be successor of Telecom and OTC

Section 13

13  Merger fee not to be charged

No fee, payment or consideration shall be paid or payable by Telecom, OTC or Telstra to the Government as a result of or in connection with the merger of Telecom and OTC to create Telstra.
Part 5—Use of certain names

14 Protected body may operate under protected business name

(1) A protected body may, during the transitional protection period, operate under a protected business name in a State or Territory even if the name is not registered in relation to the body under a particular law, or any law, in force in the State or Territory.

(2) Nothing in this section permits more than one body to operate under the same name at the same time in the same State or Territory.

15 Other persons not to use protected names

(1) Except with the written consent of Telstra, a person other than a protected body must not, during the transitional protection period:

(a) use in relation to a business, trade, profession or occupation; or

(b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft (including aircraft); or

(c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let on hire; or

(d) use in relation to:

(i) goods or services; or

(ii) the promotion, by any means, of the supply or use of goods or services;

a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it.

Penalty: $1,000.

(2) Nothing in subsection (1) limits anything else in that subsection.
16 Exceptions for pre-existing rights

(1) Nothing in section 15, so far as it applies in relation to a particular protected name, affects rights conferred by law on a person in relation to:
   (a) a trade mark that is registered under the Trade Marks Act 1955; or
   (b) a design that is registered under the Designs Act 2003; and was so registered, or was registered under the Designs Act 1906, at the protection time in relation to the name.

(2) Nothing in section 15, so far as it applies in relation to a particular protected name, affects the use, or rights conferred by law relating to the use, of a name (in this subsection called the relevant name) by a person in a particular manner if, at the protection time in relation to the protected name, the person:
   (a) was using the relevant name in good faith in that manner; or
   (b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or a similar name, goods or services as the goods or services of the first-mentioned person.

17 Use of other names by protected bodies

This Part does not prevent a protected body from operating in a State or Territory under a name other than a protected name.

18 Effect on State and Territory laws

This Part does not prevent a protected body from registering a name under a law of a State or Territory.
Part 7—Application of laws to Telstra

Division 1—General

26 Telstra not public authority etc.

Telstra is taken for the purposes of the laws of the Commonwealth, of a State or of a Territory:

(a) not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth; and
(b) not to be a public authority or an instrumentality or agency of the Crown (however described); and
(c) not to be entitled to any immunity or privilege of the Commonwealth;

except so far as express provision is made by this Act or any other law of the Commonwealth, or by a law of a State or of a Territory, as the case may be.

27 Exemption from taxes and charges

(1) No tax is payable under a law of the Commonwealth, of a State or of a Territory in respect of:

(a) an exempt matter; or
(b) anything done (including a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

(2) An authorised person may, by signed writing, certify that:

(a) a specified matter or thing is an exempt matter; or
(b) a specified thing was done (including a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter.

(3) For all purposes and in all proceedings, a certificate under subsection (2) is conclusive evidence of the matter certified, except to the extent to which the contrary is established.
28 Merged entity taken to be the same body, for tax purposes, as merging entities

(1) Where:
   (a) 2 or more entities are a set of merging entities; and
   (b) an entity is the merged entity in relation to that set;
subsection (2) has effect, on and after the merger day in relation to that set and that merged entity, even if any of the entities concerned later ceases to be a group company.

(2) For the purposes only of the application of the laws of the Commonwealth, of the States and of the Territories relating to taxation:
   (a) the merging entities are taken to be the same body as the merged entity and to continue in existence under the merged entity’s name; and
   (b) any provisions of this Act that are inconsistent with paragraph (a) are to be disregarded; and
   (c) any act or transaction inconsistent with paragraph (a) is taken not to have been done or not to have occurred, as the case may be; and
   (d) Telecom as it existed at any time before the succession day is taken to have had at that time a share capital all the issued shares in which were beneficially owned by the Commonwealth; and
   (e) OTC as it existed at any time before the succession day is taken to have had at that time a share capital all the issued shares in which were beneficially owned by the Commonwealth.

(3) The effect that this section has in relation to a set of merging entities and the merged entity in relation to that set is in addition to, and does not prejudice, the effect that this section has in relation to another set of merging entities and the merged entity in relation to that other set.
Division 2—Application of Commonwealth laws

29 General application of Commonwealth laws

Subject to section 26, the laws of the Commonwealth apply to Telstra according to their tenor, and so far as they are capable of applying, except to the extent that Telstra is exempted from the application of a particular law or class of laws by express provision of this Act or of any other law of the Commonwealth.

30 Lands Acquisition Act

The Lands Acquisition Act 1989 does not apply to:

(a) the acquisition by Telstra by agreement of; or
(b) the disposal by Telstra of; or
(c) any other dealing by Telstra in;
land or an interest in land.

31 Public Works Committee Act

The Public Works Committee Act 1969 does not apply to Telstra.

32 Corporations Act

Section 186 and paragraph 461(d) of the Corporations Act 2001 do not apply to Telstra.
Division 3—Application of State and Territory Laws

33 Laws relating to buildings, structures and facilities

A law of a State or Territory that relates to:
(a) the standards applicable to:
   (i) the design; or
   (ii) the manner of the construction;
   of a building, structure or facility; or
(b) the approval of the construction of a building, structure or facility; or
(c) the occupancy, or use, of a building, structure or facility; or
(d) the alteration or demolition of a building, structure or facility;
does not apply to a building, structure or facility that is the property of Telstra if:
(e) the building, structure or facility was occupied or in use; or
(f) the construction, alteration or demolition of the building, structure or facility had commenced;
before the succession date.

34 Environment protection laws

(1) Telstra is not subject, under a law of a State or Territory relating to the protection of the environment, to any requirement, obligation, liability, penalty or disability in respect of any act or omission by a former telecommunications corporation or by a person who was a director or employee of such a corporation.

(2) A person who was at any time a director or employee of a former telecommunications corporation is not subject, under a law of a State or Territory relating to the protection of the environment, to any requirement, obligation, liability, penalty or disability in respect of any act or omission by that corporation or by that person in the course of the performance of his or her duties as a director or employee of that corporation.

(3) This section does not exempt Telstra or an employee of Telstra from the application of a law of a State or Territory relating to the
protection of the environment in respect of an act or omission by Telstra or that employee that occurs on or after the succession date.
Part 8—Miscellaneous

35 Certain instruments to continue in force

Subject to the regulations, each instrument (including a legislative instrument other than this Act) subsisting immediately before the succession day:

(a) to which a former telecommunications corporation was a party; or
(b) that was given to or in favour of such a corporation; or
(c) that refers to such a corporation; or
(d) under which:
   (i) money is, or may become, payable to or by such a corporation; or
   (ii) other property is to be, or may become liable to be, transferred to or by such a corporation;

continues to have effect according to its tenor on and after the succession day except that a reference in the instrument to a former telecommunications corporation is taken on and after that day to be a reference to Telstra.

36 Audit

(3) The Auditor-General is taken to have been appointed under section 327 of the Corporations Act 2001 as auditor of Telstra with effect from its formation.

(3A) However, the rule in subsection (3) does not prevent the members of the Board from appointing another person or firm to be an additional auditor of Telstra. Such an appointment must comply with subsection 327(7) of the Corporations Act 2001. Before making such an appointment, the members of the Board must consult the Auditor-General. The Corporations Act 2001 has effect as if the additional auditor had been appointed under subsection 327(5) of that Act.

(4) Sections 328 and 329 of the Corporations Act 2001 do not apply in relation to the Auditor-General’s appointment as auditor of Telstra.
Section 37

(5) Nothing done, or omitted to be done, by the Auditor-General as auditor of Telstra makes the Auditor-General liable to be prosecuted for an offence.

