Amendments to be moved on behalf of the Government

(Circulated by authority of the Minister for Broadband, Communications and the Digital Economy, Senator the Honourable Stephen Conroy)
OUTLINE

The Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 (the Bill) forms part of a package of legislation to achieve continuity of key telecommunications safeguards in the transition to the National Broadband Network. This package of legislation provides for, among other things, 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.

The Bill makes consequential amendments to telecommunications and related legislation (including the Telecommunications Act 1997 (the Act)), under which the Minister may permit regulatory universal service obligation (USO) requirements to be progressively lifted from Telstra Corporation Limited, and to reflect the shift in responsibility to TUSMA for the delivery of universal service outcomes and other public interest services.

Part 13 of the Act prohibits the disclosure or use by eligible persons of certain information or documents relating to carriage service provider communications or the affairs or personal particulars of another person. An exception to the primary disclosure/use offence is if the disclosure may assist the ACMA, the ACCC or the Telecommunications Industry Ombudsman (TIO) to carry out their respective functions or powers (or in the case of the TIO, assist in the consideration of a complaint). The proposed amendments to the Bill extend this exception to apply to when the disclosure is made to TUSMA and the information or documents may assist TUSMA in carrying out its statutory functions and powers.

The amendment is intended to facilitate TUSMA’s achievement of its public interest telecommunications policy objectives by allowing persons to disclose information or documents to TUSMA where those information or documents would assist TUSMA in carrying out its contract- and grant-related functions and powers. Following the lifting of USO regulation in accordance with the Bill, the amendment to Part 13 of the Act will allow for the continued flow of USO-related information to TUSMA as the statutory agency with responsibility for universal service and other public interest telecommunications outcomes.

FINANCIAL IMPACT STATEMENT

The amendments are not expected to have any material financial impact for the Commonwealth.
ABBREVIATIONS

The following abbreviations are used in this supplementary explanatory memorandum:

ACCC: Australian Competition and Consumer Commission
ACMA: Australian Communications and Media Authority
Bill: Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011
NBN: National Broadband Network
NBN Co: NBN Co Limited
TIO: Telecommunications Industry Ombudsman
TUSMA: Telecommunications Universal Service Management Agency
TUSMA Bill: Telecommunications Universal Service Management Agency Bill 2011

NOTES ON AMENDMENTS

AMENDMENT (1)

This amendment inserts new items 28A to 28E into the Bill.

Item 28A – Section 284 (heading)
Item 28B – At the end of section 284

These items amend section 284 of the Act by replacing the heading and inserting a proposed new subsection 284(4).

Section 284 of the Act exempts persons from the prohibition in sections 276 and 277 relating to the disclosure of certain information or a document where the disclosure is made to:

- the ACMA (or a member of its staff) and the disclosure may assist the ACMA to carry out its functions or powers;
- the ACCC (or a member of its staff) and the disclosure may assist the ACCC to carry out its telecommunications functions or powers; or
- the TIO (or to an employee of the TIO) and the disclosure may assist the TIO in the consideration of a complaint.

Items 28A and 28B amend section 284 by similarly enabling disclosure by a person of information or a document if the disclosure is made to TUSMA (or a member of its staff) and the information or document may assist TUSMA in carrying out its functions or powers as set out in the TUSMA Bill.
These proposed amendments will ensure that with the shift in responsibility for the delivery of universal service outcomes and other public interest services to TUSMA, that persons can disclose certain information and documents to TUSMA, a statutory agency, without committing an offence – provided the disclosure may assist TUSMA in carrying out its functions and powers.

**Item 28C – Section 299 (heading)**
**Item 28D – At the end of section 299 (before the note)**
**Item 28E – Section 299 (note)**

These items amend section 299 of the Act by adding a proposed new subsection 299(4) to provide that where information or a document is disclosed to TUSMA (or a staff member of TUSMA), as permitted under proposed new subsection 284(4), TUSMA (or its staff members) must not disclose that information or document except for the purpose of, or in connection with, the carrying out of TUSMA’s functions and powers.

Proposed new subsection 299(4) is equivalent to the requirements that currently apply when information or a document is disclosed to assist the ACMA under subsection 299(1), and is similar to the requirements that apply when disclosure is made to either the ACCC or the TIO. This new subsection is an amendment consequential to proposed subsection 284(4); it ensures that TUSMA’s use of information received under subsection 284(4) is limited to its statutory functions or powers, as set out in the TUSMA Bill, and that the information or documents cannot be used or disclosed for any secondary purpose.