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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TELECOMMUNICATIONS BILL 1996

EXPLANATORY MEMORANDUM

VOLUME 3

(Circulated by authority of Senator the Hon. Richard Alston, Minister for
Communications and the Arts)

NOTES ON CLAUSES - CONTINUED

Schedule 1—Standard carrier licence conditions

Part 1—Compliance with this Act

Clause 1 – Compliance with this Act

This clause requires carriers to comply with the Act. This obligation provides a mechanism for the enforcement under Parts 30 and 31 of obligations placed on carriers throughout the Act.

Part 2—Industry development plans

This Part sets out a carrier licence condition that implements the object in clause 3(2)(e) that relates to promoting:

- the development of the technical capabilities and skills of the Australian telecommunications industry;
- the development of the value-adding and export-oriented activities of the Australian telecommunications industry; and
- research and development that contributes to the growth of the Australian telecommunications industry.

The Part implements this object by requiring carriers to have industry development plans and to report annually on their progress in implementing the plans.

Clause 2 – Simplified outline

This clause provides an outline of the Part to assist readers.

Clause 3 – Definitions

This clause sets out the definitions of terms which are used in this Part.

Clause 4 – Carriers must have a current industry development plan

This clause establishes the obligation on a carrier to have a current industry development plan and to give its plan to the Industry Minister within 90 days of being granted a carrier licence.

Clause 6 requires industry development plans to specify the period to which the plan applies. Clause 4(2) provides for further plans after an industry development plan's period has concluded. It requires that where a plan relates to a particular period, a carrier must give the Industry Minister its plan within 90 days of the commencement of the

period or such longer period as allowed by the Minister. The effect is that where a carrier has a plan for a period and that period has concluded, the carrier must give a new plan to the Minister within the required time limits.

Clause 5 – Exemptions from industry development plan requirements

Under this clause the Industry Minister may by written instrument declare that a specified kind of carrier is not subject to this Part. This provides the flexibility to exclude a kind of carrier where the requirement to have a plan is an unnecessary regulatory requirement given the level of benefits for Australia that are likely to arise from those carriers' industry plans. For example, such an instrument might exclude small carriers below a threshold of annual or total expenditure and which have little current or planned investment in infrastructure.

A declaration under this clause is a disallowable instrument which must be published in the *Gazette*, tabled in Parliament and is subject to Parliamentary disallowance.

Clause 6 – Contents of industry development plan

Clause 6(1) defines an industry development plan as a plan for the development in Australia, in connection with the carrier's business as a carrier, of industries involved in the manufacture, development or supply of facilities; and related research and development. Facility is defined to include any system (whether software-based or otherwise) used in connection with the supply of a carriage or content service. This definition ensures that a plan can deal with the development of industries involved in the development or supply of software and other systems.

Clause 6(2) requires that an industry development plan contain relevant particulars about the carrier's strategic commercial relationships; research and development activities; involvement with industry; and export facilitation plans.

A plan must specify the period (at least 12 months) to which it relates.

Clause 7 – Current industry development plan

An industry development plan is considered current at a particular time, if that time is included in the period to which the plan relates.

Clause 8 – Publication of industry development plan

A carrier must make a summary of any plan it gives to the Industry Minister available to the public. The summary need not contain commercially sensitive information.

Clause 9 – Variation of industry development plan

As soon as practicable after varying an industry development plan, a carrier must give a copy of the variation to the Industry Minister and make a summary of the variation available to the public. The summary need not contain commercially sensitive information.

Clause 10 – Formulation of plan or variation – expression of views of the Commonwealth Government about industry development

A carrier must have regard to any views expressed by the Industry Minister about industry development when formulating or varying an industry plan.

Clause 11 – Notification of matters that may affect the achievement of an industry development plan

This clause requires a carrier to advise the Industry Minister about matters which may affect the achievement of its current industry plan, for example, changes in market conditions or business plans. It must set out the matters and explain their effect on the plan.

Clause 12 – Annual report on implementation of industry development plan

Within 90 days of the end of a financial year a carrier with a current industry development plan must give the Industry Minister a report setting out progress on the plan during the year and make a summary of the report available to the public. The summary need not contain commercially sensitive information.