(6) For the purposes of this section, if a provision of the Corporations Act 2001 referred to in this section is repealed and replaced by another provision of that Act that deals with a corresponding matter, a reference in this section to the first-mentioned provision is to be read as a reference to the replacement provision.

37 Pending proceedings

Where, immediately before the succession day, proceedings (including arbitration proceedings) to which a former telecommunications corporation was a party were pending or existing in any court or tribunal, then, on and after the succession day, Telstra is substituted for the former corporation as a party to the proceedings.

38 Registration of interests in land

Where:

(a) under this Act, land that is situated in a State or Territory, or an interest in such land, becomes land, or an interest in land, of Telstra; and

(b) there is lodged with the Registrar of Titles or other proper officer of the State or Territory in which the land is situated a certificate that:

(i) is signed by an authorised person; and

(ii) identifies the land or interest, whether by reference to a map or otherwise; and

(iii) states that the land or interest has, under this section, become land, or an interest in land, of Telstra;

the officer with whom the certificate is lodged may:

(c) register the matter in like manner to the manner in which dealings in land or interests in land of that kind are registered; and

(d) deal with, and give effect to, the certificate.
39 Transfer to Telstra of employees of former corporation

(1) A person who was an employee of a former telecommunications corporation immediately before the succession day is taken:
   (a) to have been engaged by Telstra as an employee of Telstra with effect from the succession day; and
   (b) to have been so engaged on the same terms and conditions as those that applied to the person, immediately before the succession day, as an employee of the former corporation; and
   (c) to have accrued an entitlement to benefits, in connection with that engagement by Telstra, that is equivalent to the entitlement that the person had accrued, as an employee of the former corporation, immediately before the succession day.

(2) The service of a transferred employee as an employee of Telstra is taken for all purposes to have been continuous with the service of the employee, immediately before the succession day, as an employee of the former corporation.

(3) A transferred employee is not entitled to receive any payment or other benefit merely because he or she ceased to be an employee of the former corporation by virtue of this Act or the repeal of the *Australian Telecommunications Corporation Act 1989* or of the *OTC Act 1946*, as the case may be.

(4) A director, secretary or auditor of the former corporation does not, because of the operation of this Act, become a director, secretary or auditor of Telstra.

40 Judicial notice of seals

For the purposes of Part 4, all courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of Telecom or of the Overseas Telecommunications Commission (Australia) appearing on a document and must presume that the seal was duly affixed.

41 Compensation for acquisition of property

(1) Where, but for this section, the operation of this Act (other than Part 2, 2A or 2B) would result in the acquisition of property from a
person otherwise than on just terms, there is payable to the person by Telstra such reasonable amount of compensation as is agreed on between the person and Telstra or, failing agreement, as is determined by a court of competent jurisdiction.

(2) Any damages or compensation recovered, or other remedy given, in proceedings that are brought otherwise than under this section must be taken into account in assessing compensation payable in proceedings that are brought under this section and arise out of the same event or transaction.

42 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
Part 9—Social bonus resulting from the partial sale of Telstra

Division 1—Introduction

43 Simplified outline

The following is a simplified outline of this Part:

- This Part provides for a social bonus resulting from the partial sale of Telstra.
- The elements of the social bonus are as follows:
  
  (a) rural transaction centres ($70 million over 5 years);
  
  (b) extended access to untimed local calls ($150 million over 3 years);
  
  (c) meeting the telecommunications needs of people in remote island communities, isolated island communities or the Australian Antarctic Territory ($20 million over 3 years);
  
  (d) Internet access for people in rural or regional areas ($36 million over 3 years);
  
  (e) mobile phone coverage along highways ($25 million over 3 years);
  
  (f) a Television Fund to enable improved television reception, to extend coverage of SBS television, and to support a New Media Unit to be established within the SBS ($120 million over 5 years).

44 Definitions

In this Part:

Telstra Corporation Act 1991
carriage service provider has the same meaning as in the

interim period means the period:
(a) beginning at the commencement of this section; and
(b) ending immediately before the social bonus commencement
day.

proceeds of the sale of shares in Telstra includes:
(a) an amount received by the Commonwealth directly or
indirectly from:
   (i) the sale-scheme trustee; or
   (ii) an investor in Telstra;
under a Telstra sale scheme; and
(b) an amount received by the Commonwealth by way of the
redemption of redeemable preference shares in Telstra held
by the Commonwealth, where the redemption was in
accordance with a Telstra sale scheme.

Regional Telecommunications Infrastructure Account means the
Special Account known as the Regional Telecommunications
Infrastructure Account.

social bonus commencement day has the meaning given by
section 45.

State includes the Australian Capital Territory and the Northern
Territory.

45 Social bonus commencement day

(1) If, in the opinion of the Minister, a particular day is the day on
which the total amount received by the Commonwealth, after the
commencement of this section, by way of proceeds of the sale of
shares in Telstra first reaches $671 million, the Minister must, by
written instrument, declare the day to be the social bonus
commencement day.

(2) The declaration has effect accordingly.

(3) A copy of the declaration must be published in the Gazette within
21 days after the social bonus commencement day.
Part 9 Social bonus resulting from the partial sale of Telstra
Division 4 Supplementation of the Regional Telecommunications Infrastructure Account

Section 58

Division 4—Supplementation of the Regional Telecommunications Infrastructure Account

58 Meeting the telecommunications needs of people in isolated or remote island communities or the Australian Antarctic Territory

(1) As soon as practicable after the social bonus commencement day, $20 million is to be credited to the Regional Telecommunications Infrastructure Account.

(2) Amounts standing to the credit of the Regional Telecommunications Infrastructure Account that represent an amount credited under subsection (1) may only be debited and paid by the Commonwealth for the following purposes:
   (a) the purpose of assisting in meeting the telecommunications needs of people in remote island communities, isolated island communities or the Australian Antarctic Territory;
   (b) a purpose incidental or ancillary to the above purpose;
   (c) the making of grants of financial assistance for either of the above purposes.

(3) The purposes of the Regional Telecommunications Infrastructure Account are taken to include each purpose set out in subsection (2).

(4) Amounts standing to the credit of the Regional Telecommunications Infrastructure Account that represent an amount credited under subsection (1) must not be debited and paid by the Commonwealth after:
   (a) 30 June 2002; or
   (b) if the Minister, by notice published in the Gazette, specifies a later day and that later day is earlier than 1 July 2003—that later day.

(5) During the interim period, the Minister for Finance may, by notice published in the Gazette, determine that a specified amount is to be credited to the Regional Telecommunications Infrastructure Account by way of an advance on account of the amount that may be credited to the Regional Telecommunications Infrastructure Account.

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Account under subsection (1). The determination has effect accordingly.

(6) For each $1 credited under subsection (5), the amount credited under subsection (1) is to be reduced by $1.

(7) Subsection (2) applies to an amount credited under subsection (5) in a corresponding way to the way in which it applies to an amount credited under subsection (1).

(8) For the purposes of this section, the following are examples of remote or isolated island communities:
   (a) islands in the Torres Strait;
   (b) islands in the Cocos (Keeling) group;
   (c) Christmas Island;
   (d) Norfolk Island;
   (e) King Island;
   (f) Flinders Island;
   (g) Kangaroo Island.

59 Internet access for people in rural and regional areas

(1) As soon as practicable after the social bonus commencement day, $36 million is to be credited to the Regional Telecommunications Infrastructure Account.

(2) Amounts standing to the credit of the Regional Telecommunications Infrastructure Account that represent an amount credited under subsection (1) may only be debited and paid by the Commonwealth for the following purposes:
   (a) the purpose of facilitating the provision of Internet access for people in rural or regional areas, being access at a reasonable cost and involving a reasonable bandwidth;
   (b) a purpose incidental or ancillary to the above purpose;
   (c) the making of grants of financial assistance for either of the above purposes.

