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HOUSE OF REPRESENTATIVES

TELECOMMUNICATIONS LEGISLATION AMENDMENT (UNIVERSAL SERVICE REFORM) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Broadband, Communications and the Digital Economy, Senator the Hon. Stephen Conroy)
TELECOMMUNICATIONS LEGISLATION AMENDMENT (UNIVERSAL SERVICE REFORM) BILL 2011

OUTLINE

Introduction

The Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 forms part of a package of legislation to achieve continuity of key telecommunications safeguards in the transition to the National Broadband Network (NBN). The other bills in the package are the Telecommunications Universal Service Management Agency Bill 2011 (the TUSMA Bill) and the Telecommunications (Industry Levy) Bill 2011 (the Industry Levy Bill).

The TUSMA Bill:

- provides for the establishment of the Telecommunications Universal Service Management Agency (TUSMA) as the statutory agency that will have the responsibility for the effective implementation and administration of service agreements that deliver universal service and other public policy telecommunications outcomes
- sets out TUSMA’s corporate governance structure, reporting and accountability requirements
- provides for the Minister, subject to the scrutiny of Parliament, to set the standards, rules and minimum benchmarks that would apply to the universal service components of the Government’s agreement with Telstra, and any future contracts or grants entered into by TUSMA, and
- sets out arrangements for consolidating the two current Universal Service Obligation (USO) and National Relay Service (NRS) industry levy regimes into a single regime to contribute funding towards TUSMA’s costs.

The main purpose of this Bill is to make consequential amendments to telecommunications and related legislation (including the Telecommunications Act 1997, the Telecommunications (Consumer Protection and Service Standards) Act 1999, and the Australian Communications and Media Authority Act 2005) as a result of the new legislative scheme in the TUSMA Bill. In particular, this Bill includes provisions which, if specified pre-conditions are met, would enable the progressive removal of the current USO for standard telephone services and payphones. The regulated USO obligation is intended to be replaced by the contractual arrangements in the TUSMA Bill.

The Industry Levy Bill imposes a levy that will provide for relevant industry participants to contribute to the costs of TUSMA that are not met by dedicated Budget funding.

Policy objectives

Current arrangements

Currently, the main public interest telecommunications services regulated under telecommunications legislation are the USO (for standard telephone services and payphones) and emergency call services. Telecommunications legislation also provides for the Commonwealth to contract with the private sector for the provision of the NRS.
The legislative arrangements for the USO are set out in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Consumer Protection Act) and legislative instruments made under that Act. The USO requires Telstra as the current primary universal service provider (PUSP) to ensure that standard telephone services and payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. Under this current legislation, the telecommunications industry contributes funding towards the delivery of the USO through levy arrangements.

The Consumer Protection Act also sets out the policy objectives for the NRS, which is a service that provides voice equivalent services for people who are deaf or who have a hearing and/or speech impairment. NRS services are delivered under contract with the Commonwealth. Under current Commonwealth contract arrangements, the relay service is delivered by Australian Communication Exchange Limited, and an outreach service for the NRS is provided by WestWood Spice. Industry funds the cost of the NRS contracts through levy arrangements similar to the USO scheme.

The arrangements for emergency call services in Australia are covered by the *Telecommunications Act 1997* (the Telecommunications Act), the Consumer Protection Act and legislative instruments made under those Acts. The telecommunications industry is required to provide access to the emergency call service for standard telephone services free of charge. Currently, the national providers of the emergency call service are Telstra and the NRS provider. The NRS element is funded through the NRS levy, but Telstra’s costs are not funded through levy arrangements.

**Need for change**

The USO regulatory arrangements were designed for a market where there was a vertically integrated operator of a national telecommunications network. The rollout of the NBN will result in a fundamental change to the structure of the Australian telecommunications market as Telstra’s near ubiquitous national copper fixed line network will be progressively decommissioned as NBN Co rolls out its next-generation fibre network nationally.

The NBN will be operated on a wholesale-only and equivalent basis. In an environment where all retail service providers are able, via the NBN, to offer high quality voice and high-speed broadband services nationally, it is appropriate that the model for delivering universal service and other public policy telecommunications outcomes be reformed to facilitate the competitive supply of universal service and other public policy telecommunications outcomes. A regime that enables competitive supply arrangements will be of benefit to consumers and industry as it promotes more innovative, effective and efficient service delivery arrangements.

In this regard, the service delivery arrangements for the USO will transition to a model that is similar to the current arrangements for the provision of the NRS, in that the Government will contract with service providers for the supply of these important services.

Telstra’s role as the emergency call person also reflects its historical position as the vertically integrated owner of a national telecommunications network. The Government’s intention is that, while the supplier of the emergency call service will remain subject to direct regulation, the service will be delivered through contract with the Commonwealth and for the telecommunications industry to contribute to the costs of the emergency call service through levy arrangements. This will also enable the provision of the emergency call service to be
opened up through a competitive process to alternative suppliers. While a competitive process will place a very high priority on reliable and robust service arrangements, it also provides a mechanism to ensure that the telecommunications services that the community expects continue to be delivered effectively and efficiently.

On 23 June 2011, following consultation with industry, the Government announced that it had entered into an initial service agreement with Telstra to ensure continuity of services during the transition to the NBN. Together with the existing NRS contracts outlined above, the Telstra agreement will ensure:

- that all Australians have reasonable access to a standard telephone service (the USO for voice telephony services)
- that payphones are reasonably accessible to all Australians (the USO for payphones)
- the ongoing delivery of the Emergency Call Service by Telstra (calls to Triple Zero ‘000’ and ‘112’)
- the ongoing delivery of the National Relay Service
- that appropriate safety net arrangements are in place that will assist the migration of voice-only customers to a NBN fibre service as Telstra’s copper customer access network is progressively decommissioned, and
- technological solutions will be developed as necessary to support continuity of other public interest services (i.e. public alarm systems and traffic lights).

As part of the reforms, a new statutory agency, TUSMA, will be established to manage the Telstra agreement and other public interest telecommunications contracts and grants. The establishment of a statutory agency dedicated to the implementation and effective administration of telecommunications service agreements will promote high quality and efficient contract and grant management to maximise the benefit for consumers and manage risks appropriately, within a transparent and accountable legislative framework.

**Structure of the Bill**

The key elements in this Bill include:

- amendments to the Consumer Protection Act to provide a framework which will allow the Minister to make declarations to enable the removal of the current regulated obligations on the PUSP to make the STS and payphones reasonably accessible, and shift to a fully contractual model for provision of universal service outcomes
- amendments to the Consumer Protection Act, the *Telecommunications (Universal Service Levy) Act 1997* and the *NRS Levy Imposition Act 1998* such that the USO and NRS levies (respectively) will cease to apply after 30 June 2012 with a new Telecommunications Industry Levy Scheme to meet the residual costs of TUSMA (provided for in Part 6 of the TUSMA Bill and the Industry Levy Bill) to take effect
- amendments to provide that TUSMA will be a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act) from commencement, and
- a range of minor and technical amendments to the *Australian Communications and Media Authority Act 2005*, the *Competition and Consumer Act 2010*, the *Criminal Code Act 1995*, the *Sea Installations Act 1987*, and the *Telecommunications Act* to recognise the establishment of the TUSMA under the TUSMA Bill; to allow the ACMA to administer, enforce and report on the new levy provisions set out in Part 6 of the TUSMA Bill; and to reflect the shift in responsibility for the delivery of universal service outcomes and other public interest services to TUSMA.
Progressive removal of regulated obligations to supply the STS and payphones

There are two parts of current USO regulation – the USO in relation to standard telephone services (STS) and the USO in relation to payphones (paragraphs 9(1)(a) and 9(1)(b) of the Consumer Protection Act). There is capacity for a USO to apply to carriage services that are prescribed in regulations but no regulations have been made and it is proposed to repeal these provisions (see item 82). The repeal of the concept of ‘prescribed carriage services’ is consequential to the inclusion of paragraph 11(f) of the TUSMA Bill, which enables new policy objectives for TUSMA to be specified under regulations where these objectives relate to the supply of carriage services. As TUSMA will have the capacity to take on additional functions under paragraph 11(f) of the TUSMA Bill, the concept of ‘prescribed carriage services’ will no longer be needed.

The Bill proposes amendments to the Consumer Protection Act to enable the progressive removal from Telstra of the STS and payphones parts of USO regulation (existing paragraphs 9(1)(a) and (b)), where the Minister is satisfied that specified conditions have been met (proposed sections 8J and 8K of the Act).

During the period beginning 18 months after commencement of the amendments to the Consumer Protection Act and ending 23 months after commencement, the Minister would be required to determine whether or not there are satisfactory alternative contractual arrangements in place for STS (proposed subsection 8J(1)). The Minister would also be required to separately determine whether or not there are satisfactory alternative contractual arrangements in place for payphones (proposed subsection 8K(1)). In each case, the making of a positive declaration by the Minister would be a pre-condition to removal of the relevant part of USO regulation from Telstra.

In relation to both STS and payphones, the Minister would not be able to make a positive declaration unless the relevant part of the Telstra agreement (i.e. STS or payphones) remains in force; and the Minister is satisfied that that Telstra is likely to substantially comply with the contract if this part of USO regulation is removed. In deciding whether Telstra is likely to substantially comply with the contract, the Minister will be able to have regard to a range of non-exhaustive criteria, including Telstra’s record of compliance with relevant contract and regulatory obligations (proposed subsections 8J(6) and 8K(6)).

If the Minister makes a positive declaration of the kind referred to above in relation to the payphones part of the USO, this part of USO regulation would no longer apply in any area of Australia (item 76).

If the pre-conditions for removal of the STS part of USO regulation are met (because the Minister has made a positive declaration of the kind outlined above), the Bill provides for the progressive removal of the STS part of the USO regulation as the NBN fibre network is rolled out (new section 8H). In broad terms, the Minister would then be able to make further declarations that have the effect of removing the STS USO in:

(a) **non-fibre designated STS areas** (i.e. areas where the Minister is satisfied that an NBN corporation has not installed and does not propose to install optical fibre – these are the areas that will receive high speed broadband from NBN Co through wireless and satellite technologies), and

(b) **fibre designated STS areas** (i.e. areas where a final Migration Plan is in force to provide for the transition of services from Telstra’s copper network to the NBN fibre
network (section 577BB of the Telecommunications Act and where the Minister is satisfied an NBN corporation has installed or is installing optical fibre in those areas).

The Minister would be required to make at least one declaration in relation to either fibre or non-fibre designated STS areas within 90 days of making a positive declaration in relation to the STS. The Minister would also be required to consider whether to make further declarations at six monthly intervals.

The progressive removal of the STS USO (in proposed NBN fibre areas) as the fibre is installed by NBN Co is intended to ensure that Telstra benefits from removal of the STS part of USO regulation in fibre areas as it implements structural separation in those areas by migrating its customers from the Telstra copper network to the NBN fibre network in accordance with a final Migration Plan.

If STS or payphones USO regulation is removed, Telstra would remain subject to the contractual obligations that are provided for in the agreement with the Commonwealth to be administered by TUSMA.

If the Minister does not declare that satisfactory alternative contractual arrangements are in place for the STS part of USO regulation, the Minister would be required to make a declaration that has the effect of deferring consideration of whether the STS part of USO regulation should be removed for an additional period of 18 months (proposed paragraph 8J(1)(d)). The same process applies for the payphones part of USO regulation (proposed paragraph 8K(1)(d)). The statutory criteria for determining whether a declaration should be made by the end of the additional period of 18 months in relation to STS or payphones parts of USO regulation would be the same as for the initial decision by the Minister (proposed subsections 8J(6) and 8K(6) respectively).

The Bill enables up to two such deferral declarations to be made by the Minister (proposed subsections 8J(3), 8J(5), 8K(3) and 8K(5)) in relation to STS or payphones USO regulation. If a positive declaration has not been made by the end of the second deferral period in relation to STS or payphones USO regulation, this part of USO regulation could not be removed without further legislative amendment.

Other consequential and transitional amendments

The Bill also makes a range of other consequential changes to the Telecommunications Act and Consumer Protection Act. Most of the non-levy aspects of the USO regime established by Part 2 of the Consumer Protection Act will continue to operate unchanged until such time as any relevant declarations are made under proposed new sections 8J and 8K of the Consumer Protection Act, which will set in train the process to enable USO STS or payphone obligations to be removed.

Amendments to the Part 3 of the Consumer Protection Act – the National Relay Service

Part 3 of the Consumer Protection Act currently sets out provisions that enable the Commonwealth to contract providers of the NRS, a service that provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to those on which other Australians have access to a standard telephone service. The Bill amends the Consumer
Protection Act to transition management of existing contracts for the provision of the NRS to TUSMA.

Amendments to Financial Management and Accountability Regulations 1997

The Bill amends Schedule 1 of the FMA Regulations to declare TUSMA as a prescribed agency for the purposes of the FMA Act from commencement. The inclusion of this item as part of the legislative package (including the TUSMA Bill and the Industry Levy Bill) assists by expediting the process of establishing TUSMA so that it can take on management of existing contracts with Telstra and NRS providers from 1 July 2012.

Information sharing with TUSMA

Other consequential amendments allow the ACMA and ACCC to share information with TUSMA. Providing these bodies with the capacity to share information on communications matters with TUSMA could assist TUSMA to meet its monitoring and reporting obligations set out at clause 29 of the TUSMA Bill. These consequential amendments also reflect the corresponding scope for TUSMA to disclose relevant information to the ACMA and the ACCC (clause 122 of the TUSMA Bill).

Regulatory Impact Statement

See the explanatory memorandum for the TUSMA Bill for a regulatory impact statement related to the package of legislation.