Part 3—Access to supplementary facilities

This Part establishes obligations on carriers to provide access to other carriers to certain facilities. It closely reflects existing obligations placed on:

- general carriers by clause 6 of the Telecommunications (General Telecommunications Licence) Declaration (No 1) of 1991; and
- mobile carriers by clause 6 of the Telecommunications (Public Mobile Licences) Declaration (No 1) of 1991.

Clause 13 – Simplified outline

This clause provides a simplified outline of the Part to assist readers.

Clause 14 – Access to supplementary facilities

This clause requires carriers, on the request of another carrier, to provide access to facilities they own or operate. That obligation, however, applies only where:

- the access is provided for the sole purpose of enabling the second carrier to provide competitive facilities or services and/or to establish its own facilities;
- the request is reasonable (having regard to whether it would promote the long term interests of end-users of carriage services and services supplied by means of carriage services as detailed in proposed s. 152AB, Part XIC of the TPA to be inserted by the proposed *Trade Practices Amendment (Telecommunications) Act 1996*); and
- in the case of facilities that are not customer cabling or customer equipment - the facilities were installed before 30 June 1991 or were obtained after that date, but were not obtained solely by means of commercial negotiation.

Reference to the installation of facilities before 30 June 1991 and facilities which were obtained after that date, but were not obtained solely by means of commercial negotiation is intended to focus the obligation to require access to facilities where they have been installed or obtained as a direct or indirect result of legislated rights of access (such as land access powers or immunities from relevant planning laws), rather than on a commercial basis. There is no intention that consideration be given solely to legislated rights established under telecommunications law (for example, facilities acquired by a State utility which is also a carrier in accordance with land access powers given to that utility under State legislation).

Clause 15 – Terms and conditions of access

The terms and conditions on which a carrier complies with an access obligation under clause 14 are to be agreed between the carrier and requesting carrier, or where agreement cannot be reached, determined by an arbitrator appointed by the parties. In circumstances where the parties fail to agree on an arbitrator, the ACCC is to be the arbitrator.

If the ACCC is obliged to arbitrate a matter under this clause, it is expected that the ACCC will have regard to the same considerations, to the extent that they are applicable, as is required by an arbitration undertaken under proposed Division 8 of Part XIC of the TPA to be inserted by the proposed *Trade Practices Amendment (Telecommunications) Act 1996*. The regulations may make provision for the conduct of an arbitration under this clause.

A determination made under this clause must not be inconsistent with a Ministerial pricing determination (if any) made under clause 16.

Clause 16 – Ministerial pricing determination

This clause enables the Minister to make a written determination setting out principles dealing with price-related terms and conditions on which the access obligation in clause 14 is complied with.

Any such determination is a disallowable instrument for the purposes of s. 46A of the *Acts Interpretation Act 1901*.

Part 4—Access to network information

These provisions are intended to provide carriers, as infrastructure providers, with access to information, including traffic carriage information, necessary to ensure efficient interworking between networks. This Part closely reflects existing obligations placed on:

- general carriers by clause 5 of the Telecommunications (General Telecommunications Licences) Declaration (No. 1) of 1991; and
- mobile carriers by clause 5 of the Telecommunications (Public Mobile Licences) Declaration (No 1) of 1991.

In this Part, whether a request for information is ‘reasonable’ is intended to be considered on a case-by-case basis, having regard to the legitimate commercial interests of both the requesting party and the party which would be under an obligation to supply the information. The obligations in this Part are only imposed where the requesting carrier is supplied with carriage services by the carrier to whom the request was made.

Clause 17 – Simplified outline

This clause provides a simplified outline of the Part to assist readers.

Clause 18 – Access to network information

This clause establishes the primary obligations concerning the supply of network information between carriers. It places an obligation on carriers to provide other carriers with reasonable access to information from their operation support systems and traffic flow information where the requesting carrier will use that information for the sole purpose of undertaking planning, maintenance or reconfiguration of the requesting carrier’s network.

Where a request is made for information under this clause, the carrier to whom the request has been made must make the information available as soon as practicable after the request has been made.

‘Operations support systems’ is intended to mean systems that provide information relevant to the management of interconnection to, or use of, a network of a carrier and a network of another carrier, including, but not limited to fault and status reporting, and monitoring and testing of network reconfiguration systems.