Note: An example of a purpose mentioned in paragraph (a) is increasing the number of Internet points of presence in rural or regional areas.

(3) The purposes of the Regional Telecommunications Infrastructure Account are taken to include each purpose set out in subsection (2).
Section 60

(4) Amounts standing to the credit of the Regional Telecommunications Infrastructure Account that represents an amount credited under subsection (1) must not be debited and paid by the Commonwealth after:
   (a) 30 June 2002; or
   (b) if the Minister, by notice published in the Gazette, specifies a later day and that later day is earlier than 1 July 2003—that later day.

(5) During the interim period, the Minister for Finance may, by notice published in the Gazette, determine that a specified amount is to be credited to the Regional Telecommunications Infrastructure Account by way of an advance on account of the amount that may be credited to the Regional Telecommunications Infrastructure Account under subsection (1). The determination has effect accordingly.

(6) For each $1 credited under subsection (5), the amount credited under subsection (1) is to be reduced by $1.

(7) Subsection (2) applies to an amount credited under subsection (5) in a corresponding way to the way in which it applies to an amount credited under subsection (1).

60 Mobile phone coverage along highways

(1) As soon as practicable after the social bonus commencement day, $25 million is to be credited to the Regional Telecommunications Infrastructure Account.

(2) Amounts standing to the credit of the Regional Telecommunications Infrastructure Account that represent an amount credited under subsection (1) may only be debited and paid by the Commonwealth for the following purposes:
   (a) the purpose of facilitating mobile phone coverage along highways;
   (b) a purpose incidental or ancillary to the above purpose;
   (c) the making of grants of financial assistance for either of the above purposes.

(3) The purposes of the Regional Telecommunications Infrastructure Account are taken to include each purpose set out in subsection (2).
(4) Amounts standing to the credit of the Regional Telecommunications Infrastructure Account that represent an amount credited under subsection (1) must not be debited and paid by the Commonwealth after:
   (a) 30 June 2002; or
   (b) if the Minister, by notice published in the Gazette, specifies a later day and that later day is earlier than 1 July 2003—that later day.

(5) During the interim period, the Minister for Finance may, by notice published in the Gazette, determine that a specified amount is to be credited to the Regional Telecommunications Infrastructure Account by way of an advance on account of the amount that may be credited to the Regional Telecommunications Infrastructure Account under subsection (1). The determination has effect accordingly.

(6) For each $1 credited under subsection (5), the amount credited under subsection (1) is to be reduced by $1.

(7) Subsection (2) applies to an amount credited under subsection (5) in a corresponding way to the way in which it applies to an amount credited under subsection (1).

61 Grant of financial assistance to a State

(1) This section applies if:
   (a) an amount is to be debited from the Regional Telecommunications Infrastructure Account for the purpose of making a grant of financial assistance to a State; and
   (b) the grant is covered by this Division.

(2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State.

(3) An agreement under subsection (2) may be entered into by the Secretary to the Department on behalf of the Commonwealth.

62 Grant of financial assistance to a person other than a State

(1) This section applies if:
Section 62

(a) an amount is to be debited from the Regional Telecommunications Infrastructure Account for the purpose of making a grant of financial assistance to a person other than a State; and

(b) the grant is covered by this Division.

(2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person.

(3) An agreement under subsection (2) may be entered into by the Secretary to the Department on behalf of the Commonwealth.
Division 6—Delegation

69 Delegation by Minister

(1) The Minister may, by writing, delegate to:
   (a) the Secretary to the Department; or
   (b) an SES employee, or acting SES employee, in the Department;
   all or any of the Minister’s powers under this Part.

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

70 Delegation by Minister for Transport and Regional Services

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

(2) The delegate is, in the exercise of the power delegated under subsection (1), subject to the directions of the Minister for Transport and Regional Services.

71 Delegation by Secretary to the Department

(1) The Secretary to the Department may, by writing, delegate to an SES employee, or acting SES employee, in the Department all or any of the powers conferred on the Secretary by this Part.

(2) The delegate is, in the exercise of the power delegated under subsection (1), subject to the directions of the Secretary to the Department.
Schedule Ownership definitions

Clause 1

Schedule—Ownership definitions

1 Object

The object of this Schedule is to define terms used in Part 2A (which deals with ownership restrictions).

2 Definitions

In Part 2A and this Schedule, unless the contrary intention appears:

acquisition includes an agreement to acquire, but does not include:
(a) an acquisition by will or by devolution by operation of law;
or
(b) an acquisition by way of enforcement of a loan security.

aggregate substantial interest, in relation to a trust estate, has the meaning given by clause 13.

agreement means any agreement, whether formal or informal and whether express or implied.

arrangement has the meaning given by clause 4.

associate has the meaning given by clause 5.

company means a body corporate.

constituent document, in relation to a company, means:
(a) the memorandum and articles of association of the company; or
(b) any rules or other documents constituting the company or governing its activities.

direct control interest has the meaning given by clause 12.

director includes any person occupying the position of director of a company, by whatever name called.
discretionary trust means a trust where:
(a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and
(b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
   (i) the identities of those who may benefit under the trust;
   (ii) how beneficiaries are to benefit, as between themselves, under the trust.

foreign citizen means an individual who is not an Australian citizen.

foreign company means a company incorporated outside Australia.

foreign person means:
(a) a foreign citizen not ordinarily resident in Australia; or
(b) a company where:
   (i) a foreign citizen not ordinarily resident in Australia; or
   (ii) a foreign company;
   holds a particular type of stake in the company of 15% or more; or
(c) a company where a group of 2 or more persons, each of whom is either:
   (i) a foreign citizen not ordinarily resident in Australia; or
   (ii) a foreign company;
   holds, in total, a particular type of stake in the company of 40% or more; or
(d) the trustee of a trust estate in which a foreign citizen not ordinarily resident in Australia or a foreign company holds a substantial interest; or
(e) the trustee of a trust estate in which 2 or more persons, each of whom is either a foreign citizen not ordinarily resident in Australia or a foreign company, hold an aggregate substantial interest.

group includes:
(a) one person alone; or
Clause 2

(b) a number of persons, even if they are not in any way associated with each other or acting together.

*increase*, in relation to a stake in a company, includes an increase from a starting point of nil.

*interest in a share* has the meaning given by clause 8.

*lending money* includes providing non-equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.

*loan security* means a security held solely for the purposes of a moneylending agreement.

*moneylending agreement* means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.

*officer*, in relation to a company, includes:

(a) a director, secretary or employee of the company; or

(b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; or

(c) a liquidator of the company appointed in a voluntary winding-up.

*ordinarily resident in Australia* has the meaning given by clause 3.

*ownership provisions* means Part 2A and this Schedule.

*power to appoint a director of a company* has a meaning affected by clause 6.

*relative*, in relation to a person, means:

(a) the person’s spouse; or

(b) another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person; or

(c) a parent or remoter lineal ancestor of the person; or

(d) a son, daughter or remoter issue of the person; or

(e) a brother or sister of the person.
scheme means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

share, in relation to a company, means a share in the share capital of the company, and includes:

(a) stock into which any or all of the share capital of the company has been converted; or

(b) an interest in such a share or in such stock.

stake, in relation to a company, has the meaning given by clause 11.

substantial interest, in relation to a trust estate, has the meaning given by clause 13.

sub-underwriter, in relation to an issue of shares, means a person who is a party to an agreement with an underwriter that obliges the first-mentioned person to subscribe for any of the shares in circumstances specified in the agreement.

underwriter, in relation to an issue of shares, means a person who is a party to an agreement with the company issuing the shares that includes a provision obliging the person to subscribe for any of the shares in the event of a shortfall in public subscriptions below an amount specified in the agreement.

voting power has the meaning given by clause 10.