Financial Implications

See the explanatory memorandum for the TUSMA Bill for financial implications related to the package of legislation.
ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

ACCC:  Australian Competition and Consumer Commission
ACMA:  Australian Communications and Media Authority
ACMA Act:  *Australian Communications and Media Authority Act 2005*
AIA:  *Acts Interpretation Act 1901*
Bill:  Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011
CC Act:  *Competition and Consumer Act 2010* (formerly the *Trade Practices Act 1974*)
CEO:  Chief Executive Officer
Consumer Protection Act:  *Telecommunications (Consumer Protection and Service Standards) Act 1999*
CSG:  Customer Service Guarantee
FMA Act:  *Financial Management and Accountability Act 1997*
FMA Regulations:  *Financial Management and Accountability Regulations 1997*
Industry Levy Bill  Telecommunications (Industry Levy) Bill 2011
LI Act:  *Legislative Instruments Act 2003*
Minister:  Minister for Broadband, Communications and the Digital Economy
NBN:  National Broadband Network
NBN Co:  NBN Co Limited
NRS:  National Relay Service
PUSP:  primary universal service provider
STS:  standard telephone service
Telecommunications Act:  *Telecommunications Act 1997*
Telstra: Telstra Corporation Limited

TUSMA: Telecommunications Universal Service Management Agency

TUSMA Bill: Telecommunications Universal Service Management Agency Bill 2011

USO: universal service obligation
NOTES ON CLAUSES

TELECOMMUNICATIONS LEGISLATION AMENDMENT (UNIVERSAL SERVICE REFORM) BILL 2011

Clause 1 – Short title

Clause 1 provides that the Bill, when enacted, may be cited as the Telecommunications Legislation Amendment (Universal Service Reform) Act 2011.

Clause 2 – Commencement

Clause 2 provides for the commencement of the Bill.

Clauses 1 to 3 of the Bill, and any other provisions not covered elsewhere in the table provided at subclause 2(1), commence on the day the Bill receives Royal Assent.

Parts 1 and 3 of Schedule 1 to the Bill commence at the same time that clause 3 of the TUSMA Bill commences. Clause 3 of the TUSMA Bill commences on a single day to be fixed by proclamation. The TUSMA Bill does not commence until Telstra is legally committed to the structural separation of its copper network as that network is progressively decommissioned in fibre network areas through a structural separation undertaking that is in force.

Linking the commencement of Parts 1 and 3 to the commencement of clause 3 of the TUSMA Bill is necessary to ensure that the proposed amendments to the telecommunications and other legislation, including arrangements to phase out the existing USO and NRS levies come into force at the same time as the establishment of TUSMA and the introduction of new industry levy arrangements in Part 6 of the TUSMA Bill.

Part 2 of Schedule 1 to the Bill commences the later of 1 July 2012 and the day that clause 3 of the TUSMA Bill commences (however, the provisions do not commence at all if clause 3 of the TUSMA Bill does not commence). Part 2 of Schedule 1 contains amendments that relate to the NRS. As TUSMA will be assuming responsibility for an existing Government contract for provision of the NRS, this fixed start date ensures that the transfer of management of the NRS contract from the ACMA to TUSMA coincides with the commencement of the financial year beginning 1 July 2012.

Clause 3 – Schedule(s)

Subclause 3(1) provides that each Act, and each set of regulations, specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule to the Bill has effect according to its terms.

Subclause 3(2) provides that the amendment of any regulation under subclause 3(1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.
SCHEDULE 1 – AMENDMENTS

Part 1—Amendments commencing at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2011 commences

Part 1 of Schedule 1 to the Bill amends the ACMA Act, the CC Act, the Telecommunications Act and the Consumer Protection Act. These are consequential to new arrangements for the delivery of universal service outcomes and other public interest services under contracts or grants of financial assistance, and to facilitate the establishment of TUSMA and a smooth transition to new levy arrangements. It also makes minor, consequential amendments to the Sea Installations Act 1987 and the FMA Regulations; the amendments to the latter will provide for TUSMA to be a prescribed agency for the purposes of the FMA Act from commencement.

Australian Communications and Media Authority Act 2005

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

Item 1 inserts at the end of paragraph (b) of the definition of ‘authorised disclosure information’ proposed subparagraph (vi) referring to Part 6 of the TUSMA Bill. This means that information obtained by the ACMA as a result of the exercise of its powers under Part 6 of the TUSMA Bill will be ‘authorised disclosure information’.

Part 6 of the TUSMA Bill concerns the assessment, collection and recovery of levy, and outlines the role of the ACMA in making eligible revenue assessments for the purpose of assessing the levy imposed by the Industry Levy Bill. The inclusion of the reference to Part 6 of the TUSMA Bill in the definition of ‘authorised disclosure information’ is a consequential amendment consistent with the current reference in that definition to Part 2 of the Consumer Protection Act which similarly concerns, amongst other things, the assessment, collection and recovery of the USO levy.

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

Item 2 extends the ACMA’s telecommunications functions under section 8 of the ACMA Act to include such other functions as are conferred on the ACMA by or under Part 6 of the TUSMA Bill. Part 6 of the TUSMA Bill sets out the ACMA’s functions with respect to the assessment, collection and recovery of the levy imposed by the Industry Levy Bill.

The inclusion of the reference to Part 6 of the TUSMA Bill in the ACMA’s telecommunications functions under section 8 of the ACMA Act is a consequential amendment consistent with the current reference in that provision to the Consumer Protection Act which similarly concerns, amongst other things, the assessment, collection and recovery of the USO levy.

Item 3 – After paragraph 59D(1)(n)

Item 3 amends subsection 59D(1) by inserting proposed paragraph (na) to include TUSMA in the list of bodies to whom an ACMA official may disclose authorised disclosure information, provided that the Chair of the ACMA authorises it in writing and is satisfied that the
information will enable or assist TUSMA to perform or exercise any of its functions or powers. Item 1 above amends the definition of ‘authorised disclosure information’.

It is anticipated that the ACMA will have information that will be of relevance to TUSMA (in performing or exercising any of its functions or powers) including information about compliance with Ministerial determinations made under clause 15 of the Bill, and with the levy provisions set out in Part 6 of the TUSMA Bill.

There is corresponding scope for TUSMA to disclose relevant information to the ACMA and the ACCC (see clause 122 of the TUSMA Bill).

**Competition and Consumer Act 2010**

**Item 4 – After paragraph 155AAA(12)(k)**

Section 155AAA of the CC Act prohibits ACCC members or staff from disclosing protected information unless one of the exceptions set out in the section applies. An exception includes if the Chairperson of the ACCC is satisfied that particular protected information will enable or assist one of the bodies listed in subsection 155AAA(12) to perform or exercise any of its functions or powers, then the information may be disclosed to that body. Subsection 155AAA(13) enables the Chairperson to impose conditions to be complied with in relation to the disclosure.

This item includes reference to TUSMA on the list of bodies that the Chairperson may authorise the disclosure of protected information to, if the Chairperson is satisfied that it will enable or assist TUSMA in the performance or exercise of any of its functions or powers. The functions and powers of TUSMA are set out in the TUSMA Bill. The policy objectives at clause 11 of the TUSMA Bill relate primarily to the delivery of universal service outcomes, but also to provision of other key public interest services in the telecommunications sector.

A capacity for the ACCC to share information on communications matters with TUSMA may assist TUSMA in meeting its monitoring and reporting obligations set out at clause 29 of the TUSMA Bill.

There is corresponding scope for TUSMA to disclose relevant information to the ACMA and the ACCC (see clause 122 of the TUSMA Bill).

**Financial Management and Accountability Regulations 1997**

**Item 5 – Part 1 of Schedule 1 (after table item 180)**

Section 5 of the FMA Act provides that for the purposes of that Act, a prescribed agency includes a body, organisation or group of persons prescribed by the Financial Management and Accountability Regulations 1997 (the FMA Regulations). Agencies are prescribed in Schedule 1 to the FMA Regulations.

The proposed amendment to Schedule 1 of the FMA Regulations by item 5 means that TUSMA will be a prescribed agency for the purposes of the FMA Act from commencement. Item 5 clarifies that the reference to TUSMA in Schedule 1 includes:

- the Chief Executive Officer of TUSMA (mentioned in clause 58 of the TUSMA Bill)
- the staff (mentioned in clause 71 of the TUSMA Bill)
- those persons whose services are made available to TUSMA (under clause 73 of the TUSMA Bill), and
- the consultants engaged by TUSMA (under subclause 72(1) of the TUSMA Bill).

The inclusion of this item as part of the legislative package ensures that the financial management and accountability obligations in the FMA Act apply to TUSMA immediately from the time it is established.

The FMA Act sets out the financial management, accountability and audit obligations of agencies that are financially part of the Commonwealth. In particular, that Act requires agencies to manage public resources efficiently, effectively, economically and ethically. It also requires that proper accounts and records be maintained for the receipt and expenditure of public money. This item is consistent with clauses 33 and 34 of the TUSMA Bill, which make clear TUSMA holds any money for and on behalf of the Commonwealth, and that any financial liabilities of TUSMA are taken to be liabilities of the Commonwealth.

**Sea Installations Act 1987**

**Item 6 – Schedule**

This item inserts a reference to the TUSMA Bill into the Schedule of the *Sea Installations Act 1987* in its appropriate alphabetical position.

Section 45 of the *Sea Installations Act 1987* provides that certain Commonwealth Acts, as provided for in the Schedule to that Act, are to apply in adjacent areas. ‘Adjacent areas’ is defined in section 5 of that Act to include, in general, waters of the sea that are outside the outer limits of Australia’s territorial sea, but either within the outer limits of the exclusive economic zone (within the meaning of the *Seas and Submerged Lands Act 1973*), or outside those limits but within the outer limits of the continental shelf. Both the Telecommunications Act and the Consumer Protection Act (including the USO provisions of that Act) are included in the Schedule.

The inclusion of the TUSMA Bill in the Schedule to the *Sea Installations Act 1987* would extend the application of the TUSMA Bill, and the obligations set out in any contracts or grants under that Bill, to sea installations within Australia’s territorial sea, including, for example, submarine power cables, floating hotels, tourism pontoons and artificial islands. This approach is consistent with other telecommunications legislation and takes into account the intended removal over time of the USO provisions from the Consumer Protection Act.

**Telecommunications Act 1997**

**Item 7 – Paragraph 3(2)(a)**

This proposed amendment to paragraph 3(2)(a) clarifies that the other objects of the Telecommunications Act with respect to the USO are limited to standard telephone services and payphones, and do not include other carriage services.

The change is a consequence of the proposed repeal of section 9D of the Consumer Protection Act, which enables a carriage service to be specified in the regulations. The repeal
of the concept of ‘prescribed carriage services’ is consequential to the inclusion of paragraph 11(f) of the TUSMA Bill, which enables new policy objectives for TUSMA to be specified under regulations where these objectives relate to the supply of carriage services. As TUSMA will have the capacity to take on additional functions under that clause, the concept of ‘prescribed carriage services’ will no longer be needed.

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

This item inserts reference to Part 6 of the TUSMA Bill into the definition of ‘ACMA’s telecommunications powers’ in section 7.

This amendment would enable the ACMA to obtain information and documents from other persons under section 522 of the Telecommunications Act where the ACMA has reason to believe that the information is relevant to the exercise of its telecommunications powers under Part 6 of the TUSMA Bill.

The inclusion of the reference to Part 6 of the TUSMA Bill (which relates to the assessment, collection and recovery of the new industry levy) into the definition of ‘ACMA’s telecommunications powers’ is a consequential amendment consistent with the current reference in that definition to the Consumer Protection Act, which similarly concerns, amongst other things, the assessment, collection and recovery of the USO levy.

**Item 9 – Section 7**

**Item 10 – Section 7 (definition of levy)**

Item 9 inserts in section 7 a proposed new definition of ‘industry levy’ to mean the levy imposed by the Industry Levy Bill. This levy will, from the commencement of the TUSMA Bill, replace the USO and NRS levies currently imposed, respectively, under the *Telecommunications (Universal Service Levy) Act 1997* and the *NRS Levy Imposition Act 1998*. The replacement of the USO and NRS levies by this Bill (see items 95, 107, 111, 118 and 120) with a single levy mechanism will assist with meeting the residual costs of TUSMA. The USO and NRS levies will cease to apply after 30 June 2012.

To distinguish the USO levy from the new industry levy in the Telecommunications Act, item 10 will repeal the definition of ‘levy’ in section 7 and the USO levy will be redefined to mean the “universal service levy” (see item 12 below).

**Item 11 – Section 7**

This item inserts in section 7 a proposed definition of ‘TUSMA’ to mean “the Telecommunications Universal Service Management Agency”. This will make clear which agency is referred to by the ‘TUSMA’ acronym as contained in the provisions proposed to be included in the Telecommunications Act by this Bill.

**Item 12 – Section 7**

Item 12 inserts in section 7 a proposed definition of ‘universal service levy’ to mean the levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*. This item is consequential to the amendments referred to in items 9 and 10.
**Item 13 – At the end of section 19**

This item inserts a proposed subsection (3) at the end of section 19 to provide that a person may be specified in writing by the ACMA (for the purposes of paragraph 19(1)(b)) as either a national or regional operator of emergency call services even if at the time the determination is made, that person does not operate an emergency call service.

Section 19 provides that a recognised person who operates an emergency call service is defined to be a person who:

- operates an emergency call service; and
- is specified in a written determination made by the ACMA as a national or regional operator of emergency call services.

The proposed new subsection 19(3) is intended to remove any doubt that the ACMA can make a determination to appoint a person who has the capacity to operate an emergency call service, even if they are not operating an emergency call service at the time that a written determination is made by the ACMA.

While TUSMA may enter into contracts or grants in relation to the fulfilment of the emergency call service policy objective at paragraph 11(c) of the TUSMA Bill, due to the nature and importance of the emergency call service, provisions for regulation of the emergency call service will not be removed from the Consumer Protection Act as a result of the establishment of TUSMA.