‘Traffic flow information’ is intended to mean information:

- in sufficient detail to enable a requesting carrier to derive the statistics required to ascertain and quantify:
 - the volume of telecommunications traffic carried along routes within a network of a licensee; or
 - the proportion of this traffic which is accredited to the requesting carrier; or

- of a type defined in the relevant International Telecommunications Union recommendations required for network planning, operation or real-time management.

Clause 18(5) makes it clear that the obligations imposed on carriers in clauses 19, 20, 21, 22 and 26 of this Part do not, by implication, limit the obligation established under this clause.

Clause 19 – Access to information in databases

This clause requires a carrier to give a requesting carrier reasonable access to information contained in the carrier's database relating to the manner in which the carrier's network treats calls of a particular kind (such as calls to toll-free numbers or emergency numbers), including routing information. This information may be required by a requesting carrier, for example, to align treatment of such calls on their own network with the treatment of those calls on other networks.

Clause 19(3) provides that an obligation under this clause is only established where the request is made for the sole purpose of enabling the requesting carrier to undertake planning, maintenance or reconfiguration of their own network. Clause 19(4) provides that where a request is made for information under this clause, the carrier to whom the request has been made must make the information available as soon as practicable after the request has been made.

To safeguard privacy, security and commercial interests, this clause obliges the provision of access to information contained on a carrier's databases, not access to the databases themselves.

Clause 20 – Access to network planning information

This clause obliges a carrier to provide, where a reasonable request has been made, another carrier with timely and detailed network planning information sufficient to enable the requesting carrier to undertake its own network planning.

A non-exhaustive list of the types of information which may be requested is provided in clause 20(3).

Clause 20(5) provides that where a request is made for information under this clause, the carrier to whom the request has been made must make the information available as soon as practicable after the request has been made.

Clause 21 – Access to information about likely changes to network facilities - completion success rate of calls

This clause obliges a carrier, where requested to do so by another carrier, to supply timely and detailed information relating to likely changes to facilities on the carrier's network which will affect the completion success rate of calls offered by the requesting carrier.

Clause 21(2) provides that an obligation under this clause is only established where the request is made for the sole purpose of enabling the requesting carrier to undertake forward planning for its own network.

Clause 21(4) provides that where a request is made for information under this clause, the carrier to whom the request has been made must make the information available as soon as practicable after the request has been made.

Clause 22 – Access to quality of service information etc.

This clause obliges a carrier to comply with reasonable requests of other carriers to supply detailed and timely information relating to network problems (eg. congestion). The types of information which may be requested are listed in clause 22(2) and may be supplemented by regulations.

Clause 22(4) provides that where a request is made for information under this clause, the carrier to whom the request has been made must make the information available as soon as practicable after the request has been made.

Clause 23 – Security procedures

This clause provides that the obligations in clauses 18 to 22 do not take effect unless the requesting carrier has procedures in place designed to protect the confidentiality of information and which have either been agreed between the requesting and supplying carrier or, failing agreement, determined by the ACCC.

Clause 24 – Terms and conditions of compliance

This clause provides that the terms and conditions on which the obligations described in clauses 18 to 22 are complied with are to be agreed by the requesting carrier and the carrier supplying the information or, failing agreement, as determined by an arbitrator appointed by the parties. Where the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

If the ACCC is obliged to arbitrate a matter under this clause, it is expected that the ACCC will have regard to the same considerations, to the extent that they are applicable, as is required by an arbitration undertaken under proposed Division 8 of Part XIC of the TPA to be inserted by the proposed *Trade Practices Amendment (Telecommunications) Act 1996*.

A determination made under this clause must not be inconsistent with a Ministerial pricing determination (if any) made under clause 25.

Clause 25 – Ministerial pricing determination

This clause enables the Minister to make a written determination setting out principles dealing with price-related terms and conditions on which the access obligation in clause 24 is complied with.

Any such determination is a disallowable instrument for the purposes of s. 46A of the *Acts Interpretation Act 1901*.

Clause 26 – Consultation about reconfiguration etc.