3 When foreign citizens are ordinarily resident in Australia

For the purposes of the ownership provisions, a foreign citizen is ordinarily resident in Australia at a particular time if, and only if:

(a) the foreign citizen has been in Australia during 200 or more days in the period of 12 months immediately preceding that time; and

(b) at that time, one of the following subparagraphs applies:

(i) the foreign citizen is in Australia and has permission to remain in Australia indefinitely;
Clause 4

(ii) the individual is not in Australia but has a right to re-enter Australia and, on re-entry, to be granted permission to remain in Australia indefinitely;
(iii) the individual is in Australia and has a special category visa under section 32 of the Migration Act 1958;
(iv) the individual is not in Australia, is a New Zealand citizen, holds a New Zealand passport and, on re-entry to Australia, would have the right to be granted a special category visa under section 32 of the Migration Act 1958.

4 Entering into an agreement or arrangement

(1) For the purposes of the ownership provisions, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.

(2) A reference in the ownership provisions to entering into an agreement or arrangement includes a reference to altering or varying an agreement or arrangement.

(3) A reference in the ownership provisions to entering into an arrangement is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:
   (a) entering into an agreement; or
   (b) creating a trust, whether express or implied; or
   (c) entering into a transaction;
and a reference in the ownership provisions to an arrangement is to be construed accordingly.

(4) A reference in the ownership provisions to a moneylending agreement does not include a reference to a moneylending agreement.

5 Associates

(1) For the purposes of the ownership provisions, the following persons are associates of a person:
   (a) a relative of the person;
   (b) a partner of the person;

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(c) a company of which the person is an officer;
(d) if the person is a company—an officer of the company;
(e) an employee or employer of the person;
(f) an officer of a company of which the person is an officer;
(g) an employee of an individual of whom the person is an employee;
(h) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subclause benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts;
(i) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person;
(j) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company;
(k) a company in which the person has, apart from this paragraph, a particular type of stake of not less than 15%;
(l) if the person is a company—a person who holds, apart from this paragraph, a particular type of stake in the company of not less than 15%;
(m) a person who is, because of this subclause, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph).

(2) If a person (the **first person**) enters, or proposes to enter, into an arrangement with another person (the **second person**) that relates to any of the following matters:

(a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company;
(b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company;
(c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions,
Clause 6

instructions or wishes of the first person and the second person acting together;
then, the second person is taken to be an associate of the first person for the purposes of the application of a provision of the ownership provisions in relation to the matter concerned.

6 Power to appoint director

(1) A reference in the ownership provisions to a power to appoint a director includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.

(2) For the purposes of the ownership provisions, a person is taken to have the power to appoint a director if:
   (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment; or
   (b) a person’s appointment as a director of the company follows necessarily from that person being a director or other officer of the first-mentioned person.

7 Meaning of entitled to acquire

For the purposes of the ownership provisions, a person is entitled to acquire any thing if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

8 Meaning of interest in a share

(1) Subject to this clause, for the purposes of the ownership provisions, a person holds an interest in a share if the person has any legal or equitable interest in the share.

(2) For the purposes of the ownership provisions, a person is taken to hold an interest in a share if:
   (a) the person has entered into a contract to purchase the share; or
   (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person’s order (whether the right is
exercisable presently or in the future and whether or not on the fulfilment of a condition); or

(c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

(d) the person is otherwise entitled to acquire the share or an interest in the share; or

(e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.

(3) Subclause (2) does not, by implication, limit subclause (1).

(4) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.

(5) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.

(6) An interest in a share is not to be disregarded only because of:

(a) its remoteness; or
(b) the manner in which it arose; or
(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

9 Certain interests in shares to be disregarded

(1) For the purposes of the ownership provisions, the following interests must be disregarded:

(a) an interest in a share in Telstra held by the sale-scheme trustee in accordance with the sale-scheme trust deed;
(b) an interest in a share held by a person whose ordinary business includes the lending of money if the person holds the interest as a loan security;
(c) an interest in a share held by a person, being an interest held by the person because the person holds a prescribed office;
(d) an interest of a prescribed kind in a share, being an interest held by such persons as are prescribed.

(2) For the purposes of the ownership provisions, if:
   (a) a person holds an interest in a share as a loan security; and
   (b) the ordinary business of the person includes the lending of money; and
   (c) the loan security is enforced; and
   (d) as a result of the enforcement of the loan security, the person becomes the holder of the share; and
   (e) the person holds the share for a continuous period (the *holding period*) beginning at the time when the security was enforced;
   the person’s interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:
   (f) the period of 90 days beginning when the security was enforced;
   (g) if the Minister, by written notice given to the person, allows a longer period—the end of that longer period.

(3) For the purposes of the ownership provisions, if:
   (a) a person acquires an interest in a share in Telstra; and
   (b) the interest was acquired in the person’s capacity as an underwriter or a sub-underwriter under a Telstra sale scheme;
   the person’s interest in the share must be disregarded at all times during whichever of the following periods is applicable:
   (c) the period of 90 days beginning when the person acquired the interest;
   (d) if the Minister, by written notice given to the person, allows a longer period—that longer period.

10 Voting power

(1) A reference in the ownership provisions to the *voting power* in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
   (a) the making of distributions of capital or profits of the company to its shareholders;

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Clause 11

(b) the constituent document of the company;
(c) any variation of the share capital of the company.

(2) A reference in the ownership provisions to control of the voting power in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
   (a) whether or not having legal or equitable force; and
   (b) whether or not based on legal or equitable rights.

(3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this clause.

(4) If a company:
   (a) is limited both by shares and by guarantee; or
   (b) does not have a share capital;
this clause has effect as if the members or policy holders of the company were shareholders in the company.

11 Stake in a company

(1) A particular type of stake that a person holds in a company at a particular time is the aggregate of:
   (a) the direct control interests in the company of that type that the person holds at that time; and
   (b) the direct control interests in the company of that type held at that time by associates of the person.

(2) In calculating the stake that a person holds in a company, a direct control interest held because of subclause 12(5) is not to be counted under paragraph (1)(a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under paragraph (1)(b).

(3) For the purpose of calculating the total of the stakes of a particular type that a group of persons holds in a company, if a particular stake that a person holds in a company would be counted more than once because the person is an associate of one or more other persons in the group, that interest is to be counted only once.
Clause 12

12 Direct control interests in a company

(1) A person holds a direct control interest in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.

(2) A person also holds a direct control interest in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.

(3) A person also holds a direct control interest in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.

(4) A person also holds a direct control interest in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.

(4A) In determining the direct control interest of a particular type that a person holds in Telstra, it is to be assumed that the only shares in Telstra are the shares held by persons other than the Commonwealth.

(4AA) For the purposes of subclause (4A), if a share in Telstra is an investment of the Future Fund or the Communications Fund, the share is taken to be held by a person other than the Commonwealth.

(4AB) For the purposes of subclause (4A), if:

(a) a share in Telstra is held by the Commonwealth; and
(b) the share is specified in a written declaration made by the Minister for Finance under this paragraph;

the share is taken to be held by a person other than the Commonwealth.

Note: For specification by class, see subsection 13(3) of the Legislative Instruments Act 2003.