Therefore carriers, carriage service providers and emergency call persons will remain regulated by the ACMA under section 147 of the Consumer Protection Act. It is intended that the ACMA and TUSMA coordinate their respective roles in relation to the emergency call service. In particular, it is intended that the ACMA be able to determine a new emergency call person when a suitable person has, or is about to enter into a contract or grant with TUSMA in relation to the fulfilment of the emergency call service policy objective at paragraph 11(c) of the TUSMA Bill, and is ready to provide an emergency call service.

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

This item amends subsection 57(2) such that a carrier licence has effect subject to not only the Telecommunications Act and the Consumer Protection Act and regulations under that Act, but also to Part 6 of the TUSMA Bill.

Section 1 of Schedule 1 to the Telecommunications Act makes it a statutory condition of a licence that a carrier must comply with the Telecommunications Act, the Consumer Protection Act, and it is proposed to also include reference to Part 6 of the TUSMA Bill in this Schedule (see item 52). Contravention of Part 6 of the TUSMA Bill will subject a carrier to civil penalty provisions under the Telecommunications Act (see the proposed amendment at item 40 to section 572E of the Telecommunications Act) involving pecuniary penalties of up to $10 million.

This is a consequential amendment arising from the replacement of the USO and NRS levies in the Consumer Protection Act with the new industry levy to be assessed under the TUSMA
Bill and reflects that carriers’ obligations regarding the new levy arrangements will be located in Part 6 of the TUSMA Bill.

**Item 15 – Paragraphs 58(2)(a) and (b)**

This item amends paragraphs 58(2)(a) and (b) and is a consequence of the proposed new subsection 72(2A) (see item 22 of the Bill). This item clarifies that the grounds under section 58 for refusal of a carrier licence, due to the disqualification of the applicant, extend to circumstances where, under the proposed new subsection 72(2A), the ACMA cancels a carrier licence held by a carrier because the carrier has failed to pay in full any industry levy imposed by the Industry Levy Bill on or before the date on which the industry levy becomes due and payable. The amendment ensures that the requirements regarding the current universal service levy and the new industry levy are treated consistently under this section.

**Item 16 – Paragraphs 58(4)(a), (b) and (c)**

These amendments are consequential changes arising from phasing out the universal service levy assessed under the Consumer Protection Act and moving to the new industry levy assessed under Part 6 of the TUSMA Bill.

Subsection 58(1) enables the ACMA to refuse to grant a carrier licence to an applicant if the applicant is disqualified immediately before the ACMA makes its decisions on the application. Subsection 58(4) sets out the circumstances for when an individual is disqualified for failure to pay the universal service levy. The proposed amendments to subsection 58(4) make clear that this subsection is to apply to the universal service levy. The proposed new subsection 58(4A) is intended to operate concurrently with subsection 58(4) and sets out the circumstances for when an individual is disqualified for failure to pay the new industry levy to be imposed by the Industry Levy Bill.

These amendments will enable the ACMA to refuse to grant a carrier licence if at the appropriate point in time the individual has been disqualified due to a failure to pay either the universal service levy or the new industry levy.

**Item 18 – Paragraph 58(5)(a)**

This item amends paragraph 58(5)(a) and is a consequence of the proposed new subsection 72(2A) at item 22. This amendment ensures that subsection 58(5) – which applies to when a partnership is disqualified – will operate with respect to a disqualification arising from either the failure to pay the universal service levy imposed by the *Telecommunications (Universal Service Levy) Act 1997* or the failure to pay the industry levy imposed by the Industry Levy Bill.

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

This item extends the definition of ‘this Act’ in subsection 67(3) to include reference to the TUSMA Bill.

Carrier licence conditions are subject to the conditions specified in Schedule 1 of the Telecommunications Act; the conditions that a carrier must comply with any standard access
obligations that are applicable under the CC Act; and any conditions declared by the Minister. The effect of this amendment is that section 67 will provide that a condition of a carrier licence may remove or restrict a right or privilege that the carrier would otherwise have under a provision of the TUSMA Bill, in addition to a provision of the Telecommunications Act or the Consumer Protection Act (whether or not in the carrier’s capacity as a carrier).

Item 20 – Subsection 72(2)  
Item 21 – Subsection 72(2) (note)  
Item 22 – After subsection 72(2)

Subsection 72(2) enables the ACMA to cancel a carrier licence held by a carrier if the carrier fails to pay in full any levy on or before the date the levy becomes payable and due. Items 20 to 22 are consequential amendments arising from phasing out the universal service levy assessed under the Consumer Protection Act and moving to the new industry levy assessed under Part 6 of the TUSMA Bill.

The proposed amendments will enable the ACMA to cancel a carrier licence if a carrier fails to pay in full either the universal service levy imposed by the *Telecommunications (Universal Service Levy) Act 1997* or the new industry levy imposed by the Industry Levy Bill by the due date. Similarly, items 16 and 17 also provide the ACMA can refuse to grant a carrier licence for failure to pay either levy.

Item 23 – Subsection 78(2) (definition of this Act)

Item 23 extends the definition of ‘this Act’ in subsection 78(2) by including reference to the TUSMA Bill.

Division 4 of Part 3 of the Telecommunications Act enables licensed carriers to apply to the ACMA to be declared a nominated carrier in relation to specified network units owned by another person. Where a nominated carrier declaration is in force, any obligation on the owner of the network unit to be licensed as a carrier in regard to that unit ceases.

The effect of expanding the definition of ‘this Act’ to include the TUSMA Bill is that subsection 78(1) will provide that an application to the ACMA for a nominated carrier declaration is required to be accompanied by, amongst other things, the election of the applicant accepting responsibility for the units for the purposes of the TUSMA Bill, in addition to the Telecommunications Act and the Consumer Protection Act (and regulations under that Act).

Item 24 – Subsection 81(5) (definition of this Act)

Item 24 extends the definition of ‘this Act’ in subsection 81(5) by including reference to the TUSMA Bill.

This amendment to section 81 will have the effect of providing that the ACMA may, after considering an application for a nominated carrier declaration, only declare that the applicant is the nominated carrier in relation to the relevant network units if the ACMA is satisfied that, among other things, the making of the declaration would not impede the efficient
administration of the TUSMA Bill, in addition to the Telecommunications Act and the Consumer Protection Act (and regulations under that Act).

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

Item 25 extends the definition of ‘this Act’ in subsection 81A(3) by including reference to the TUSMA Bill.

This amendment will ensure that, if at any time the nominated carrier does not own or operate the network units covered by the relevant declaration, the TUSMA Bill (in addition to the Telecommunications Act and the Consumer Protection Act (and regulations under that Act)) will nevertheless apply to the nominated carrier in relation to the network as if they were owned or operated by the network carrier.

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

This item extends the definition of ‘this Act’ in subsection 83(8) by including reference to the TUSMA Bill.

Section 83 deals with the revocation of nominated carrier declarations. The effect of this amendment would be that if a nominated carrier gives the ACMA a written notice stating that it does not accept responsibility for the units for the purposes of the TUSMA Bill (or the Telecommunications Act or Consumer Protection Act (or regulations under that Act)), then the ACMA must, by writing, revoke that carrier’s nominated carrier declaration.

**Item 27 – Paragraph 105(3)(e)**

**Item 28 – After paragraph 105(3)(ea)**

Subsection 105(1) requires the ACMA to monitor and report each financial year to the Minister on all significant matters relating to the performance of carriers and carriage service providers.

Item 27 amends paragraph 105(3)(e) of the Telecommunications Act by providing that the ACMA’s subsection 105(1) report must set out details of the adequacy of compliance with obligations under Part 2 of the Consumer Protection Act only if there are any such obligations. This amendment reflects the proposed gradual phasing out of the universal service regime in Part 2 of the Consumer Protection Act. As the ACMA’s obligations under that Part will be gradually phased out and transferred to TUSMA, the ACMA will eventually have no reporting obligations under this paragraph.

Item 28 inserts two new paragraphs 105(3)(eb) and (ec). These will provide, respectively, that the ACMA’s subsection 105(1) report must set out details of:

- the adequacy of compliance with obligations under Part 6 of the TUSMA Bill; and
- the operation of Part 6 of the TUSMA Bill.

These amendments ensure that the ACMA’s report extends to cover matters arising in relation to assessment, collection and recovery of the new industry levy under Part 6 of the TUSMA Bill.
**Item 29 – Subsection 492(5) (after paragraph (a) of the definition of this Act)**

This item extends the definition of ‘this Act’ in subsection 492(5) to include Part 6 of the TUSMA Bill.

Section 492 provides that, as a general rule, a hearing by the ACMA for the purposes of a public inquiry about certain matters relating to telecommunications will be required to be held in public. A hearing or part of a hearing will, however, be able to be conducted in private if the ACMA is satisfied that a public hearing would not be conducive to the due administration of ‘this Act’. If a hearing is held in public, the ACMA will be required to give reasonable public notice of the conduct of the hearing.

This amendment will enable the ACMA, in determining if a hearing should be held in public, to have regard to the due administration of the levy assessment, collection and recovery provisions in Part 6 of the TUSMA Bill. The amendment ensures that the current universal service levy (under the Consumer Protection Act) and the new industry levy (under Part 6 of the TUSMA Bill) are treated consistently under this section.

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

This item extends the definition of ‘this Act’ in subsection 502(5) to include Part 6 of the TUSMA Bill.

Division 3 of Part 25 enables the ACCC to hold public inquiries about certain matters relating to telecommunications. Section 502 provides that, as a general rule, hearings will be required to be held in public and if the hearing is to be conducted in public, the ACCC will be required to give reasonable public notice of the conduct of the hearing.

Subsection 502(3) enables a hearing, or part of a hearing, to be conducted in private if the ACCC is satisfied that confidential evidence may be given or other confidential matters may arise during the hearing, or that hearing a matter, or part of a matter, in public would not be conducive to the due administration of ‘this Act’.

Similar to the amendment to subsection 492(5) at item 29 above, this amendment will enable the ACCC, in determining if a hearing should be held in public, to have regard to the due administration of the levy assessment, collection and recovery provisions in Part 6 of the TUSMA Bill. The amendment ensures that the current universal service levy (under the Consumer Protection Act) and the new industry levy (under Part 6 of the TUSMA Bill) are treated consistently under this section.

**Item 31 – After paragraph 508(aa)**

Part 26 of the Telecommunications Act provides the ACMA with the power to investigate certain matters relating to telecommunications. Item 31 inserts a proposed new paragraph 508(aaa) to extend the matters to which Part 26 applies to include a contravention of Part 6 of the TUSMA Bill.

Under Part 6 of the TUSMA Bill, the ACMA will have the power to assess, collect and recover the industry levy to be imposed by the Industry Levy Bill. The amendment to
section 508 will enable the ACMA to investigate matters relating to a contravention of Part 6 of the TUSMA Bill.

This power to investigate complements the extension of other ACMA powers in relation to Part 6 of the TUSMA Bill, including the power to cancel carrier licences (item 22) or seek injunctions by the Federal Court (item 37).

Item 32 – After paragraph 510(1)(aa)

Item 32 inserts a new paragraph 510(1)(aaa). This amendment makes clear that the ACMA may investigate a contravention of Part 6 of the TUSMA Bill if the ACMA has reason to suspect that a person may have contravened that Part. This amendment is consequential to the amendment in item 31.

Item 33 – At the end of section 512
Item 34 – At the end of section 513

Item 33 inserts a proposed new subsection 512(7), which will require the ACMA, before investigating a contravention of Part 6 of the TUSMA Bill, to inform TUSMA that the matter is to be investigated. This amendment is consequential to items 31 and 32 above.

It is appropriate that the ACMA notify TUSMA before it begins an investigation since a contravention of Part 6 of the TUSMA Bill may have implications for TUSMA in terms of the performance of its functions and the exercise of its powers. For example, the ACMA investigating the failure of a carrier to lodge an eligible revenue return may impact levy contribution calculations and possibly delay levy payments, which could affect the ability of TUSMA to make payments to contractors or grant recipients. Clause 13 of the TUSMA Bill enables TUSMA to enter into contracts (and/or grants) to achieve the policy objectives at clause 11 of that Bill.

Item 34 inserts a proposed new subsection 513(3), which will require the ACMA, if it decides not to investigate, or not to investigate further, a complaint in relation to a possible contravention of Part 6 of the TUSMA Bill, to inform TUSMA of the decision as soon as practicable. Since item 33 requires the ACMA to notify TUSMA prior to beginning an investigation of a contravention of Part 6 of the TUSMA Bill, it is appropriate that TUSMA also be notified of any decision by the ACMA not to proceed with an investigation.

Item 35 – Subsection 551(3) (definition of this Act)

This item extends the definition of ‘this Act’ in subsection 551(3) by including reference to Part 6 of the TUSMA Bill.

Section 551 allows a court to order the forfeiture to the Commonwealth of anything involved in the commission of an offence for which a person has a person has been convicted. The expansion of the meaning of ‘this Act’ to include Part 6 of the TUSMA Bill would enable a court to order forfeiture to the Commonwealth arising from the offence under clause 120 of the TUSMA Bill of failing to lodge an eligible revenue return. This approach is consistent with existing legislation in that equivalent provisions in Part 2 of the Consumer Protection Act also apply to section 551.
**Item 36 – Section 563**

This item amends the simplified outline in section 563 of Part 30 of the Telecommunications Act to provide that the Federal Court may grant injunctions in relation to the contravention of:

- the Telecommunications Act;
- the Consumer Protection Act (and any regulations under that Act); or
- Part 6 of the TUSMA Bill.

This item is consequential to item 38 below.

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

Item 37 is related to item 38, and extends the definition of ‘this Act’ in subsection 564(4) to include reference to Part 6 of the TUSMA Bill. This amendment will enable the Federal Court to grant an injunction in relation to a contravention of Part 6 of the TUSMA Bill. This amendment is consistent with the Court’s existing powers to grant injunctions in relation to contraventions of the Consumer Protection Act and the Telecommunications Act.