This clause provides that, if requested by another carrier, the carrier must consult with the requesting carrier about proposed modifications to, or reconfigurations of, the carrier's network where those modifications or reconfigurations have a bearing on the requesting carrier's own network planning, maintenance or reconfiguration activities.

Clause 26(4) provides that the terms and conditions on which the obligations described in this clause are complied with are to be agreed by the requesting carrier and the carrier supplying the information or, failing agreement, as determined by an arbitrator appointed by the parties. Where the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

If the ACCC is obliged to arbitrate a matter under this clause, it is expected that the ACCC will have regard to the same considerations, to the extent that they are applicable, as is required by an arbitration undertaken under proposed Division 8 of Part XIC of the TPA to be inserted by the proposed *Trade Practices Amendment (Telecommunications) Act 1996*.

Part 5—Access to telecommunications transmission towers and to underground facilities

This Part establishes obligations on carriers to provide other carriers with access to:

- facilities and sites used for the supply of a carriage service by means of radiocommunications; and
- underground facilities used for, or designed to hold, lines;

with the aim of ensuring as far as possible that these facilities are co-located. A carrier will have rights of access to another carrier's site in order to maintain its facilities installed on that site by reason of the carrier powers provided in Part 1 of Schedule 3.

Clause 27 – Simplified outline

This clause provides a simplified outline of Part 5 of Schedule 1 to assist readers.

Clause 28 – Definitions

This clause provides definitions of terms used in this Part.

An ‘eligible underground facility’ is an underground facility that is used, installed ready to be used, or intended to be used, to hold lines.

A ‘site’ is defined to mean land or a building or structure on land.

A ‘telecommunications transmission tower’ is defined to mean any tower, pole, mast or similar structure that is used to supply a carriage service by means of radiocommunications.

Clause 29 – Access to telecommunications transmission towers

This clause requires a carrier, on the request of another carrier, to provide access to a telecommunications transmission tower the carrier owns or operates where:

- the access is provided for the sole purpose of enabling the second carrier to install a facility for supply of a carriage service by means of radiocommunications;
- the requesting carrier gives reasonable notice that it requires access; and
- the ACA has not certified that the proposed access is not technically feasible.

Clause 30 – Access to sites of telecommunications transmission towers

This clause requires a carrier, on the request of another carrier, to provide access to a site where a telecommunications transmission tower is located where:

- the access is provided for the sole purpose of enabling the second carrier to install a facility for supply of a carriage service by means of radiocommunications;
- the requesting carrier gives reasonable notice that it requires access; and
- the ACA has not certified that the proposed access is not technically feasible.

Clause 31 – Access to eligible underground facilities.

This clause requires a carrier, on the request of another carrier, to provide access to an eligible underground facility that the carrier owns or operates where:

- the access is provided for the sole purpose of enabling the second carrier to install a line for supply of a carriage service;
- the requesting carrier gives reasonable notice that it requires access; and

- the ACA has not certified that the proposed access is not technically feasible.

Clause 32 – Terms and conditions of access

The terms and conditions on which a carrier complies with an access obligation under clause 29, clause 30 or clause 31 are to be as agreed between a carrier and a requesting carrier, or, where agreement cannot be reached, determined by an arbitrator appointed by the parties. Where the parties cannot agree on an arbitrator, the ACCC is to be the arbitrator.

The clause further provides that regulations may be made for the conduct of an arbitration under this clause. These include regulations that may deal with the constitution of the ACCC for the purposes of such an arbitration.

If the ACCC is obliged to arbitrate a matter under this clause, it is expected that the ACCC will have regard to the same considerations, to the extent that they are applicable, as is required by an arbitration undertaken under proposed Division 8 of Part XIC of the TPA to be inserted by the proposed *Trade Practices Amendment (Telecommunications) Act 1996*.

Clause 33 – Code relating to access

This clause provides for a Code to be made by the ACCC setting out conditions that carriers must comply with in relation to the provision of access under Part 5 of Schedule 1.

A Code is a disallowable instrument which must be notified in the *Gazette*, tabled in the Parliament and is subject to Parliamentary disallowance.

The clause makes it clear that the provision made by this clause for a Code of Practice governing the conduct of carriers in carrying out these relevant activities is not intended by implication to limit the matters that may be dealt with by the industry codes and the industry standards that are provided for in Part 6 of the Bill.