(4B) For the purposes of subclauses (4A), (4AA) and (4AB), share does not include an interest in a share.
(5) Subject to subclause (6), if:
   (a) a person holds a particular type of direct control interest 
       (including a direct control interest that is taken to be held 
       because of one or more previous applications of this 
       subclause) in a company (the first level company); and 
   (b) the first level company holds the same type of direct control 
       interest in another company (the second level company); 
the person is taken to hold that type of direct control interest in the 
second level company equal to the percentage worked out using the 
formula:

\[
\text{First level percentage} \times \text{Second level percentage}
\]

where:

- **first level percentage** means the percentage of the direct control 
  interest held by the person in the first level company. 
- **second level percentage** means the percentage of the direct control 
  interest held by the first level company in the second level 
  company. 

(6) In determining, for the purposes of paragraph 8BG(a) or 
subparagraph 8BH(b)(ii), the total of the stakes of a particular type 
that a group of foreign persons holds in Telstra, if:
   (a) a foreign company (the first company) holds that type of 
       direct control interest in Telstra; and 
   (b) in a case where that interest is held because of 
       subclause (5)—that interest was not worked out under that 
       subclause on the basis that one or more foreign companies 
       were interposed between the first company and Telstra; and 
   (c) apart from this subclause, a foreign person other than the first 
       company would be taken under subclause (5) to hold that 
       type of direct control interest in Telstra equal to a particular 
       percentage; and 
   (d) the direct control interest mentioned in paragraph (c) was 
       worked out under subclause (5) directly or indirectly by 
       reference to the direct control interest mentioned in 
       paragraph (a); 
the direct control interest mentioned in paragraph (c) is not to be 
counted.
Schedule  Ownership definitions

Clause 13

(7) For the purposes of subclause (6), a foreign company is a company that is a foreign person.

(8) A declaration under paragraph (4AB)(b) is a legislative instrument for the purposes of the Legislative Instruments Act 2003, but section 42 of that Act does not apply to the declaration.

13 Substantial interests in trust estates

(1) For the purposes of the ownership provisions:

(a) a person is taken to hold a substantial interest in a trust estate if the person, alone or together with an associate or associates, holds a beneficial interest in not less than 15% of the corpus or income of the trust estate; and

(b) 2 or more persons are taken to hold an aggregate substantial interest in a trust estate if the persons, together with an associate or associates, hold, in the aggregate, beneficial interests in not less than 40% of the corpus or income of the trust estate.

(2) For the purposes of subclause (1), if, under the terms of a trust, a trustee has a power or discretion as to the distribution of the income or corpus of the trust estate to beneficiaries, each beneficiary is taken to hold a beneficial interest in the maximum percentage of income or corpus of the trust estate that the trustee is empowered to distribute to that beneficiary.
Notes to the *Telstra Corporation Act 1991*

Note 1

The *Telstra Corporation Act 1991* as shown in this compilation comprises Act No. 79, 1991 amended as indicated in the Tables below.

The *Telstra (Transition to Full Private Ownership) Act 2005* (No. 118, 2005) was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006* (No. 1) (SLI 2006 No. 50) [see Note 2].

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitions) Act 2001*, see Act No. 55, 2001.

For application, saving or transitional provisions made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*, see Act No. 45, 2005.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

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Act Notes

(a) The Australian and Overseas Telecommunications Corporation Act 1991 was amended by sections 3–6 only of the Transport and Communications Legislation Amendment Act 1991, subsection 2(1) of which provides as follows:

   (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(b) The Telstra Corporation Act 1991 was amended by subsections 3(1) and (2) only of the Transport and Communications Legislation Amendment Act 1994, subsection 2(1) of which provides as follows:

   (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(c) The Telstra Corporation Act 1991 was amended by Schedule 1 (items 56–66) only of the Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997, subsection 2(2)(d) of which provides as follows:

   (2) The following provisions commence on 1 July 1997:

   (d) Schedule 1;

(d) The Telstra Corporation Act 1991 was amended by Schedule 2 (item 1248) only of the Audit (Transitional and Miscellaneous) Amendment Act 1997, subsection 2(2) of which provides as follows:

   (2) Schedules 1, 2 and 4 commence on the same day as the Financial Management and Accountability Act 1997.

(e) The Telstra Corporation Act 1991 was amended by Schedule 3 (items 65–68) only of the Telecommunications Legislation Amendment Act 1999, subsection 2(4) of which provides as follows:

   (4) Subject to subsection (5), Schedule 3 commences on the commencement of section 1 of the Telecommunications (Consumer Protection and Service Standards) Act 1999.

(f) The Telstra Corporation Act 1991 was amended by Schedule 1 (items 923–931) only of the Public Employment (Consequential and Transitional) Amendment Act 1999, subsections 2(1) and (2) of which provide as follows:

   (1) In this Act, commencing time means the time when the Public Service Act 1999 commences.

   (2) Subject to this section, this Act commences at the commencing time.

(g) The Telstra Corporation Act 1991 was amended by Schedule 1 (items 166–174) only of the Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001, subsection 2(1)(a) of which provides as follows:

   (1) Subject to this section, this Act commences at the latest of the following times:

   (a) immediately after the commencement of item 15 of Schedule 1 to the Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000;


(h) The Telstra Corporation Act 1991 was amended by Schedule 3 (items 516–548) only of the Corporations (Repeals, Consequentials and Transitionals) Act 2001, subsection 2(3) of which provides as follows:

   (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the Corporations Act 2001.

(i) The Telstra Corporation Act 1991 was amended by Schedule 1 (items 347–363) only of the Financial Services Reform (Consequential Provisions) Act 2001, subsections 2(1) and (6) of which provide as follows:

   (1) In this section:

   FSR commencement means the commencement of item 1 of Schedule 1 to the Financial Services Reform Act 2001.
(6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the
FSR commencement.

(j) Subsection 2(1) (item 2) of the Designs (Consequential Amendments) Act 2003 provides as
follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken
to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

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(k) Subsection 2(1) (items 2, 3 and 10) of the Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005 provide as follows:

(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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<td>3. Schedule 2</td>
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<td>10. Schedule 4</td>
<td>At the same time as section 6 of the Australian Communications and Media Authority Act 2005 commences.</td>
<td>1 July 2005</td>
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(l) Subsection 2(1) (item 4) of the Telecommunications Legislation Amendment (Future Proofing and Other Measures) Act 2005 provides as follows:

(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.

<table>
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<th>Provision(s)</th>
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</table>
| 4. Schedule 4, items 1 to 6 | The later of:
(a) the start of the day on which this Act receives the Royal Assent; and
(b) immediately after the commencement of Part 1 of Schedule 1 to the Telstra (Transition to Full Private Ownership) Act 2005. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. | 23 September 2005 (paragraph (b) applies) |
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Note 2

Telstra (Transition to Full Private Ownership) Act 2005 (No. 118, 2005) (as amended by the Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI 2006 No. 50))

The amendments made by the Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) commenced on 27 March 2006 and have been incorporated into this Note.

The following amendments commence on the designated day declared under section 3:

Schedule 1

57 Section 3
Insert:

*designated day* means the day declared under section 3 of the Telstra (Transition to Full Private Ownership) Act 2005.

58 Section 3
Insert:

*employee* includes apprentice.

59 Section 3
Insert:

*Long Service Leave Act* means the Long Service Leave (Commonwealth Employees) Act 1976 as in force immediately before the designated day.

60 Section 3
Insert:

*Maternity Leave Act* means the Maternity Leave (Commonwealth Employees) Act 1973 as in force immediately before the designated day.

61 Section 3
Insert:

**SRC Act** means the *Safety, Rehabilitation and Compensation Act 1988*.

### 62 Section 3

Insert:

Telstra body:

(a) in Divisions 1, 2 and 3 of Part 3A—has the meaning given by subsection 3B(1); and

(b) in the remaining provisions of this Act—has the meaning given by subsection 3B(2).