It is appropriate that injunctions be permissible in relation to contraventions of Part 6 of the TUSMA Bill, as such contraventions may have implications for TUSMA in terms of the performance of its functions and the exercise of its powers. For example, failure of a carrier to lodge an eligible revenue return may impact levy contribution calculations and possibly delay levy payments, which subsequently may affect the ability of TUSMA to make payments to contractors or grant recipients.

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

This item extends the definition of ‘this Act’ in subsection 570(7) by including reference to Part 6 of the TUSMA Bill.

Section 570 enables a court to order a person to pay a pecuniary penalty to the Commonwealth if satisfied the person has contravened a civil penalty provision. Contravention of Part 6 of the TUSMA Bill (and the Telecommunications Act and Consumer Protection Act as section 570 currently applies to) will subject a person to civil penalty provisions involving pecuniary penalties of up to $10 million (by virtue of proposed amendments to section 572E of the Telecommunications Act as per item 40 below). The expansion of the meaning of ‘this Act’ under section 570 to include Part 6 of the TUSMA Bill is consistent with existing legislation and would enable a court to order payment of pecuniary penalties for a contravention of that Part.

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

Item 39 extends the definition of ‘this Act’ in subsection 572B(6) to include reference to Part 6 of the TUSMA Bill.

This amendment enables the ACMA to accept written undertakings from a person to ensure compliance with, or prevent contravention of, Part 6 of the TUSMA Bill. For example, this could allow the ACMA to accept an undertaking from a person that they will lodge an
eligible revenue return under clause 91 of the TUSMA Bill within say, 48 hours, instead of immediately instituting proceedings against the person.

If a person breaches an undertaking then the ACMA may apply to the Federal Court for an order. If the Court is satisfied that a person has breached a term of the undertaking then it may direct the person to comply with the term of the undertaking, or make any other order that the Court considers appropriate (subsection 572C(2)).

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

This item extends the definition of ‘this Act’ in subsection 572E(9) by including reference to Part 6 of the TUSMA Bill.

Section 572E enables an ‘authorised infringement officer’ to issue an infringement notice if the officer has reasonable grounds to believe that a person has contravened a particular civil penalty provision. However, if the civil penalty provision arises from either a breach of section 68 or section 101 of the Telecommunications Act (as will be the case with Part 6 of the TUSMA Bill as a consequence of items 52 and 53), an infringement notice may only be issued if the civil penalty provision has been declared by the ACMA to be a ‘listed infringement notice provision’. This amendment enables the ACMA to declare Part 6 of the TUSMA Bill to be such a provision since it is to be included in the definition of ‘this Act’.

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

Item 41 extends the definition of ‘this Act’ in section 574A to include reference to Part 6 of the TUSMA Bill for the purposes of Part 32 of the Telecommunications Act. Part 32 deals with the proof of matters that involve directors, employees and agents of corporations in connection with civil and criminal proceedings.

This proposed amendment has the effect that, in the context of the TUSMA Bill, if a director, employee or agent of a corporation engages in conduct on behalf of the corporation within the scope of his or her authority, the conduct will be taken, for the purposes of a proceeding for an offence under Part 6 of the TUSMA Bill 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 (subsection 575(2)). As proposed, the only offence in Part 6 relates to the failure to lodge an eligible revenue return under clause 120 of the TUSMA Bill.

If conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person and the conduct is within the scope of his or her authority, the conduct will be taken, for the purposes of a proceeding under Part 6 of the TUSMA Bill 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 (subsection 576(3)).

**Item 42 – Section 582**

This item amends the simplified outline for Part 35 of the Telecommunications Act by including, in dot point 2, a reference to the TUSMA Bill, which deals with assessment, collection and recovery of levy. This amendment clarifies in the simplified outline that partnerships are to be treated as persons for the purposes of the TUSMA Bill.
This amendment is consequential to item 46 below.

**Item 43 – Section 582**

This item amends the simplified outline for Part 35 of the Telecommunications Act by including, in dot point 4, a reference to the TUSMA Bill. This amendment clarifies in the simplified outline that instruments made under the TUSMA Bill may apply, adopt or incorporate certain other instruments.

This amendment is consequential to item 50 below.

**Item 44 – Section 582**

Item 44 amends the simplified outline for Part 35 of the Telecommunications Act by including, in dot point 7, a reference to the TUSMA Bill. This amendment clarifies in the simplified outline that the TUSMA Bill does not affect the performance of State or Territory functions.

This amendment is consequential to item 51 below.

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

This item extends the definition of ‘this Act’ in subsection 583(3) to include reference to Part 6 of the TUSMA Bill.

The effect of this amendment is that if an offence against Part 6 of the TUSMA Bill is a continuing offence (whether under the TUSMA Bill or because of section 4K of the Crimes Act 1914), the maximum penalty for each day that the offence continues is 10 per cent of the maximum penalty that could be imposed in respect of the principal offence.

As proposed, the only offence in Part 6 relates to the failure to lodge an eligible revenue return under clause 120 of the TUSMA Bill. In the context of this clause, a continuing offence would be the continuing failure to lodge an eligible revenue return as required under clause 91 of that Bill within the time specified in the instrument made under subclause 91(5).

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

Item 46 extends the definition of ‘this Act’ in subsection 585(2) to include reference to the TUSMA Bill. Section 585 provides for the manner in which partnerships are to be treated for the purposes of the Acts defined in subsection 585(2).

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

Item 47 extends the definition of ‘this Act’ in subsection 586(2) to include reference to the TUSMA Bill. Section 586 provides for the giving of documents to partnerships. In effect, if a document is delivered personally to the partner of a partnership or is left, or posted, to the partner’s last known residential or business address, the document is taken to have been given to the partnership.
Item 48 – Subsection 587(4) (after paragraph (a) of the definition of this Act)

This item extends the definition of ‘this Act’ in subsection 587(4) to include reference to Part 6 of the TUSMA Bill. Section 587 makes provision for nominating an address for service of documents. For example, this will enable a participating person to nominate to the ACMA a relevant address where the person can receive service of documents, including written documents associated with the industry levy.

Item 49 – Subsection 588(4) (definition of this Act)

Item 49 extends the definition of ‘this Act’ in subsection 588(4) to include reference to Part 6 of the TUSMA Bill. Section 588 applies to the service of summons or process on foreign corporations in criminal proceedings.

Item 50 – Subsection 589(6) (after paragraph (a) of the definition of this Act)

Item 50 extends the definition of ‘this Act’ in subsection 589(6) to include reference to the TUSMA Bill.

The effect of this amendment is that, notwithstanding anything in the AIA or the LI Act, regulations or any other instrument made under the TUSMA Bill will be able to make provision in relation to a matter by applying, adopting, or incorporating (with or without modifications) provisions of any Commonwealth Act or of any regulations or rules under a Commonwealth Act as in force at a particular time or as in force from time to time (subsections 589(1), (5) and (6)).

In addition, regulations or any other instrument made under the Act will be able to make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) a matter contained in any other instrument or writing whatever as in force or existing at a particular time or from time to time even if the other instrument or writing does not yet exist when the instrument under the TUSMA Bill is made (subsections 589(2), (5) and (6)).

A reference in subsection 589(2) to “any other instrument or writing” is defined widely to include a reference to an instrument or writing made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory or one of its officers or authorities or an overseas entity) whatever its nature and whether or not it has legal force or effect. Examples will include:

- regulations or rules under a Commonwealth Act
- a State Act, a Territory law or regulations or any other instrument made under such an Act or law
- an international technical standard or performance indicator, or
- a written agreement such as a contract or an arrangement or an instrument or writing made unilaterally (subsection 589(3)).

Nothing in section 589 limits the generality of anything else in it (subsection 589(4)).

The power conferred by section 589 is essential for the making of delegated legislation under the TUSMA Bill, especially with regard to instruments necessary to effect an efficient
transition from the universal service regime to the alternative contractual/grant arrangements under the TUSMA Bill. For instance:

- the power for the Minister under clause 15 of the TUSMA Bill to determine performance standards, performance benchmarks and other rules or standards may need to refer to other Commonwealth legislation, regulations, instruments or rules. For example, this could provide that a Ministerial determination to establish a minimum benchmark (made under clause 15 of the TUSMA Bill) that commences upon the making of a declaration that there are satisfactory alternative contractual arrangements relating to standard telephone services or payphones (under proposed sections 8J or 8K of the Consumer Protection Act (item 71)), or
- a determination under subparagraph 92(1)(b)(i) of the TUSMA Bill may need to refer to the making of an eligible revenue assessment under clause 96 of that Bill in determining when a person is or is not a participating person for the purposes of that instrument.

In both of the examples above, the relevant instrument referred to may not have been in existence at the time the determinations are made, but it would nevertheless be necessary to refer to the making of that instrument under Commonwealth legislation.

**Item 51 – Subsection 592(2) (after paragraph (a) of the definition of this Act)**

This item extends the definition of ‘this Act’ in subsection 592(2) to include reference to the TUSMA Bill. Section 592 provides that a power conferred by this Act must not be exercised in such a way as to prevent the exercise of the powers, or the performance of the functions, of government of a State, the Northern Territory, the Australian Capital Territory or Norfolk Island.

**Item 52 – Subclause 1(2) of Schedule 1 (definition of this Act)**

This item extends the definition of ‘this Act’ in subclause 1(2) of Schedule 1 to the Telecommunications Act to include reference to Part 6 of the TUSMA Bill. This amendment makes the requirement to comply with Part 6 of the TUSMA Bill (concerning the assessment, collection and recovery of the industry levy) a standard carrier licence condition. As a consequence, non-compliance with Part 6 of the TUSMA Bill will be a civil penalty, as section 68 of the Telecommunications Act provides, in effect, that contravention of a carrier licence is a civil penalty.

See also item 22 which enables the ACMA to cancel a carrier licence if a carrier fails to pay in full the new industry levy imposed by the Industry Levy Bill by the due date. Carriers are participating persons for the new industry levy by virtue of paragraph 92(1)(a) of the TUSMA Bill.

**Item 53 – Subclause 1(2) of Schedule 2 (definition of this Act)**

This item extends the definition of ‘this Act’ in subclause 1(2) of Schedule 2 to the Telecommunications Act to include reference to Part 6 of the TUSMA Bill. The effect of this amendment is to make compliance with Part 6 of the TUSMA Bill (concerning the assessment, collection and recovery of the industry levy) a standard service provider rule. Paragraph 92(1)(a) of the TUSMA Bill provides that carriers are participating...
persons for the new industry levy. This means that carriers (unless they are exempt) must lodge eligible revenue returns and may be required to pay a levy. The Minister may also determine by written instrument that carriage service providers are also participating persons (subparagraph 92(1)(b)(i) of the TUSMA Bill). In the absence of such a determination, the amendment in item 53 will have no practical consequence, since without the determination the Part 6 provisions will not apply to service providers that are not carriers.

Item 54 – Paragraph 27(5)(e) of Schedule 3

A facility installation permit is a written instrument issued by the ACMA to a licensed carrier, providing authorisation for that carrier to proceed with installation of one or more specified telecommunications facilities in circumstances where the carrier has not obtained all the administrative authority and proprietor approvals required under state and territory legislation.

Clause 27 sets out the matters that the ACMA must be satisfied about before it may issue a facility installation permit under clause 25 of Schedule 3 to the Telecommunications Act. It also sets out the things that the ACMA is required to take into account in deciding whether the grounds for an installation permit have been made out, including, at paragraph 27(1)(d), the condition that the advantages that are likely to be derived from the operation of the facilities in the context of the telecommunications network to which the facilities relate outweigh any form of degradation of the environment that is likely to result from the installation of the facilities.

In determining whether the condition at paragraph 27(1)(d) has been satisfied, paragraph 27(5)(e) currently provides that the ACMA must have regard to whether the installation of the facilities contributes to the fulfilment by the applicant of the universal service obligation. Item 54 inserts a proposed new paragraph 27(5)(e) which will in addition require that the ACMA must have regard to whether the installation of the facilities contributes to the applicant’s compliance with the obligations under a contract or grant (whichever is applicable) entered into or made under clause 13 of the TUSMA Bill for a purpose relation to the USO policy objectives for STS and payphones set out in paragraphs 11(a) and (b) of that Bill.

This item is a consequential amendment arising from the gradual phasing out and replacement of the universal service regime with the alternative contractual arrangements under the TUSMA Bill (see proposed new sections 8H–8K of the Consumer Protection Act for the progressive removal of regulation under the universal service regime).

Item 55 – After paragraph 1(jb) of Schedule 4

Clause 1 of Schedule 4 sets out the kinds of decisions that may be subject to reconsideration by the ACMA. Currently the list includes a decision by the ACMA to remit the whole or part of a penalty a person is liable to pay for late payment of the universal service levy (ja) as well as the NRS levy (jb). Item 55 amends the list to include a decision of the ACMA under subclause 121(3) of the TUSMA Bill to remit the whole or part of a late payment penalty that a person is liable to pay in respect of a levy amount that remains unpaid.
**Telecommunications (Consumer Protection and Service Standards) Act 1999**

**Item 56 – Section 4**

This item removes the reference to prescribed carriage services in the simplified outline for the Act in section 4. This amendment is a consequence of the proposed repeal of paragraph 9(1)(c) and section 9D of the Consumer Protection Act which will result in prescribed carriage services no longer being referred to in Part 2 of the Consumer Protection Act.

The repeal of the concept of ‘prescribed carriage services’ is consequential to the inclusion of paragraph 11(f) of the TUSMA Bill, which enables new policy objectives for TUSMA to be specified under regulations where these objectives relate to the supply of carriage services. As TUSMA will have the capacity to take on additional functions under that clause, the concept of ‘prescribed carriage services’ will no longer be needed.