Clause 34 – Industry co-operation about sharing of sites and eligible underground facilities

This clause requires carriers, in planning the provision of future carriage services, to co-operate to share transmission tower sites and eligible underground facilities.

Clause 35 – This Part does not limit Part 3 of this Schedule

This clause provides that Part 5 (which deals with access to telecommunications towers, related sites and eligible underground facilities) does not by implication limit the scope of Part 3 of Schedule 1 (which gives a carrier rights in some circumstances to access to any type of facility owned or operated by another carrier).

Part 6—Inspection of facilities etc.

These obligations relating to record-keeping and inspection of facilities are based on the current obligations on carriers under the Telecommunications National Code.

Clause 36 – Simplified outline

This clause provides a simplified outline to Part 6 of Schedule 1 to assist readers.

Clause 37 – Records relating to underground facilities

This clause requires a carrier who owns or operates underground facilities to keep and maintain accurate records of the kind and location of those facilities and, where the facility is an eligible underground facility, its capacity to hold further lines. (Clause 46 of Schedule 3 provides that the ACA may inform members of the public about the kinds and location of underground facilities. In performing this function, the ACA usually would rely upon the records kept by carriers.)

Clause 38 – Regular inspection of facilities

This clause requires a carrier to inspect facilities owned or operated by it at regular intervals determined having regard to good engineering practice.

Clause 39–Prompt investigation of dangerous facilities

This clause requires a carrier to investigate promptly the condition of a facility owned or operated by it where the carrier has reasonable grounds to suspect that the condition of the facility is likely to endanger health or safety of persons or property.

Clause 40 – Remedial action

This clause requires a carrier to take any remedial action reasonably required as soon as practicable after it becomes aware of the need to do so following an inspection under clause 38 or an investigation under clause 39.

Schedule 2—Standard service provider rules

Part 1—Compliance with this Act

Clause 1 – Compliance with this Act

Clause 1 requires all service providers to comply with the Act. This obligation provides a mechanism for the enforcement under Parts 30 and 31 of obligations imposed on service providers by provisions throughout the Act.

Part 2—Operator services

This Part is intended to ensure that all end-users of a standard telephone service have access to operator services. A licence condition will be imposed on Telstra which will require it to provide an operator service. Should other carriage service providers not wish to establish their own service, they will be able to make arrangements with Telstra for their end-users to have access to Telstra's service.

Clause 2 – Simplified outline

Clause 2 provides a simplified outline of this Part to assist readers.

Clause 3 – Scope of Part

This clause defines operator services for the purposes of this Part as services for dealing with faults and service difficulties, and services of a kind specified in the regulations. The regulation making power will enable other kinds of operator services to be specified, should it become appropriate to do so.

Clause 4 – Operator services must be provided to end-users of a standard telephone service

Clause 4 requires a carriage service provider who supplies a standard telephone service to make operator services available to each end-user of the standard telephone service, either by providing the services itself or by arranging for a third person to provide the services.

Clause 5 – Access to end-users of other carriage service providers

Clause 5 applies where a carriage service provider who does not provide operator services requests access to the operator services provided by another carriage service provider (such as Telstra). That carriage service provider is required to provide access in accordance with the request and on such terms and conditions as are agreed between the parties, or failing agreement, as are determined by an arbitrator appointed by the parties. If the parties fail to agree on the appointment of an arbitrator, then the ACCC is to be the arbitrator. It is expected that the ACCC will have regard to the types of issues it is required to consider in arbitrating disputes under proposed Part XIC of the TPA to be

inserted by the proposed *Trade Practices Amendment (Telecommunications) Act 1996* and would follow similar procedures. The regulations may make provision for and in relation to the conduct of an arbitration under this clause.

Part 3—Directory assistance services

This Part is intended to ensure that all end-users of a standard telephone service have access to directory assistance services. A licence condition will be imposed on Telstra which will require it to provide a directory assistance service. Should other carriage service providers not wish to establish their own service they will be able to make arrangements with Telstra for their end-users to have access to Telstra's service.

Clause 6 – Simplified outline

Clause 6 provides a simplified outline of this Part to assist readers.

