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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**Competition and Consumer Amendment (Misleading Representations about
Broadband Speeds) Bill 2018**

**EXPLANATORY MEMORANDUM
and
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

Circulated by authority of
Andrew Wilkie MP

Competition and Consumer Amendment (Misleading Representations about Broadband Speeds) Bill 2018

OUTLINE

This bill seeks to address the problem of retailers making misleading representations about the speed of a broadband service, particularly the practice of advertising speeds or quality that are not achievable during most periods or that are far beyond what the average user could expect to experience. Such representations may technically be correct and thus may not be in breach of current consumer law, but they are nonetheless misleading for consumers and can cause substantial loss and/or damage.

The bill seeks to amend the *Competition and Consumer Act 2010* to ensure that, when a representation is made about the speed, quality or price of a broadband service in trade or commerce, that representation also includes information about typical (not maximum) speeds, typical busy periods and what impact this can have on average speeds, and any other factors that might affect the performance of the service. This transparent advertising of speeds is consistent with guidance to the industry issued by the Australian Competition & Consumer Commission in its publication *Broadband Speed Clams: Industry guidance* (August 2017).

FINANCIAL IMPACT

The bill will have no financial impact.

NOTES ON CLAUSES

Clause 1: Short title

1. This clause is a formal provision and specifies the short title of the bill as the *Competition and Consumer Amendment (Misleading Representations about Broadband Speeds) Bill 2018*.

Clause 2: Commencement

2. This clause provides for the commencement of the Act on the day after it receives Royal Assent. The Act will not apply retrospectively and will only apply to representations made after its commencement.

Clause 3: Schedules

3. This clause establishes that, as the intent of the bill is to be realised through amendments to another Act, the schedules of this bill will amend that Act accordingly.

Schedule 1: Amendments

Competition and Consumer Act 2010

Item 1: After section 37 of schedule 2

1. Item 1 inserts a section 37A into schedule 2 of the *Competition and Consumer Act 2010* (the Act).
2. The new subsection 37A(1) stipulates that a person must not, in trade or commerce and in connection with the supply or possible supply of a broadband service, make a representation about the quality, value, grade or price of the service without including the information outlined in new subsection 37A(2).
3. Subsection 37A(2) sets out the required information to be information about: typical (not maximum) speeds that the average customer can expect to receive, typical busy periods and what impact this has on average speeds, and other factors that might be reasonably expected to affect performance.
4. Subsection 37A(3) specifies that this section does not limit the operation of any other provision of this division (such as section 37, which deals with misleading representations more broadly).

Item 2: After section 159 of schedule 2

5. Item 2 insert a section 159A into the Act.
6. Subsection 159A(1) creates an offence for making a representation about a broadband service that does not include the information outlined in subsection 159A(2), which is the same information outlined in 37A(2).
7. There is a pecuniary penalty for contraventions of this section of \$1,100,000 for a body corporate and \$220,000 for all other persons. This is consistent with other pecuniary penalties in the Act.
8. Subsection 159A(2) specifies that 159A(1) is an offence of strict liability. Strict liability is appropriate because it is consistent with other similar provisions in this part of the Act. Strict liability is also appropriate in this context because of the nature of the loss or damage that may be suffered with a misleading representation is made.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Competition and Consumer Amendment (Misleading Representations about Broadband Speeds) Bill 2018

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

The bill seeks to amend the *Competition and Consumer Act 2010* to ensure that, when a representation is made about the speed, quality or price of a broadband service in trade or commerce, that representation also includes information about typical (not maximum) speeds, typical busy periods and what impact this can have on average speeds, and any other factors that might affect the performance of the service. This transparent advertising of speeds is consistent with guidance to the industry issued by the Australian Competition & Consumer Commission in its publication *Broadband Speed Clams: Industry guidance* (August 2017).

Human rights implications

This bill does not engage any of the applicable rights or freedoms.

Conclusion

This bill is compatible with human rights because it does not raise any human rights issues.

Andrew Wilkie MP