**Item 57 – Section 4**

Item 57 amends the simplified outline in section 4 by inserting, before dot point 2, a proposed new dot point to explain to the reader that the universal service regime established by the Consumer Protection Act will be phased out and replaced by alternative contractual arrangements under the TUSMA Bill. The regulatory obligations with respect to the universal service regime will be removed in accordance with the proposed amendments to Part 2 of the Consumer Protection Act (see proposed new sections 8H, 8J and 8K of the Consumer Protection Act for the progressive removal of regulation under the universal service regime).

**Item 58 – Subsection 5(2)**

This item inserts in subsection 5(2) a proposed definition of ‘designated STS area’ which is taken to have the meaning given by proposed section 8H. The term ‘designated STS area’ is intended to collectively refer to both a non-fibre designated STS area and a fibre designated area.

Part 2 of the Consumer Protection Act provides for a universal service regime that imposes on Telstra, as the PUSP, a series of regulated obligations in relation to making the STS and payphones reasonably accessible across Australia. However, from the establishment of TUSMA, TUSMA will enter into, and administer, contracts or grants for universal service outcomes and other public interest services to achieve policy objectives at clause 11 of the TUSMA Bill. Accordingly, this Bill proposes amendments (including a framework set out at proposed sections 8H, 8J and 8K) to allow for a full transition, over time, from the current regulated obligation for the supply of the STS and payphones, to a solely contractual framework as set out in the TUSMA Bill.

**Item 59 – Subsection 5(2)**

Item 59 inserts in subsection 5(2) a proposed new definition of ‘NBN Co’. This term is defined to have the same meaning as in the National Broadband Network Companies Act 2011.
‘NBN Co’ is defined in section 5 of the National Broadband Network Companies Act 2011 to mean the company currently registered as NBN Co Limited (ACN 136 533 741), as that company exists from time to time (even if its name is changed at a later date).

Unlike the term ‘NBN corporation’, which appears in other NBN-related legislation, the term ‘NBN Co’ is not intended to include NBN Tasmania (currently registered as NBN Tasmania Limited (ACN 138 338 271)) or another company over which NBN Co is in a position to control. A reference to ‘NBN Co’ in the Consumer Protection Act will therefore be a reference to NBN Co Limited only. Before making a declaration of a non-fibre designated STS area or a fibre designated STS area under proposed section 8H, the Minister must consult NBN Co.

**Item 60 – Subsection 5(2)**

**Item 61 – Subsection 5(2)**

Items 60 and 61 insert in subsection 5(2) proposed definitions for ‘universal service contractor’ and ‘universal service grant recipient’. A ‘universal service contractor’ is defined to mean a person who is a contractor within the meaning of the TUSMA Bill. Under that Bill, a person is a contractor if TUSMA enters into a contract with the person for a purpose relating to the achievement of any or all of the policy objectives in clause 11 of that Bill.

A ‘universal service grant recipient’ is defined to mean a person who is a grant recipient within the meaning of the TUSMA Bill. Under that Bill, a person is a grant recipient if the person receives a grant of financial assistance from TUSMA for a purpose relating to the achievement of any or all of the policy objectives in clause 11 of the Bill.

Proposed sections 8H, 8J and 8K allow for a full transition, over time, from the current regulated obligations for the supply of the STS and payphones under Part 2 of the Consumer Protection Act, to a solely contractual framework as set out in the TUSMA Bill. There will be a transitional period whereby Telstra will have both regulated obligations and contractual arrangements with TUSMA for provision of the STS and payphones. Accordingly, these definitions of ‘universal service contractor’ and ‘universal service grant recipient’ are used in a number of items in this Bill to distinguish where a service is being provided under contract or grant arrangements with TUSMA.

**Item 62 – Paragraph 6(4)(a)**

Section 6 of the Consumer Protection Act defines the STS. This item amends paragraph 6(4)(a) to extend the matters to which the Minister may have regard under that paragraph to include infrastructure being used by ‘universal service contractors’ and ‘universal service grant recipients’ in addition to the infrastructure being used by universal service providers regulated under Part 2 of the Consumer Protection Act. This amendment is a consequence of the intended gradual transition from the universal service regime established by the Consumer Protection Act to the contractual framework for the delivery of similar outcomes under the TUSMA Bill.
Item 63 – Subsection 6(6) (definition of this Act)

This item extends the definition of ‘this Act’ in subsection 6(6) to include the TUSMA Bill. This ensures that the definition of a STS (as provided for in section 6) is applied consistently as between the Consumer Protection Act, the Telecommunications Act and the TUSMA Bill.

Item 64 – Section 8

Item 64 amends the simplified outline in section 8 to clarify that the universal service regime established by Part 2 of the Consumer Protection Act is intended to be phased out and replaced by alternative contractual arrangements under the TUSMA Bill.

The inclusion of this statement makes clear that there will be a gradual transition from regulated universal service obligations under Part 2 of the Consumer Protection Act to the contractual framework established by the TUSMA Bill (see proposed new sections 8H–8K of the Consumer Protection Act for the progressive removal of regulation under the universal service regime).

Item 65 – Section 8

Item 65 removes the reference to prescribed carriage services in the simplified outline in section 8. This consequential amendment is a result of the proposed repeal of section 9D of the Consumer Protection Act, which currently enables carriage services to be specified in the regulations.

The repeal of the concept of ‘prescribed carriage services’ is consequential to the inclusion of paragraph 11(f) of the TUSMA Bill, which enables new policy objectives for TUSMA to be specified under regulations where these objectives relate to the supply of carriage services. As TUSMA will have the capacity to take on additional functions under that clause, the concept of ‘prescribed carriage services’ will no longer be needed.

Item 66 – Section 8A

This item amends section 8A, which sets out the objects for Part 2 of the Consumer Protection Act, by requiring the objects to be read together with the TUSMA Bill. This amendment is a consequence of the gradual transition from regulated universal service obligations under Part 2 of the Consumer Protection Act to the contractual framework as provided for under the TUSMA Bill (see proposed new sections 8H–8K of the Consumer Protection Act for the progressive removal of regulation under the universal service regime).

Item 67 – Subparagraph 8A(a)(ii)

Item 68 – Subparagraph 8A(a)(iii)

These items amend section 8A to repeal “prescribed carriage services” as an object of the Consumer Protection Act.

These are consequential amendments following the proposed repeal of section 9D of the Consumer Protection Act, which currently enables the making of prescribed carriage services by regulations. The repeal of the concept of ‘prescribed carriage services’ is consequential to the inclusion of paragraph 11(f) of the TUSMA Bill, which enables new policy objectives for
TUSMA to be specified under regulations where these objectives relate to the supply of carriage services. As TUSMA will have the capacity to take on additional functions under that clause, the concept of ‘prescribed carriage services’ will no longer be needed.

**Item 69 – Paragraph 8D(1)(a)**

**Item 70 – After subsection 8D(3)**

Item 69 amends paragraph 8D(1)(a) with the effect that the final claim period to apply under the Consumer Protection Act will be the financial year 2011–12.

From 1 July 2012, the universal service levy to which the claim period relates will be replaced by an industry levy to be imposed by the Industry Levy Bill. Item 70 is a consequential amendment arising from the amendment to paragraph 8D(1)(a).

**Item 71 – At the end of Division 1 of Part 2**

Item 71 inserts three proposed new sections providing the Minister with the power to designate STS areas and make declarations about alternative contractual arrangements relating to the standard telephone service and payphones. The proposed sections provide mechanisms for the transition from the application of regulatory USO provisions under Part 2 of the Consumer Protection Act to the contractual framework set out under the TUSMA Bill.

Proposed sections 8H and 8J operate together to provide processes for the progressive removal of Telstra’s regulatory obligation to supply the standard telephone service. Proposed section 8K sets out the process for the removal of Telstra’s regulatory obligation for the provision of payphones.

There will be a transitional period whereby Telstra will have regulated obligations to supply the STS and payphones under Part 2 of the Consumer Protection Act, and, at the same time, be required to provide these services under the contractual framework provided for under the TUSMA Bill. After the USO regulation for the standard telephone service and/or payphones is lifted, pursuant to the declarations made under these proposed new sections (and consequential amendments made elsewhere to the Consumer Protection Act), the contractual arrangements set out in the TUSMA Bill will then provide for the continued delivery of universal service outcomes.

**Proposed section 8H – Meaning of designated STS area**

**Proposed section 8J – Declaration about alternative contractual arrangements relating to standard telephone services**

**Declarations relating to satisfactory alternative contractual arrangements**

Proposed section 8J sets out the process by which the Minister is required to make declarations as to whether there are satisfactory alternative contractual arrangements relating to standard telephone services. This proposed section obliges the Minister to determine whether or not Telstra has fulfilled specified pre-conditions, the consequential effect of which will be the removal of the USO STS regulation under the Consumer Protection Act.

Once a declaration of satisfactory alternative contractual arrangements has been made under proposed section 8J, declarations can be made under proposed section 8H to identify those
areas in Australia where USO regulation is to be lifted. The two sections will therefore work in concert with item 72 to progressively remove the regulatory obligations relating to Telstra’s provision of STS in Australia.

Proposed subsection 8J(1) requires the Minister, after 18 months (but no later than 23 months) from commencement of the section, to make either of the following initial declarations:

- a declaration that, in the Minister’s opinion, there are satisfactory alternative contractual arrangements in relation to standard telephone services, or
- a declaration that the 18 month period starting immediately after the declaration is made is the ‘first declaration deferral period’ for the purpose of section 8J.

**Criteria for determining satisfactory alternative contractual arrangements**

Before making a declaration that there are satisfactory contractual arrangements relating to STS under proposed section 8J, proposed subsection 8J(6) requires that there be in force a contract with Telstra under clause 13 of the TUSMA Bill that has been entered into by Telstra for a purpose relating to the achievement of the policy objective in paragraph 11(a) of that Bill (with respect to the supply of STS). There must be no notice of termination given under this contract by either party.

The Minister must also be satisfied that Telstra, as the contracted provider of standard telephone services at the time the Bill commences, is likely to substantially comply with its contractual obligations, having regard to the following criteria:

- the extent to which Telstra has complied with its regulated STS obligations, as set out in Parts 2 (Universal Service Regime) and 5 (Customer Service Guarantee) of the Consumer Protection Act (not including any act, omission, matter or thing occurring before the commencement of this proposed section)
- the extent to which Telstra has complied with its contractual obligations (under its contract with TUSMA) to supply STS
- the nature of Telstra’s obligations under the contract, and
- any other matters that the Minister considers relevant (for example, any rectification plans or contract variations that have occurred).

These criteria are not intended to be exhaustive, and will not limit the matters to which the Minister may have regard in making a declaration. The Minister must also obtain advice from the ACMA (regarding regulatory compliance) and TUSMA (regarding contractual compliance) before making the declaration.

If the Minister is satisfied that there are satisfactory alternative contractual arrangements in place, the Minister will be able to determine that the process for progressive removal of the USO for the standard telephone service can proceed through the mechanisms set out in proposed section 8H.

In requiring the Minister to make a declaration under proposed subsection 8J(1) no earlier than 18 months after commencement of the section, this proposed section provides Telstra with at least a full financial year of delivering the STS under the new contractual arrangements before the Minister considers Telstra’s record of compliance with its regulatory and contractual obligations, as per proposed subsection 8J(6). The timeframe also allows
sufficient time for the ACMA and TUSMA to gather and analyse relevant data about Telstra’s compliance in order to inform the Minister’s decision.

Declarations by the Minister under this proposed section are legislative instruments and will be subject to disallowance, but they cannot otherwise be varied or revoked.

Declaration deferral periods

If the Minister is not initially satisfied under proposed paragraph 8J(1)(c) that there are satisfactory alternative contractual arrangements, the Minister will be required under paragraph 8J(1)(d) to make a ‘first declaration deferral period’ declaration. Such a declaration is also taken to have been made if a declaration made under either proposed paragraphs 8J(1)(c) or (d) is not in force at the later of either 26 months after the commencement of subsection 8J(2) or following the last day that a motion to disallow the declaration could have been passed by a House of Parliament. This ensures a declaration deferral period will apply where, for instance, an initial declaration that there are satisfactory contractual arrangements is disallowed by a House of Parliament.

The Minister is provided with up to two ‘declaration deferral periods’ (proposed paragraphs 8J(1)(d) and 8J(3)(b)) should the Minister decide not to declare that satisfactory alternative contractual arrangements are in place relating to STS. Each period has the effect of deferring consideration of whether the STS part of USO regulation should be removed for an additional period of up to 18 months. This would provide an opportunity for Telstra to remedy any issues with its record of regulatory or contractual compliance.

If, after both the first and second declaration deferral periods are declared, the Minister is still not satisfied that there are satisfactory alternative contractual arrangements based on Telstra’s performance against the criteria, the Minister is required to declare (proposed paragraph 8J(5)(b)) that there are no satisfactory alternative contractual arrangements in place. If this happens, the regulatory obligations relating to the supply of STS under the Consumer Protection Act will remain in force and any arrangements regarding the removal of regulatory obligations will only be able to occur with further Parliamentary approval.

Proposed subsection 8J(9) provides that a declaration under this section cannot be varied or revoked. Since a declaration under this section is a trigger for the removal or not of Telstra’s regulatory obligations, it is important that there be certainty regarding the validity of the declaration.

The process for declaring designated STS areas – proposed section 8H

If the Minister has declared that there are satisfactory alternative contractual arrangements under proposed section 8J, the Minister will be able to commence the progressive removal of regulation from Telstra through the processes for the making of a ‘designated STS area’ set out in proposed section 8H.

The term ‘designated STS area’ refers collectively to either a ‘non-fibre designated STS area’ or a ‘fibre designated STS area’. As a consequence of a service area being a ‘designated STS area’ (and in concert with other amendments to this Bill – see item 72) the regulated obligations for the supply of the STS will cease to apply to that service area. In those areas, STS will be solely provided in accordance with TUSMA’s contract with Telstra.
The Minister must not declare a ‘non-fibre designated STS area’ or a ‘fibre designated STS area’ unless:

- a final migration plan is in force under subsection 577BE(3) of the Telecommunications Act. The requirements for a final migration plan are set out in subsection 577BC(2) of that Act;
- the Minister has declared under proposed section 8J that, in the Minister’s opinion, there are satisfactory alternative contractual arrangements relating to standard telephone services; and
- the Minister has consulted with NBN Co.