Clause 7 – Directory assistance services must be provided to end-users

A carriage service provider who supplies a standard telephone service is required to make directory assistance services available to each end-user of the service, either by providing the services itself or by arranging for a third person to provide the services.

Clause 8 – Access by end-users of other carriage service providers

Clause 8 applies where a carriage service provider who supplies a standard telephone service but does not provide directory assistance services requests access to the directory assistance services provided by another carriage service provider. That carriage service provider is required to provide access in accordance with the request and on such terms and conditions as are agreed between the parties, or failing agreement, as are determined by an arbitrator appointed by the parties. If the parties fail to agree on the appointment of an arbitrator, then the ACCC is to be the arbitrator. It is expected that the ACCC will have regard to the types of issues it is required to consider in arbitrating disputes under proposed Part XIC of the TPA to be inserted by the proposed *Trade Practices Amendment (Telecommunications) Act 1996* and would follow similar procedures. The regulations may make provision for and in relation to the conduct of an arbitration under this clause.

Part 4—Integrated public number database

It is intended that Telstra will be obliged under its licence conditions to provide and maintain an integrated public number database. However, a mechanism is included in clause 456 of the Bill for the Minister to determine that another specified person or association is to provide and maintain an integrated public number database. This mechanism will be used if the industry can reach agreement for a body other than Telstra to perform the function.

This Part requires all carriage service providers to assist Telstra or the other body in its discharge of its obligation. The database will be an industry-wide database containing the details of all customers. All carriage service providers will have access to the

database for the purpose of providing operator and directory assistance services. Emergency service organisations and law enforcement agencies will also have access to the database, for emergency and law enforcement purposes.

Clause 9 – Simplified outline

Clause 9 provides a simplified outline of this Part to assist readers.

Clause 10 – Carriage service providers must give information to Telstra

Clause 10 applies if there is a carrier licence condition on Telstra to provide and maintain an integrated public number database. In that case, this clause requires carriage service providers who supply carriage services to end-users with a public number to give any information reasonably required by Telstra for the provision and maintenance of the integrated public number database.

‘Public number’ is defined to mean a number specified in the numbering plan as mentioned in clause 439(3), which requires the numbering plan to specify numbers for use in connection with the supply of carriage services to the public in Australia.

Clause 11 – Carriage service providers must give information to another person or association

Clause 11 applies if a person or association other than Telstra is obliged to provide and maintain an integrated public number database under clause 456. In that case, this clause requires carriage service providers who supply carriage services to end-users with a public number to give any information reasonably required by the person or association for the provision and maintenance of the integrated public number database.

Part 5—Itemised billing

This Part is intended to ensure that all customers of a standard telephone service have the right to receive itemised billing for each call that is not an untimed local call.

Clause 12 – Simplified outline

Clause 12 provides a simplified outline of this Part to assist readers.

Clause 13 – Itemised billing

Clause 13 imposes a general requirement for a carriage service provider to provide itemised billing for each of its customers supplied with a standard telephone service for calls made using that service.

This requirement does not apply where the customer chooses not to have itemised billing for a particular service. The requirement does not apply to untimed local calls, which are defined under Part 8.

The requirement does not apply to designated local calls except at the customer's request. A 'designated local call' is a call that is made using a standard telephone service and is made between points in an applicable zone in relation to the carriage service provider and the customer. 'Applicable zone' is defined under Part 8 and is, in effect, the local call zone that the carriage service provider provides to the customer. A designated local call does not include an exempt call, which is defined as a call which involves the use of a public mobile telecommunications service or a satellite service. The effect of these exemptions is that carriage service providers are required to provide itemised billing for calls made using a standard telephone service which involves the use of a public mobile telecommunications service or a satellite service, unless the customer chooses otherwise.

Itemised billing means provision of a bill that contains the date, duration and charge for each call and the number to which the call was made, or if the ACA has made a written determination in relation to itemised billing for the kind of service concerned, the details specified in that determination. Such a determination is a disallowable instrument which must be published in the *Gazette*, tabled in Parliament and is subject to Parliamentary disallowance.