### 63 After section 3A

Insert:

3B Telstra body

*Divisions 1, 2 and 3 of Part 3A*

(1) A reference in Divisions 1, 2 and 3 of Part 3A to a Telstra body is a reference to:

(a) Telstra; or

(b) a body corporate that is a subsidiary of Telstra immediately before the day that is the first day after the commencement of Part 1 of Schedule 1 to the *Telstra (Transition to Full Private Ownership) Act 2005* on which a majority of the voting shares in Telstra are held by a person, or persons, other than the Commonwealth.

Remaining provisions

(2) A reference in any of the remaining provisions of this Act to a Telstra body is a reference to:

(a) Telstra; or

(b) a body corporate that is a subsidiary of Telstra.

*Future Fund and Communications Fund*

(3) For the purposes of subsection (1), if a share in Telstra is an investment of the Future Fund or the Communications Fund, the
share is taken to be held by a person other than the Commonwealth.

**Securities lending arrangements**

(4) For the purposes of subsection (1), if, under an agreement of the kind known as a securities lending arrangement:

   (a) at a particular time (the *disposal time*), the Commonwealth disposed of a share in Telstra (the *borrowed share*) to another person (the *borrower*); and

   (b) the Commonwealth may come under an obligation to:

      (i) re-acquire the borrowed share from the borrower at a later time; or

      (ii) acquire an identical share from the borrower at a later time;

the borrowed share is taken to be held by the Commonwealth during the period:

   (c) beginning at the disposal time; and

   (d) ending when the obligation mentioned in paragraph (b) is discharged or can no longer arise.

**Definition**

(5) In this section:

   the *Commonwealth* includes a category A hybrid-security issuer company.

64 Before Part 4

Insert:
Notes to the *Telstra Corporation Act 1991*

**Note 2**

**Part 3A—Transitional provisions relating to the sale by the Commonwealth of its remaining equity interest in Telstra**

**Division 1—Long service leave**

**9A Interpretation**

(1) Unless the contrary intention appears, expressions used in this Division that are also used in the Long Service Leave Act have the same meanings in this Division as in that Act.

(2) In this Division:

*combined service period*, in relation to an employee, means the total of:

(a) the period that was, immediately before the designated day, the employee’s period of service for the purposes of the Long Service Leave Act; and

(b) the period starting on the designated day during which the employee continues to be an employee of a Telstra body.

*employee* includes a person employed in a full-time or a part-time capacity.

*industrial instrument* means any of the following (within the meanings given by the *Workplace Relations Act 1996*):

(a) a workplace agreement;

(b) an award or a variation or order affecting an award;

(c) a transitional award or a variation or order affecting a transitional award;

(d) a pre-reform AWA;

(e) a pre-reform certified agreement;

(f) a preserved State agreement;

(g) a notional agreement preserving State awards.

*law* means:

(a) a law of the Commonwealth, a State or a Territory; or
(b) regulations or any other instrument (other than a determination or industrial instrument) made under such a law.

*post-sale long service leave rights*, in relation to an employee, means any long service leave rights the employee acquires under a determination or industrial instrument or law (other than this Act) on or after the designated day in relation to service on or after that day.

### 9B Long service leave for employees with less than 10 years service

(1) This section provides that, in certain circumstances, a Telstra body may grant long service leave to an employee whose period of service for the purposes of the Long Service Leave Act was less than 10 years.

(2) This section applies in relation to a person who was an employee of Telstra immediately before the designated day if, at that time, the employee’s period of service for the purposes of the Long Service Leave Act was less than 10 years.

(3) This section does not apply in relation to an employee who dies while in the employment of a Telstra body. Section 9D applies to such employees.

(4) If the employee continues to be employed by a Telstra body on and after the designated day until his or her combined service period is at least 10 years, the Telstra body may grant the employee long service leave on full salary for a period of up to the employee’s long service leave credit under subsection 9E(1).

(5) If:

(a) the employee ceases to be an employee of a Telstra body, on or after reaching the minimum retirement age, or because of retrenchment; and

(b) the employee’s combined service period at the time when he or she ceases to be an employee of the Telstra body is at least one year;

the Telstra body may grant the employee long service leave on full salary for a period of up to the employee’s long service leave credit under subsection 9E(1).
Note 2

(6) If a period of long service leave may be granted to an employee under subsection (4) or (5), the Telstra body may, if the employee asks in writing, grant the employee long service leave on half salary for a period that is not more than twice the first-mentioned period.

(7) Long service leave granted in the circumstances set out in subsection (5) is to be taken so as to end immediately before the employee ceases to be an employee.

(8) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 20 of the Long Service Leave Act if:
   (a) that section applied to the employee; and
   (b) for the expression “section 16 or 17” in that section there were substituted the expression “section 9C of the Telstra Corporation Act 1991”.

9C Payments in lieu of long service leave for employees with less than 10 years service

(1) This section provides that, in certain circumstances, a Telstra body must pay an amount in respect of long service leave to an employee who has not used all of his or her long service leave credit by taking long service leave under section 9B.

(2) This section applies in relation to a person who was an employee of Telstra immediately before the designated day if, at that time, the employee’s period of service for the purposes of the Long Service Leave Act was less than 10 years.

(3) This section does not apply in relation to an employee who dies while in the employment of a Telstra body. Section 9D applies to such employees.

(4) Subject to subsection (7), if the employee ceases to be an employee of a Telstra body on or after the day on which his or her combined service period reaches 10 years, the Telstra body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 9E(2).

(5) Subject to subsection (7), if:
(a) the employee ceases to be an employee of a Telstra body, on or after reaching the minimum retiring age, or because of retrenchment; and
(b) the employee’s combined service period at the time when he or she ceases to be an employee of the Telstra body is at least one year;
the Telstra body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 9E(2).

(6) Subject to subsection (7), if:
(a) the employee ceases to be an employee of a Telstra body;
and
(b) the Telstra body is satisfied that the employee left the Telstra body because of ill-health that justified his or her so leaving;
and
(c) when the employee left, his or her combined service period was at least one year;
the Telstra body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 9E(2).

(7) An employee may, by written notice given to a Telstra body before the employee ceases to be an employee of the Telstra body:
(a) request the Telstra body not to make a payment to the employee under this section; or
(b) request the Telstra body to make a payment under subsection (4), (5) or (6) of a stated amount that is less than the amount that would otherwise be payable under that subsection.

(8) The Telstra body must comply with a request made under subsection (7).

(9) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 21 of the Long Service Leave Act if:
(a) that section applied to the employee; and
(b) for the expression “sections 16 and 17” in that section there were substituted the expression “section 9C of the Telstra Corporation Act 1991”.

---

Telstra Corporation Act 1991

113
Note 2

9D Payments on the death of an employee

(1) This section applies in relation to a person who was an employee of Telstra immediately before the designated day if, at that time, the employee’s period of service for the purposes of the Long Service Leave Act was less than 10 years.

(2) If, on or after the designated day, the employee dies and, immediately before his or her death:
   (a) the employee was an employee of a Telstra body; and
   (b) the employee’s combined service period was at least one year; and
   (c) the employee had one or more dependants;
the Telstra body must make a payment to a dependant, or to 2 or more dependants, of the employee.

(3) The total amount of the payment or payments is the amount that would have been payable to the employee under section 9C if, on the day of his or her death, the employee had ceased to be an employee of the Telstra body on or after reaching the minimum retiring age.

(4) If subsection (2) applies, section 23 of the Long Service Leave Act has effect as if:
   (a) that section applied to an employee of a Telstra body; and
   (b) a reference in that section to the approving authority were a reference to the Telstra body; and
   (c) for the expression “this Act” in that section there were substituted the expression “section 9D of the Telstra Corporation Act 1991”; and
   (d) for the expression “subsection 16(7) or 17(5)” in that section there were substituted the expression “section 9D of the Telstra Corporation Act 1991”.