In addition, the Minister must not declare an area to be a non-fibre designated STS area unless the Minister is satisfied that an NBN corporation has not installed, is not installing, and does not propose to install, optical fibre lines to premises in that service area. In contrast, the Minister must not declare an area to be a fibre designated STS area unless the Minister is satisfied that an NBN corporation has installed, or is in the process of installing, optical fibre lines to premises in that service area.

Consultation with NBN Co will ensure that the Minister will be able to draw on factual information from NBN Co as to those areas where it has, or is in the process of, deploying fibre to premises, and its future plans as to the areas where it intends to deploy fibre to premises or alternatively use wireless or satellite infrastructure to provide services. NBN Co will need to maintain detailed mapping and premises information both to support the planning, construction and maintenance of its fibre network, to advise access seekers as to when services can be delivered in an area, and to regularly report against the fibre coverage objective established by the Government. It is expected that NBN Co will therefore draw on this pre-existing information when the Minister consults with it on this matter.

Proposed subsections 8H(4) and 8H(8) ensure that a declaration for a designated STS area cannot come into force unless an earlier declaration of satisfactory alternative contractual arrangements made under proposed section 8J has not been disallowed by a House of Parliament.

Under proposed subsection 8H(10), if the Minister has the power to make a designated STS area declaration, the Minister must make the first declaration for a designated STS area within 90 days of a declaration of satisfactory alternative contractual arrangements under proposed section 8J coming into force. Subsequently, the Minister is required to consider making further declarations under proposed section 8H at least once every six months, until any of the following occurs:

- the contract with Telstra for the provision of STS under clause 13 of the TUSMA Bill ceases to be in force
- if any of the provisions of a final migration plan cease to have effect, or
- the Minister declares the NBN to be built and fully operational.

Declarations under proposed section 8H will not be legislative instruments. Although declaring service areas as designated STS areas has the consequential effect of removing regulatory obligations from those areas, the instrumental declaration for removal is the initial declaration under proposed section 8J that the Minister is satisfied there are satisfactory alternative contractual arrangements relating to the STS. It is this declaration which enables the designated STS area declarations to be made. Declarations under proposed section 8H
rely on factual matters (for example, whether or not NBN is installing optical fibre lines to an area) and therefore are administrative in nature, and will not be legislative instruments under section 5 of the LI Act.

Although declarations under proposed section 8H are not legislative instruments, in the interests of transparency these declarations are required to be published on the Department’s website (proposed subsection 8H(13)).

Proposed subsection 8H(14) stipulates that a declaration under this section cannot be varied or revoked. This restriction avoids any possible uncertainty as to whether or not the STS related regulatory obligations have been removed from an area. Once a declaration is made under section 8H with respect to a service area, it will not be possible under the Consumer Protection Act for the STS-related regulatory obligations to be reintroduced to that area.

Proposed section 8K – Declaration about alternative contractual arrangements relating to payphones

Proposed section 8K sets out the process by which the Minister is required to make declarations as to whether there are satisfactory alternative contractual arrangements relating to payphones. This process is similar to that relating to STS except that, unlike STS for which there is a gradual removal of STS regulated USO as areas are declared ‘designated STS areas’, once a declaration has been made under proposed section 8K and not been disallowed (in concert with item 76 of this Bill), the regulated obligation for the provision of payphones immediately ceases to apply.

Proposed subsection 8K(1) requires the Minister, after 18 months (but no later than 23 months) from commencement of that subsection, to make either of the following declarations:

- a declaration that, in the Minister’s opinion, there are satisfactory alternative contractual arrangements in relation to payphones, or
- a declaration that the 18-month period starting immediately after the declaration is made is the first declaration deferral period for the purpose of section 8K.

Criteria for determining satisfactory alternative contractual arrangements for payphones

The matters to be considered before determining satisfactory alternative contractual arrangements for payphones are similar to the criteria applying to the equivalent declaration for standard telephone services under proposed section 8J. Namely, there must be in force a contract with Telstra under clause 13 of the TUSMA Bill that has been entered into by Telstra for a purpose relating to the achievement of the policy objective in paragraph 11(b) of that Bill (with respect to the supply of payphones) and no notice of termination has been given under this contract by either party.

The Minister must also be satisfied that Telstra, as the contracted provider in relation to the supply, installation and maintenance of payphones at the time the Bill commences, is likely to substantially comply with its contractual obligations, having regard to the following criteria:

- the extent to which Telstra has complied with its regulatory obligations in relation to payphones, as set out under Part 2 of the Consumer Protection Act (not including any act, omission, matter or thing occurring before the commencement of this proposed section)
• the extent to which Telstra has complied with its contractual obligations (under its contract with TUSMA) to supply, install and maintain payphones
• the nature of Telstra’s obligations under the contract, and
• any other matters that the Minister considers relevant (for example, any rectification plans or contract variations that have occurred).

Similar to proposed section 8J, the above criteria are not intended to be exhaustive, and will not limit the matters that the Minister may have regard to before making a declaration. The Minister must also obtain advice from the ACMA (regarding regulatory compliance) and TUSMA (regarding contractual compliance) before making the declaration.

If the required contractual arrangements are in place, and the performance of Telstra in relation to its regulatory and contractual obligations meets the criteria for making a declaration set out in proposed subsection 8K(6), the Minister may make a declaration that satisfactory alternative contractual arrangements are in place for payphones, and the regulated obligation for provision of payphones under paragraph 9(1)(b) and subsection 9(2A) is consequentially lifted in all areas of Australia (see item 76).

In requiring the Minister to make a declaration no earlier than 18 months after commencement of the section, the proposed section will provide Telstra with at least a full financial year to supply, install and maintain payphones pursuant to the new contractual arrangements before the Minister considers Telstra’s record of compliance with its regulatory and contractual obligations, as per proposed subsection 8K(6). The timeframe also allows sufficient time for the ACMA and TUSMA to gather and analyse relevant data about Telstra’s payphones-related compliance in order to inform the Minister’s decision.

Declarations by the Minister under this proposed section are legislative instruments and will be subject to disallowance by Parliament. Proposed subsection 8K(9) also provides that a declaration under this section cannot be varied or revoked. As with declarations made under sections 8H and 8J, there should be no uncertainty under this section as to whether the Minister is satisfied that there are satisfactory alternative contractual arrangements in relation to payphones. A decision on this matter can only be made by the Minister within the time period set out in this section.

**Declaration deferral periods**

If the Minister is not initially satisfied that there are satisfactory alternative contractual arrangements relating to payphones, the Minister will be required under paragraph 8K(1)(d) to make a ‘first declaration deferral period’ declaration. Such a declaration is also taken to have been made if a declaration made under either proposed paragraphs 8K(1)(c) or (d) is not in force at the later of either 26 months after the commencement of subsection 8K(2) or following the last day that a motion to disallow the declaration could have been passed by a House of Parliament. This ensures a declaration deferral period will apply where, for instance, an initial declaration that there are satisfactory contractual arrangements is disallowed by a House of Parliament.

The Minister is provided with up to two ‘declaration deferral periods’ of up to 18 months each (proposed paragraphs 8K(1)(d) and 8K(3)(b)). After each deferral period, the Minister can reconsider Telstra’s record of compliance with its regulatory and contractual obligations and other relevant matters set out in proposed subsection 8K(6), and make a further
declaration as to whether there are satisfactory alternative contractual arrangements. The 18-month period between declarations would provide Telstra with an opportunity to remedy any issues with its record of regulatory or contractual compliance.

If, after both the first and second declaration deferral periods are declared, the Minister is still not satisfied that there are satisfactory alternative contractual arrangements, the Minister is required to make a declaration under proposed paragraph 8K(5)(b) that no satisfactory alternative contractual arrangements are in place in relation to payphones. If this happens, the regulatory obligations relating to payphones under the Consumer Protection Act will remain in force and any arrangements regarding the removal of such obligations will only be able to occur with further Parliamentary approval.

**Item 72 – Paragraph 9(1)(a)**

**Item 75 – Subsection 9(2)**

These amendments are part of the package of amendments required to transition the regulated universal service regime under the Consumer Protection Act to the alternative contractual arrangements provided for in the TUSMA Bill.

Section 9 defines the universal service obligation. It includes, in paragraph 9(1)(a), the obligation to ensure that standard telephone services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business in Australia.

Subsection 9(2) makes clear that the STS obligation includes the obligation to supply STS to people in Australia on request.

Items 72 and 75 amend paragraph 9(1)(a) and subsection 9(2) with the effect that the STS obligation will no longer apply to people in ‘designated STS areas’ (this term is defined in proposed section 8H). The result of these amendments would be that the regulated universal service STS obligation under this Act would no longer apply to designated STS areas (areas declared by the Minister under section 8H), on the basis that the Minister is satisfied that there are satisfactory alternative contractual arrangements in place in those areas for the STS (as declared under proposed section 8J). While Telstra would still be providing the STS in those designated areas under its contract with TUSMA, it will no longer be subject to the regulated obligation to supply the STS under section 9 in those designated areas.

The STS obligation in paragraph 9(1)(a) and subsection 9(2) is replicated as a policy objective in paragraph 11(a) of the TUSMA Bill. Clause 13 of that Bill enables TUSMA to enter into contracts (and/or grants) to achieve the policy objectives. On 23 June 2011, the Commonwealth announced it had entered into a contract with Telstra relating, amongst other things, to achieving the policy objective in paragraph 11(a). Clause 22 of the TUSMA Bill will deem this contract to be a clause 13 contract under the TUSMA Bill provided the contract has not been discharged, terminated or rescinded at the time of commencement of clause 22. Under clause 12 of the TUSMA Bill, TUSMA must also, in performing its functions and exercising its powers, take all reasonable steps to ensure that the policy objectives listed in clause 11 (including the standard telephone service and payphone objectives that are modelled on the USO provisions in the Consumer Protection Act) are achieved under the contractual arrangements provided for in the TUSMA Bill.
Item 73 – Paragraph 9(1)(b)
Item 74 – Paragraph 9(1)(c)
Item 77 – Subsection 9(2B)

The universal service obligation includes, as per paragraph 9(1)(c), the obligation to ensure that prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. Subsection 9(2B) makes clear this obligation extends to the supply of prescribed carriage services to people in Australia on request.

At the commencement of the Bill, no services will have been prescribed under section 9D of the Consumer Protection Act. Since the universal service regime is being phased out and replaced with a contractual framework, the ability to prescribe further carriage services to be included as part of the USO is no longer necessary. Therefore, items 74 and 77 repeal paragraph 9(1)(c) and subsection 9(2B) respectively and item 73 is a consequential amendment.

The repeal of the concept of ‘prescribed carriage services’ is consequential to the inclusion of paragraph 11(f) of the TUSMA Bill, which enables new policy objectives for TUSMA to be specified under regulations where these objectives relate to the supply of carriage services. If the regulations do specify further carriage services, this will enable TUSMA to enter into contracts in relation to such services to achieve the paragraph 11(f) policy objective.

Item 76 – After subsection 9(2A)

This amendment is part of the package of amendments required to transition the regulated universal service regime under the Consumer Protection Act to the alternative contractual arrangements provided for in the TUSMA Bill.

This item inserts a proposed new subsection 9(2AA), which provides that an obligation does not arise under paragraph 9(1)(b) or subsection 9(2A) if the Minister makes a declaration under section 8K that, in the Minister’s opinion, there are satisfactory alternative contractual arrangements relating to payphones, and that declaration has not been disallowed by a House of Parliament.

The universal service obligation includes, as per paragraph 9(1)(b), the obligation to ensure that payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. Subsection 9(2A) makes clear this obligation includes the obligation to supply, install and maintain payphones in Australia. ‘Payphone’ is defined in section 9C to mean a fixed telephone that is a means by which a STS is supplied and when in working order, generally cannot be used to make a call unless payment or similar activation takes place.

The effect of proposed subsection 9(2AA) is that the regulated obligation to supply, install and maintain payphones will cease to apply to all people in Australia the day after a declaration under proposed section 8K that there are satisfactory alternative contractual arrangements relating to payphones comes into force. Proposed subsection 8K(6) sets out the criteria which must be met before the Minister can make such a declaration.
The result of this amendment would be that, from the day after the Minister’s declaration that there are satisfactory alternative contractual arrangements relating to payphones comes into effect (i.e. has been made and has not been subsequently disallowed by a House of Parliament), Telstra will be providing for payphones purely under its contractual arrangements with TUSMA and it will no longer be subject to the regulated obligation to supply payphones under section 9.

The payphones obligation in paragraph 9(1)(b) and subsection 9(2A) is replicated as a policy objective in paragraph 11(b) of the TUSMA Bill. Clause 13 of that Bill enables TUSMA to enter into contracts (and/or grants) to achieve the policy objectives. On 23 June 2011, the Commonwealth announced it had entered into a contract with Telstra relating, amongst other things, to achieving the policy objective in paragraph 11(b). Clause 22 of the TUSMA Bill will deem this contract to be a clause 13 contract under the TUSMA Bill provided the contract has not been discharged, terminated or rescinded at the time of commencement of clause 22. Under clause 12 of the TUSMA Bill, TUSMA must also, in performing its functions and exercising its powers, take all reasonable steps to ensure that the policy objectives listed in clause 11 (including the standard telephone service and payphone objectives that are modelled on the USO provisions in the Consumer Protection Act) are achieved under the contractual arrangements provided for in the TUSMA Bill.

Item 78 – Subsection 9(5)
Item 79 – Section 9A
Item 80 – Paragraph 9B(1)(b)
Item 81 – Paragraph 9B(1)(c)

These amendments are consequential to the proposed removal of the concept of prescribed carriage services from the universal service obligation in section 9 and the repeal of section 9D.

Subsection 9(5) provides that an obligation does not arise under paragraph 9(1)(c) and subsection 9(2B) in relation to particular equipment, goods or services, the supply of which is treated under section 9F as the supply of a prescribed carriage service if the relevant customer requests not to be supplied with the equipment, goods or services. Item 78 repeals this provision.

Section 9A enables the Minister to determine in writing, for the purposes of paragraph 9(1)(c), what is, or is not, necessary to ensure that prescribed carriage services are readily accessible. No determination has so far been made by the Minister under section 9A. Item 79 repeals this provision.

Paragraph 9B(1)(c) provides that the obligation referred to in paragraph 9(1)(c) (dealing with prescribed carriage services) is a ‘service obligation’ (unless the Minister makes a determination under subsection 9B(2) that divides the universal service obligation in another way). Item 81 repeals this provision and item 80 is a consequential amendment.

The repeal of the concept of ‘prescribed carriage services’ is consequential to the inclusion of paragraph 11(f) of the TUSMA Bill, which enables new policy objectives for TUSMA to be specified under regulations where these objectives relate to the supply of carriage services. As TUSMA will have the capacity to take on additional functions under that clause, the concept of ‘prescribed carriage services’ will no longer be needed.
**Item 82 – Section 9D**

Section 9D provides that, for the purposes of Part 2 of the Consumer Protection Act, a prescribed carriage service is a carriage service specified in the regulations. Item 82 repeals section 9D to remove the concept of a prescribed carriage service from Part 2 of the Act.

Section 9D was introduced to provide a mechanism to cater for changes over time in the development of the type of carriage services that may become available, and to enable other such carriage services to be made accessible under the universal service regime (if appropriate). To date, no carriage service has been prescribed by the Minister under section 9D.

With the gradual phasing out and replacement of the universal service regime under the Consumer Protection Act and the roll out of the National Broadband Network, it is no longer necessary to retain the ability to prescribe any further carriage services for the purposes of Part 2 of the Act. Further details regarding this amendment are provided in the notes to items 73, 74 and 77.

**Item 83 – Section 9F**

This item repeals section 9F, which provides that a reference in Part 2 of the Consumer Protection Act includes a reference to the supply of customer equipment and other goods or services (as specified in the regulations), where the equipment, goods or services are for use in connection with the prescribed service.

The repeal of section 9F is a consequence of the repeal of section 9D and the proposed removal of the concept of prescribed carriage services from Part 2 of the Consumer Protection Act.

**Item 84 – Subsection 9G(1) (note)**

Item 84 is a consequential amendment to the note to subsection 9G(1) as a result of the amendments to section 9G made by items 85 to 88.

**Item 85 – Subsection 9G(3)**

Subsection 9G(1) enables the Minister to determine universal service areas in respect of one or more specified areas.

Subsection 9G(3) provides that if at any particular time any areas of Australia are not within a universal service area covered by a determination under subsection 9G(1), in respect of a service obligation:

- those areas together constitute at that time a single universal service area in respect of that service obligation, and
- the Minister is taken to have made a determination to that effect under subsection 9G(1). That is, a determination that those areas outside the determined universal services areas together constitute a default service area.
Item 85 amends subsection 9G(3) by providing that the subsection will not apply to areas in Australia that are in ‘designated STS areas’. This term is defined in proposed subsection 8H(1). This amendment is a consequence of the gradual phasing out and replacement of the universal service regime from the Consumer Protection Act.

The effect of this amendment is that where a service area has been designated by the Minister under proposed section 8H it cannot be taken to have been determined by the Minister to be a single ‘universal service area’ for the purposes of section 9G.

Item 86 – Subsection 9G(3)
Item 87 – Paragraph 9G(4)(a)
Item 88 – Subsection 9G(5)

Subsection 9G(4) provides that if at any particular time one or more of the universal service areas in respect of which the Minister is taken to have made a determination because of subsection (3) cover the same areas of Australia, then despite that subsection:

- those areas together constitute at that time a single universal service area in respect of all the service obligations referred to in that subsection, and
- the Minister is taken to have made a determination under subsection 9G(1).

This rule in subsection 9G(3) is intended to prevent an unnecessary proliferation of default universal services areas in the event that the Minister determines different service areas. To the extent that the default service areas for the service obligations coincide but that for a third does not, then the first two will have the same default service area while the latter will have its own default service area.

Items 86 and 87 amend subsection 9G(3) and paragraph 9G(4)(a) so that these provisions only relate to the STS service obligation.

Item 88 repeals subsection 9G(5) and inserts proposed new subsections 9G(5) to (9). Proposed subsection 9G(5) replicates subsection 9G(3) except that it only applies to the payphone-related service obligation. Similarly, proposed subsection 9G(6) replicates subsection 9G(4) except that it only applies to the payphone-related service obligation.

The need to differentiate between the STS and payphones service obligations in section 9G is to allow for a situation where, for example, the payphones USO ceases to apply to any universal service area in Australia but the obligation to supply standard telephone services still applies to universal service areas (other than designated STS areas). Alternatively, a situation may arise where the payphones USO still applies across Australia, but the gradual removal of the obligation for STS has commenced in some areas. As the Bill enables separate declarations to be made in relation to the adequacy of the contractual arrangements for STS and payphones (proposed sections 8J and 8K respectively), such variations are possible. It is important to note, however, that Telstra will still be subject to contractual obligations under the agreement with TUSMA to supply the STS and payphones in areas where there is no longer a regulated USO obligation.

Therefore the amendments recognise that, from the commencement of the Bill, it is likely that different universal service areas will apply to different parts of the service obligation, and that a universal service provider may, for example, have a regulated obligation to supply standard
telephone services in a particular service area under section 9, but no concurrent regulatory obligation under section 9 to ensure that payphones are reasonably accessible in that area.

Proposed subsections 9G(7) and (8) provide that a declaration made in writing under subsection 9G(1) will be a legislative instrument, but not a declaration deemed to have been made under subsections 9G(3) or (4), or proposed subsection 9G(5) and (6). However, for reasons of transparency, proposed subsection 9G(9) will require the Minister to cause a determination that he or she has been taken to have made under section 9G to be published on the Department’s website.

**Item 89 – Subsection 12A(6)**
**Item 90 – Subsection 12D(2)**
**Item 91 – Subsection 12E(6)**
**Item 92 – Subsection 12E(7)**

Items 89 to 92 are consequential amendments arising from the enactment of the LI Act and the repeal of section 46A of the AIA effected by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*. The *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* did not amend the references to disallowable instruments for the purposes of section 46A of the AIA in the Consumer Protection Act at the time it repealed section 46A. To accord with current terminology, these items replace references to a ‘disallowable instrument for the purposes of section 46A of the AIA’ with ‘legislative instrument’.

**Item 93 – Paragraph 18(2)(b)**
**Item 94 – Paragraph 18(2)(c)**

Items 93 and 94 together amend subsection 18(2) by omitting paragraph 18(2)(c). The effect of the amendment is to provide that, for the purposes of Division 11 of the Consumer Protection Act, which concerns the regulation of universal service charges, a ‘universal service charge’ does not refer to the supply of prescribed carriage services to persons in a universal service area.

These items are consequential amendments arising from the proposed repeal of section 9D and that the concept of prescribed carriage services will no longer apply to Part 2 of the Consumer Protection Act. The repeal of the concept of ‘prescribed carriage services’ is consequential to the inclusion of paragraph 11(f) of the TUSMA Bill, which enables new policy objectives for TUSMA to be specified under regulations where these objectives relate to the supply of carriage services. As TUSMA will have the capacity to take on additional functions under that clause, the concept of ‘prescribed carriage services’ will no longer be needed.

**Item 95 – Paragraph 20C(1)(a)**
**Item 96 – After subsection 20C(1)**

Item 95 amends subsection 20C(1) with the effect that the last ‘eligible revenue period’ relating to the universal service levy under the Consumer Protection Act will be the 2011–12 financial year. This means that no further assessment of eligible revenue will be made by the ACMA under section 20F after the 2011–12 financial year.
This amendment reflects the change that from 1 July 2012, the universal service levy will be replaced by the new industry levy to be imposed by the Industry Levy Bill. To manage this transition, the first eligible revenue period under the TUSMA Bill (which will also be the financial year 2011–12) will rely on the eligible revenue assessment by the ACMA under section 20F, for that same period (see subclause 93(7) of the TUSMA Bill.)

Item 96 is a consequential amendment as a result of the amendment made by item 95.

Item 97 – Subparagraph 106(1)(b)(ii)
Item 98 – Subsection 106(1)
Item 99 – Subparagraph 106(2)(c)(ii)
Item 100 – Subsection 106(2)
Item 101 – After subsection 106(3)

Items 97 to 101 replace all references to the universal service obligation in section 106 with the term ‘universal service purpose’. This term is defined in proposed new subsection 106(3A).

Under proposed subsection (3A), a service is deemed to have been supplied ‘for a universal service purpose’ only if that service is supplied:

- in fulfilment of the universal service obligation, as defined in section 9 of the Consumer Protection Act, or
- in compliance with the terms and conditions of a contract or grant agreement entered into under clause 13 of the TUSMA Bill for a purpose relating to the achievement of policy objective in paragraph 11(a) of that Bill that standard telephone services are to be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business and be supplied to people in Australia on request.

Under section 104, a carriage service provider who charges an eligible customer for eligible local calls made using a STS supplied to that customer must give the customer an untimed local call option for those calls. Section 106 defines an ‘eligible local call’ to include a call that is made using a STS supplied to an eligible customer in fulfilment of the universal service obligation. Upon the declaration by the Minister of ‘designated STS areas’ under proposed new section 8H of the Consumer Protection Act, the universal service obligation to supply the STS will no longer apply with respect to those areas. The amendments to section 106 therefore allow for an eligible local call to be defined regardless of whether a particular customer is in an area that is still subject to a universal service obligation under the Consumer Protection Act or in an area where this obligation has been removed, and services are being supplied under a contract or grant that has been entered into under clause 13 of the TUSMA Bill to fulfil the STS policy objective (paragraph 11(a) of the TUSMA Bill).

These important amendments provide continuity and ensure that customers to which section 106 applies will continue to be provided with an untimed local call option notwithstanding the gradual phasing out of the STS universal service obligation set out in Part 2 of the Consumer Protection Act.
Item 102 – Subparagraphs 109(1)(a)(i), (b)(i), (c)(i) and (d)(i)
Item 103 – At the end of section 109

Item 102 amends section 109 by extending the operation of that section to apply to both ‘universal service contractors’ and ‘universal service grant recipients’. Item 103 defines these terms in proposed new subsections 109(4) and (5). Section 109 defines an ‘applicable zone’ for the purposes of Part 4 of the Consumer Protection Act. The ‘applicable zone’ is the zone within which calls are ‘local’ calls. The default ‘applicable zone’ is the relevant ‘standard zone’ in which that customer is situated. However, a different ‘nominated area’ may currently apply in the following circumstances:

- if the provider is the universal service provider for that customer, where the provider nominates a different zone to the ACMA and the customer chooses to adopt the nominated area, and
- if the provider is not a universal service provider, where the provider nominates a different zone to the ACMA (whether or not the customer chooses to adopt the nominated area).

A ‘universal service provider’ is defined in section 11A to mean a primary universal service provider or competing universal service provider. However, upon the declaration by the Minister of ‘designated STS areas’ under proposed new section 8H of the Consumer Protection Act, the obligations of primary or competing universal service providers under that Act will no longer apply with respect to the designated STS areas.

Proposed subsection 109(4) provides that a provider is a ‘universal service contractor’ if a customer of the carriage service provider is in a particular area, and the provider is a contractor in relation to a contract entered into under clause 13 of the TUSMA Bill in fulfilment of the STS-related policy objective in paragraph 11(a) of that Bill and the contract imposes an obligation on the contractor to supply standard telephone services in the area. Proposed subsection 109(5) provides a similar definition for a universal service grant recipient but in relation to a grant of financial assistance made under clause 13 rather than a contract.

The effect of these combined amendments is to ensure that where providers that fulfil the STS policy objective through a contract or grant agreement entered into under clause 13 of the TUSMA Bill nominate a different zone to the ACMA and the relevant customers choose to adopt the nominated areas, the nominated areas will become ‘applicable zones’ for the purposes of section 109.

These amendments provide important continuity for customers to which section 109 applies, notwithstanding the gradual phasing out of the STS universal service obligations set out in Part 2 of the Consumer Protection Act.

Item 104 – Subsection 120(7)

Subsection 120(7) provides that a customer cannot waive their CSG protections and rights, in whole or in part, under Part 5 of the Consumer Protection Act for services supplied, or proposed to be supplied, in fulfilment of the USO.

Item 104 amends subsection 120(7) with the effect that the prohibition on waiver by a customer will also apply if the services are supplied, or proposed to be supplied in
compliance with the obligations of a contract, or the terms and conditions of a grant, entered into under clause 13 of the TUSMA Bill in fulfilment of the STS policy objective in paragraph 11(a) of that Bill.

This amendment provides important continuity for consumers. Regardless of whether the consumer is receiving an STS from a universal service provider regulated under Part 2 of the Consumer Protection Act or from a provider pursuant to a contract or grant of financial assistance under clause 13 of the TUSMA Bill in fulfilment of the STS policy objective in paragraph 11(a) of that Bill, a standard telephone service cannot be provided on the condition that the customer waives his or her CSG rights.

Item 105 – Paragraph 136(2)(b)

Part 7 of the Consumer Protection Act operates to protect standard residential customers from losing prepaid monies if a new carriage service provider fails to supply standard carriage services, for example, due to the insolvency of the provider. Section 136 provides that, for the purposes of Part 7, a residential customer receiving a STS is a ‘standard residential customer’, and the service is a ‘standard carriage service’. Currently under subsection 136(2), public mobile telephone services are excluded from section 136 but only if, as provided for in paragraph 136(2)(b), those services are not supplied in fulfilment of the universal service obligation.