9E Employee’s long service leave credit for the purposes of sections 9B and 9C

(1) For the purposes of section 9B, an employee’s long service leave credit is equal to the long service leave credit that the employee would have under the Long Service Leave Act for the period:
   (a) starting when the employee started his or her period of service; and
Note 2

(b) ending on the designated day;
if the employee had been retrenched on the designated day.

(2) For the purposes of section 9C, an employee’s long service leave
credit is the employee’s long service leave credit worked out under
subsection (1) of this section reduced by any long service leave
credit used under section 9B.

9F Division not to affect an employee’s post-sale long service leave
rights

To avoid doubt, this Division does not affect an employee’s
post-sale long service leave rights.

9G Saving—Long Service Leave Act

If, immediately before the designated day, the period of service
under the Long Service Leave Act of an employee of Telstra was at
least 10 years, then:

(a) the employee’s accrued rights under the Long Service Leave
Act continue; and

(b) the Long Service Leave Act has effect on and after the
designated day in relation to the employee as if Telstra were
an approving authority for the purposes of that Act.

Division 2—Operation of the Safety, Rehabilitation and
Compensation Act 1988

9H Operation of section 128A of the SRC Act

On and after the designated day, section 128A of the SRC Act
continues to apply to Telstra as if Telstra were still a prescribed
Commonwealth authority for the purposes of that section.

Division 3—Retirement benefits

9J Deferred benefits under the Defence Force Retirement and Death
Benefits Act 1973

(1) This section applies if, immediately before the designated day, an
employee of a Telstra body was a person to whom deferred
Note 2

benefits were applicable under section 78 of the Defence Force Retirement and Death Benefits Act 1973.

(2) For the purposes of Division 3 of Part IX of the Defence Force Retirement and Death Benefits Act 1973, the employee is taken to continue in public employment, on and after the designated day, while the employee continues to be employed by a Telstra body.

(3) This section is subject to Division 3 of Part IX of the Defence Force Retirement and Death Benefits Act 1973.

9K  Period of eligible employment for the purposes of Division 3 of Part IX of the Defence Force Retirement and Death Benefits Act 1973

(1) This section applies if, immediately before the designated day, a particular period of employment of a person by a Telstra body was a period of eligible employment for the purposes of Division 3 of Part IX of the Defence Force Retirement and Death Benefits Act 1973.

(2) If employment by the Telstra body ceases to be eligible employment for the purposes of Division 3 of Part IX of the Defence Force Retirement and Death Benefits Act 1973 on the designated day, then, despite that cessation, the period of employment continues to be a period of eligible employment for the purposes of that Division.

9L  Application of the Superannuation Act 1976

If an employee of a Telstra body was an eligible employee for the purposes of the Superannuation Act 1976 immediately before the designated day, the employee is taken to have ceased to be an eligible employee for the purposes of that Act on the designated day.

Division 4—Other transitional and saving provisions

9M  Telstra employees not on maternity leave immediately before the designated day

(1) This section applies if:
(a) immediately before the designated day, a woman was an employee of Telstra; and
(b) within 12 months after the designated day, the woman would have been entitled to begin leave granted under the Maternity Leave Act if Telstra had continued to be a prescribed authority for the purposes of that Act.

(2) On and after the designated day, the Maternity Leave Act continues to apply to the woman in relation to the confinement in respect of which she would have been entitled to leave as if Telstra continued to be a prescribed authority for the purposes of that Act.

9N Telstra employees on maternity leave on the designated day

(1) This section applies if:
(a) immediately before the designated day, a woman was an employee of Telstra; and
(b) on the designated day, the woman is on leave granted under the Maternity Leave Act.

(2) On and after the designated day, the Maternity Leave Act continues to apply to the woman in relation to the confinement in respect of which the leave was granted as if Telstra continued to be a prescribed authority for the purposes of that Act.

9P Saving—Crimes (Superannuation Benefits) Act 1989

(1) Subject to this section, if a person who was an employee of a Telstra body before the designated day committed a corruption offence while such an employee, then, on and after the designated day, the Crimes (Superannuation Benefits) Act 1989 continues to apply in relation to the person in respect of the offence as if the Telstra body continued to be a Commonwealth authority.

(2) A superannuation order may not be made under the Crimes (Superannuation Benefits) Act 1989 in relation to employer contributions or benefits paid or payable to a superannuation scheme by a Telstra body on or after the designated day.

(3) A superannuation scheme in relation to which employer contributions or benefits are paid or payable by a Telstra body is not a superannuation scheme for the purposes of the Crimes
Note 2

(Superannuation Benefits) Act 1989 in respect of a corruption offence committed by a person on or after the designated day.

(4) Despite paragraph 19(3)(d) of the Crimes (Superannuation Benefits) Act 1989, an order under that paragraph may only order that an amount be paid to the Commonwealth.

(5) If:
   (a) a person who was an employee of Telstra before the designated day committed a corruption offence while such an employee; and
   (b) the person was paid benefits before, on or after that day out of the Consolidated Revenue Fund;
then, despite paragraph 19(4)(b) of the Crimes (Superannuation Benefits) Act 1989, an order under that paragraph may only order that an amount be paid to the Commonwealth.

(6) Unless the contrary intention appears, expressions used in this section that are also used in the Crimes (Superannuation Benefits) Act 1989 have the same meanings in this section as in that Act.

9Q Saving—Director of Public Prosecutions Act 1983

Even though the Director of Public Prosecutions Act 1983 ceases to apply to certain acts, omissions or proceedings in connection with a Telstra body because the Telstra body ceases to be an authority of the Commonwealth for the purposes of that Act, that Act continues on and after the designated day to apply in relation to:
   (a) acts or omissions in connection with a Telstra body that occurred before the designated day; and
   (b) the taking of civil remedies connected with or arising out of a prosecution that relates to acts or omissions referred to in paragraph (a).

9R Refund of part of fee paid under section 104A of the SRC Act

(1) If:
   (a) Telstra has paid a licence fee under section 104A of the SRC Act; and
(b) part of the fee is attributable to the application of paragraph 104A(2)(b) of that Act to the relevant period in which the designated day occurs;

Comcare must pay Telstra the amount worked out using the following formula:

\[
\text{Applicable part of the fee} \times \frac{\text{Number of refund days}}{365}
\]

where:

- **applicable part of the fee** means the part of the fee mentioned in paragraph (b).
- **number of refund days** means the total number of days in the period beginning on the designated day and ending on the last day of the relevant period in which the designated day occurs.

(2) In this section:

- **relevant period** has the same meaning as in section 104A of the SRC Act.

### 65 Before subsection 36(3)

Insert:

1. The Auditor-General may, by written notice given to Telstra, resign as auditor of Telstra.

2. Subsections (3), (3A) and (4) are repealed at whichever is the earlier of the following times:
   - the time when the Auditor-General resigns in accordance with subsection (1);
   - the end of the first annual general meeting of Telstra held after the designated day.

2A Even if subsections (3), (3A) and (4) remain in effect until the end of the first annual general meeting of Telstra held after the designated day, a replacement auditor may be appointed at the meeting, in accordance with the *Corporations Act 2001*, as if a vacancy in the office of auditor had arisen at the start of the meeting.
Note 2

The following amendments commence on the 85% sale day declared under section 4:

Schedule 1

66 Section 8AA

Omit:

- This Part imposes reporting obligations on Telstra.

67 Division 3 of Part 2

Repeal the Division.

68 Subsection 8AW(1)

Omit “Division 3 or”, substitute “repealed Division 3 or under”.

69 Paragraph 8AX(1)(a)

Omit “Division 3 or”, substitute “repealed Division 3 or under”.