Item 105 extends paragraph 136(2)(b) with the effect that public mobile telephone services will also be excluded from section 136 if the service is not supplied to the customer through a contract or grant agreement entered into under clause 13 of the TUSMA Bill in fulfilment of the paragraph 11(a) STS policy objective. This amendment is consequential and intended to preserve the exception set out in subsection 136(2) as the transition of provision of the STS gradually moves from regulated obligations under Part 2 of the Consumer Protection Act, to the contractual arrangements with TUSMA (see proposed new sections 8H–8K of the Consumer Protection Act for the progressive removal of regulation under the universal service regime).

Item 106 – After subsection 147(9)

Section 147 requires the ACMA to make a determination that sets out requirements to be imposed on carriers, carriage service providers and emergency call persons in relation to the provision of emergency call services. For example, the determinations may include requirements concerning the transmission of calls and requirements regarding the receiving and handling of emergency calls.

Subsection 147(9) currently provides that before making an emergency call service determination under section 147, the ACMA must consult certain persons. Item 106 inserts a proposed new subsection 147(9A) which will also require the ACMA to consult with TUSMA before making a determination under section 147.

This amendment reflects that from the commencement of the TUSMA Bill, TUSMA will be responsible for the management of any contract or grant agreements entered into under clause 13 of the TUSMA Bill in fulfilment of the paragraph 11(c) policy objective relating to the provision of an emergency call service. Therefore it is appropriate that TUSMA be
consulted by the ACMA prior to it making an emergency call service determination under section 147.

At commencement of Parts 1 and 2 of the Bill, the management of the contract with Telstra for the provision of an emergency call service will be transferred to TUSMA under clause 24 of the TUSMA Bill. Thereafter TUSMA will assume management of the contract, including monitoring of performance under clause 29 of the TUSMA Bill and making payments to Telstra under the contract.

However, due to the nature and importance of emergency call services, provisions for regulation of the emergency call service will not be removed from the Consumer Protection Act. Any contractors or grant recipients under clause 13 of the TUSMA Bill in relation to the paragraph 11(c) policy objective will be required to comply with any ACMA determinations regarding the emergency call service.

*Telecommunications (Universal Service Levy) Act 1997*

**Item 107 – At the end of section 6**

This item inserts at the end of section 6 of the *Telecommunications (Universal Service Levy) Act 1997* a note providing that the last ‘claim period’ for the purposes of the universal service levy provided by that Act will end on or before 30 June 2012.

From 1 July 2012, it is intended that the USO and NRS levies will be replaced by a single levy imposed by the Industry Levy Bill. Part 6 of the TUSMA Bill concerns the assessment, collection and recovery of the new industry levy.

Despite 2011–12 being the last financial year for which the USO levy is payable, existing provisions that enable the ACMA to assess and collect the USO levy under Part 2 of the Consumer Protection Act will continue to apply. This ensures a smooth transition from the existing USO and NRS levy schemes to the new industry levy scheme (under the Industry Levy Bill and Part 6 of the TUSMA Bill).

**Part 2—Amendments relating to the National Relay Service**

*Criminal Code Act 1995*

**Item 108 – Section 473.1 of the Criminal Code**  
**Item 109 – Section 473.1 of the Criminal Code (definition of NRS provider)**  
**Item 110 – Paragraph 474.17(2)(a) of the Criminal Code**

Items 108 and 109 are consequential amendments to section 473.1 of the Criminal Code as a result of the proposed transition of the NRS contracts from the Consumer Protection Act to the TUSMA Bill.

Current contracts for the provision of the NRS will continue to operate but under TUSMA’s management as from 1 July 2012 (see clause 25 of the TUSMA Bill).

Item 108 is a consequential amendment resulting from the definition of the ‘National Relay Service’ being moved from the Consumer Protection Act to the TUSMA Bill, noting
TUSMA’s proposed role in ensuring, as per its policy objective set out in paragraph 11(d) of the TUSMA Bill, that the National Relay Service is to be reasonably accessible to all persons in Australia who are deaf or have a hearing and/or speech impairment, wherever they reside or carry on business. Consequently, other provisions relating to the provision of the NRS under the Consumer Protection Act are also being amended (see items 113 to 121 of this Bill).

Item 110 makes a proposed change to subsection 474.17(2) to make it clear for the purposes of the subsection 474.17(1) offence that more than one person can provide NRS services.

**NRS Levy Imposition Act 1998**

**Item 111 – At the end of section 3**

This item inserts at the end of section 3 a note that NRS contribution amounts are calculated for a quarter and that the last quarter will end on 30 June 2012.

From 1 July 2012, it is intended that the USO and NRS levies will cease to apply and will both be replaced by a single levy imposed by the Industry Levy Bill. Part 6 of the TUSMA Bill concerns the assessment, collection and recovery of the new industry levy.

This note brings to the attention of the reader that the quarter ending 30 June 2012 will be the last quarter for the purposes of NRS liability under section 98 of the Consumer Protection Act.

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

**Item 112 – Section 4**

Item 112 amends the simplified outline in section 4 by providing that the NRS provisions in the Consumer Protection Act are to be replaced by alternative contractual arrangements under the TUSMA Bill. The inclusion of these words in the outline is to bring to the reader’s attention that the NRS provisions are being transitioned from the Act to the TUSMA Bill.

The existing NRS contracts will be transferred to TUSMA under clause 25 of the TUSMA Bill.

**Part 3 of the Consumer Protection Act – The NRS Levy**

Items 113 to 121 of the Bill amend Part 3 of the Consumer Protection Act which provides for the National Relay Service (NRS). Through this Bill and the proposed TUSMA Bill, transitional provisions will apply the new legislative scheme to existing NRS contracts entered into by the Commonwealth prior to commencement.

At commencement, clause 25 of the TUSMA Bill will provide that all NRS contracts entered into under section 95 of the Consumer Protection Act will be taken to have been entered into under clause 13 of the TUSMA Bill for a purpose relating to the paragraph 11(d) NRS policy objective. The changes to the NRS scheme set out in items 113 to 121 are intended to allow TUSMA, from the commencement of the Bill, to take over management of the NRS contracts by replacing the existing NRS scheme in the Consumer Protection Act with the contractual framework set out in the TUSMA Bill. However, the amendments to this Part of the
Consumer Protection Act are in no way intended to alter or detract from the overarching policy objective in Part 3 that the NRS provide persons who are deaf or who have a hearing and/or speech impairment with access to a STS on terms, and in circumstances, that are comparable to the access other Australians have to a STS. Nor is it intended for there to be any substantive change to the level of performance monitoring and reporting that currently applies to NRS providers.

**Item 113 – Section 93**

The simplified outline at section 93 is amended to clarify that the NRS provisions in Part 3 of the Consumer Protection Act will be replaced by alternative contractual arrangements under the TUSMA Bill.

**Item 114 – Section 94 (definition of *NRS service plan*)**

This item repeals the definition of ‘NRS service plan’ in section 94. This amendment is a consequence of the repeal of subsections 95(2) and (3) in item 116 of the Bill, which provide for the NRS provider to prepare service plans for the NRS.

**Item 115 – After subsection 95(1)**

This item inserts a proposed new subsection 95(1A) to ensure that no further NRS contracts may be entered into under the Consumer Protection Act after the commencement of the subsection.

After the commencement of the Bill any future NRS contracts (or grants) will be entered into by TUSMA (on behalf of the Commonwealth) under clause 13 of the TUSMA Bill. Any future NRS contracts or grants will need to be in fulfilment of the NRS policy objective in paragraph 11(d) of Part 2 of the TUSMA Bill which, similar to paragraph 95(1)(a), provides that the National Relay Service is to be reasonably accessible to all persons in Australia who are deaf or have a hearing and/or speech impairment, wherever they reside or carry on business.

On 24 June 2011, the ACMA announced it had extended its contract arrangements with Australian Communication Exchange Limited and WestWood Spice respectively to 30 June 2013 for provision of the National Relay Service. However, the validity of any existing NRS contracts at the time the Bill commences will not be affected by proposed subsection 95(1A). Instead, clause 25 of the TUSMA Bill will deem such contracts to have been entered into under clause 13 for a purpose relating to the paragraph 11(d) NRS policy objective to enable the existing NRS contracts to be managed by TUSMA.

**Item 116 – Subsections 95(2) and (3)**

Item 16 repeals subsections 95(2) and (3) to remove any further requirement for both the NRS provider to prepare service plans, and for those service plans to be published by the Minister.

Under the TUSMA Bill, there will be no specific requirement for the party contracted in relation to the NRS policy objective to prepare service plans. Instead, that will be a contractual matter between TUSMA and the contractor or grant recipient. However,
subclause 15(2) of the TUSMA Bill will enable the Minister to determine standards, rules and/or minimum benchmarks that must be complied with or met under future contracts for the NRS (however, this power would not be exercisable in relation to the current NRS contracts). Such rules could include, for example, performance standard and benchmarks, timetables for the provision of services, mechanisms for dealing with complaints, reporting mechanisms and the like.

Additionally, under clauses 27 and 28 of the TUSMA Bill, key terms and details of TUSMA contracts and grants under clause 13 of the TUSMA Bill in fulfilment of the policy objectives of clause 11 of the TUSMA Bill are to be maintained on public registers accessible from TUSMA’s website.

Item 117 – After subsection 97(2)
Item 118 – Subsection 97(5)

Subsection 97(1) requires the ACMA to monitor all significant matters relating to the performance by each NRS provider of the provider’s obligations under a NRS Service Plan. Subsection 97(2) requires the ACMA to give a written report to the Minister at the end of each financial year about the performance by each NRS provider of the provider’s obligations under a NRS Service Plan.

Item 117 inserts a proposed new subsection 97(2A), which provides that subsections 97(1) and (2) do not apply to an obligation of a NRS provider if that obligation arises after the commencement of subsection (2A).

After commencement of the TUSMA Bill, TUSMA rather than the ACMA will have the role of monitoring and reporting on the performance of contractors and grant recipients (including NRS providers) under clause 29 of the TUSMA Bill. TUSMA will also be required to submit an annual report to the Minister under clause 75 of the TUSMA Bill.

Item 118 amends the definition of ‘financial year’ for the purposes of section 97 with the effect that the last financial year for which the ACMA has to provide a written report to the Minister about the performance of each NRS provider is in relation to the 2011–12 financial year.

Item 119 – At the end of section 97

This item inserts a proposed new subsection 97(6) to provide that, for the purposes of section 97, a ‘NRS service plan’ is a plan:

(a) referred to in subsection 95(2), as in force prior to the commencement of subsection (6), or

(b) prepared before the commencement of that subsection.

This amendment is effectively a savings provision to make clear what is being referred to as a ‘NRS service plan’ in section 97, given that from the commencement of proposed subsection 97(6) the definition of ‘NRS service plan’ in section 94 and the requirement to prepare service plans in subsection 95(2) will both have been repealed.
**Item 120 – Section 98**

This item amends section 98 with the effect that the NRS levy is only payable up to and including the last quarter for the 2011–12 financial year.

From 1 July 2012, no liability will be incurred for the USO or NRS levies and instead these levies will be replaced by a new industry levy to be imposed by the Industry Levy Bill. Part 6 of the TUSMA Bill concerns the assessment, collection and recovery of levy, and outlines the role of the ACMA in making eligible revenue assessments for the purpose of assessing the levy to be imposed by the Industry Levy Bill.

Despite 2011–12 being the last financial year for which the NRS levy is payable, the ACMA will still be able to recover as a debt any unpaid NRS levy under subsection 101(1), and penalties for late penalty of NRS levy under section 101A will continue to apply.

**Item 121 – Subsection 102(3)**

Item 121 repeals subsection 102(3) and inserts a proposed new subsection (3) which defines the purpose of the NRS Account as being the payment of amounts payable by the Commonwealth under a contract or grant entered into under clause 13 of the TUSMA Bill in fulfilment of the NRS policy objective set out in paragraph 11(d) of that Bill.

Currently, the NRS Account in section 102 is stated to have the purpose of making payments to NRS providers under NRS contracts. From 1 July 2012, however, the management of existing NRS contracts will be transferred over to TUSMA (clause 25 of the TUSMA Bill) and subsequent payments made to NRS providers under the NRS contracts will be made by TUSMA pursuant to contracts or grants entered into, or taken to have been entered into, under clause 13 of the TUSMA Bill. The new purposes provision in subsection 102(3) reflects the transfer to TUSMA of responsibility for the management of NRS contracts.

A note at the end of subsection 102(3) assists the reader by referring to section 21 of the FMA Act. Subsection 21(1) provides that if an Act other than the FMA Act establishes a Special Account and identifies the purposes of that Account, then the Consolidated Revenue Fund is appropriated for expenditures of the identified purposes of that Account.

**Part 3 – Transitional**

**Item 122 – Transitional – NRS policy objectives**

This item provides that clause 12 of the TUSMA Bill does not apply before the commencement of Part 2 of this Schedule (dealing with the NRS), in relation to TUSMA’s NRS policy objective set out in paragraph 11(d) of the TUSMA Bill. Clause 12 of the TUSMA Bill requires TUSMA to take all reasonable steps to ensure the policy objectives in clause 11 are achieved.

This item ensures that TUSMA’s obligation in clause 12 does not apply to the NRS policy objective until the management of the NRS contracts are transitioned to TUSMA at the commencement of Part 2 of the Schedule to this Bill.
Item 123 – Transitional - regulations

Item 123 enables the Governor-General to make regulations in relation to transitional matters arising out of the amendments made by this Schedule to the Bill. This item provides the Government with the flexibility to address any unforeseen matters that may arise in the process of transitioning the current universal service regime to the TUSMA contractual framework.