70 Subsection 8AY(1)

Omit “Division 3 or”, substitute “repealed Division 3 or under”.

71 Section 8AYA

Repeal the section.

72 Part 3

Repeal the Part.

As at 27 March 2006 the amendments are not incorporated in this compilation.
Table A

Application, saving or transitional provisions


Schedule 1

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

(1) This item applies to anything done by, or in relation to, AUSTEL under section 22 or 24 of the *Telstra Corporation Act 1991* before the commencement of this item.

(2) The *Telstra Corporation Act 1991* has effect, after the commencement of this item, as if the thing had been done by, or in relation to, the ACCC.

Audit (Transitional and Miscellaneous) Amendment Act 1997 (No. 152, 1997)

4 Some amendments in Schedule 2 may not take effect or may take effect in a modified way

(3) If:

(a) an Act is amended by Schedule 2; and

(b) the short title of the Act is changed on or before the commencement of that Schedule;

the amendment made by Schedule 2 has effect as an amendment of the Act under its new short title.

Schedule 4

1 This Schedule binds the Crown

This Schedule binds the Crown in right of the Commonwealth, but does not make the Crown liable to be prosecuted for an offence.

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Table A

2 This Schedule extends to things outside Australia
This Schedule extends to acts, omissions, matters and things outside Australia.

3 Interpretation
In this Schedule, unless the contrary intention appears:


4 Transfers from old Funds to new Funds
(2) If:
(a) immediately before the commencement of this Schedule, money was in an account (however described) that was established or continued in existence by an Act that is amended by Schedule 2 to this Act; and
the money must be transferred from that account to the component of the Reserved Money Fund that is established to replace that account.

(3) If an amendment made by Schedule 2 substitutes a component of the Reserved Money Fund for an account (however described), any reference in any Act or other instrument to that component is to be read as including a reference to the account for which it is substituted, unless the context otherwise requires.

8 Regulations
(2) In particular, regulations may be made:
(c) for other transitional matters arising out of the amendments made by Schedules 2 and 3.
Notes to the  Telstra Corporation Act 1991

Table A

Telecommunications Legislation Amendment Act 1999 (No. 52, 1999)

Schedule 3

77  Transitional—eligible instruments

(1) This item applies to an eligible instrument if:
   (a) the eligible instrument was in force immediately before the commencement of this item; and
   (b) the eligible instrument was made or given under, or for the purposes of, a particular provision of the Telecommunications Act 1997 or the Telstra Corporation Act 1991; and
   (c) that provision is repealed by this Schedule.

(3) In this item:

   eligible instrument means regulations, a declaration, a determination, a direction, a standard or any other instrument.

78  Transitional—acts or things done before commencement

(1) This item applies to an act or thing (other than the making of an eligible instrument) if:
   (a) the act or thing was done before the commencement of this item; and
   (b) the act or thing was done under, or for the purposes of, a particular provision of the Telecommunications Act 1997 or the Telstra Corporation Act 1991; and
   (c) that provision is repealed by this Schedule.

(3) In this item:

   eligible instrument means regulations, a declaration, a determination, a direction, a standard or any other instrument.

81  Transitional—section 151CM of the Trade Practices Act 1974

Section 151CM of the Trade Practices Act 1974 has effect, after the commencement of this item, as if the reference in that section to Part 9 of the Telecommunications (Consumer Protection and Service Telstra Corporation Act 1991 123
Table A


82 Transitional regulations

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

Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001 (No. 5, 2001)

4 Application of amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

(1) If:

(a) a decision or action is taken or another thing is made, given or done; and

(b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;

then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

(2) In this section:
Schedule 1

457 Saving of agreements
An agreement made under section 50 or 51 of the *Telstra Corporation Act 1991* that was in force immediately before the repeal of those sections by item 456 of this Schedule, continues in force, according to its terms, after the repeal.

459 Saving of agreements
An agreement made under section 56 or 57 of the *Telstra Corporation Act 1991* that was in force immediately before the repeal of those sections by item 458 of this Schedule, continues in force, according to its terms, after the repeal.

492 Saving of agreements
An agreement made under section 67 or 68 of the *Telstra Corporation Act 1991* that was in force immediately before the repeal of those sections by item 491 of this Schedule, continues in force, according to its terms, after the repeal.

496 Saving provision—Finance Minister’s determinations
If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

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*Telstra (Transition to Full Private Ownership) Act 2005* (No. 118, 2005)

3 Designated day

(1) If, in the opinion of the Minister, a particular day is the first day after the commencement of Part 1 of Schedule 1 on which a majority of the voting shares in Telstra are held by a person, or persons, other than the Commonwealth, the Minister must, by written instrument, declare the day to be the designated day for Telstra.

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Table A

(2) The declaration has effect accordingly.

*Future Fund and Communications Fund*

(3) For the purposes of this section, if a share in Telstra is an investment of the Future Fund or the Communications Fund, the share is taken to be held by a person other than the Commonwealth.

*Securities lending arrangements*

(4) For the purposes of this section, if, under an agreement of the kind known as a securities lending arrangement:

(a) at a particular time (the *disposal time*), the Commonwealth disposed of a share in Telstra (the *borrowed share*) to another person (the *borrower*); and

(b) the Commonwealth may come under an obligation to:
   
   (i) re-acquire the borrowed share from the borrower at a later time; or
   
   (ii) acquire an identical share from the borrower at a later time;

the borrowed share is taken to be held by the Commonwealth during the period:

(c) beginning at the disposal time; and

(d) ending when the obligation mentioned in paragraph (b) is discharged or can no longer arise.

*Declaration*

(5) The declaration under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the declaration.

(6) The designated day may be earlier than the day on which the declaration under subsection (1) is registered under the *Legislative Instruments Act 2003*.

*Definitions*

(7) In this section:

*category A hybrid-security issuer company* has the same meaning as in the *Telstra Corporation Act 1991*.
Communications Fund has the same meaning as in the Telstra Corporation Act 1991.

Future Fund has the same meaning as in the Telstra Corporation Act 1991.

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

the Commonwealth includes a category A hybrid-security issuer company.

voting share has the same meaning as in the Telstra Corporation Act 1991.

4 85% sale day

(1) If, in the opinion of the Minister, a particular day is the first day after the commencement of Part 1 of Schedule 1 on which 85% of the voting shares in Telstra are held by a person, or persons, other than the Commonwealth, the Minister must, by written instrument, declare the day to be the 85% sale day for Telstra.

(2) The declaration has effect accordingly.

Future Fund and Communications Fund

(3) For the purposes of this section, if a share in Telstra is an investment of the Future Fund or the Communications Fund, the share is taken to be held by a person other than the Commonwealth.

Securities lending arrangements

(4) For the purposes of this section, if, under an agreement of the kind known as a securities lending arrangement:

(a) at a particular time (the disposal time), the Commonwealth disposed of a share in Telstra (the borrowed share) to another person (the borrower); and

(b) the Commonwealth may come under an obligation to:

(i) re-acquire the borrowed share from the borrower at a later time; or

(ii) acquire an identical share from the borrower at a later time;
the borrowed share is taken to be held by the Commonwealth during the period:

(c) beginning at the disposal time; and
(d) ending when the obligation mentioned in paragraph (b) is discharged or can no longer arise.

**Declaration**

(5) The declaration under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the declaration.

(6) The 85% sale day may be earlier than the day on which the declaration under subsection (1) is registered under the *Legislative Instruments Act 2003*.

**Definitions**

(7) In this section:

- **category A hybrid-security issuer company** has the same meaning as in the *Telstra Corporation Act 1991*.

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

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

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

- **the Commonwealth** includes a category A hybrid-security issuer company.

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