Clause 14 – Exemptions from itemised billing requirements

Clause 14 allows the ACA to exempt a specified carriage service provider from the requirement to provide itemised billing in relation to specified customers. This is intended to provide an exemption for carriage service providers that do not have the technical capability to provide itemised billing to certain customers. However, in making an exemption the ACA must have regard to the carriage service provider's plans to install a capability to provide itemised billing to those customers. It is intended that the ACA would only allow an exemption granted under this clause to continue for the period required to install the itemised billing capability. The ACA has the power to revoke the declaration under s. 33(3) of the *Acts Interpretation Act 1901*.

Clause 15 – Details that are not to be specified in an itemised bill

The ACA may by written instrument determine that specified details must not be shown in an itemised bill provided by a carriage service provider to a customer, having regard to the Information Privacy Principles set out in the *Privacy Act 1988*. This provision is intended to allow the ACA to ensure that itemised bills do not contain information which would unnecessarily transgress the privacy of either the customer or the parties whom the customer has called.

Schedule 3—Carriers’ powers and immunities

The provisions made in Schedule 3 to the Bill are intended to replace the regime of carriers’ powers and immunities provided for in Part 7 of the 1991 Act.

The general land access powers given to carriers by Division 3 of Part 7 of the 1991 Act and the immunity from State law provided by the Telecommunications (Exempt Activities) Regulations made under s.116 of that Act will not continue, except for transitional provisions specified at Part 2 of Schedule 3 to the Bill for works already notified in accordance with the 1991 Act.

Instead, Part 1 of Schedule 3 to the Bill provides authority for carriers to inspect land, maintain facilities, connect subscribers to an existing network or install any declared ‘low impact facilities’ or temporary defence facilities. Other installation of facilities will be regulated under State or Territory law (and also will be subject to some special requirements for environmentally sensitive projects provided for at clause 50). There is provision for a carrier to apply to a specially-constituted panel of the ACA for a permit to carry out installation of facilities where the carrier does not obtain the approval of the relevant State, Territory or local government body or the owner of the land. A permit for a designated overhead line will not be granted unless the approval of any relevant State, Territory and local government body has been obtained.

Carrying out activities authorised by the Act will be subject to a range of conditions including current conditions under Division 3 of Part 7 of the 1991 Act and the Telecommunications National Code made under s.117 of the 1991 Act indicated below.

Obligations imposed on carriers by Schedule 3 will have effect as licence conditions (see Schedule 1, clause 1) and may be enforced as such.

Part 1—General provisions

Division 1—Simplified outline and definitions

Clause 1 – Simplified outline

This clause provides an outline of Part 1 of Schedule 3 to assist the reader. It describes in general terms the activities which may be authorised under this Part.

Clause 2 – Definitions

This clause sets out the definitions of terms which are used in Part 1 of Schedule 3. The definitions of ‘Aboriginal person’ and ‘Torres Strait Islander’ are those used in the *Aboriginal and Torres Strait Islander Commission Act 1989*.

Clause 3 – Designated overhead line

This clause sets out the definition of a ‘designated overhead line’. It is defined as a line suspended above the surface of land or water that has external dimensions (ie including any insulation, etc) exceeding the specified thickness of 13 mm or such other distance as may be specified in regulations.

Division 2—Inspection of land

Clause 4 – Inspection of land

This clause authorises a carrier to enter onto and inspect land and anything that is necessary or desirable for the purposes of determining whether it is suitable for its purposes.

Clause 4 is derived from the power conferred on a carrier by s.128(1) of the 1991 Act. However, carrying out the authorised activity is subject to all the relevant conditions set out in Division 5 of Part 1 of Schedule 3 to the Bill.

Division 3—Installation of facilities

Clause 5 – Installation of facilities

This clause authorises a carrier to install facilities and carry out ancillary or incidental activities in similar terms to the power given to carriers under s.129(1) and s.129(2) of the 1991 Act (see the definition of ‘installation’ at clause 2). However the authorised activity is subject to all the relevant conditions in Division 5 of Part 1 of Schedule 3 to the Bill. Moreover, a carrier is only given authority by the Bill to install a facility in one of the following circumstances:

- where the carrier is authorised to do so by a facility installation permit granted by the ACA under Division 6 of Part 1 of Schedule 3;
- where the facility is a ‘low impact facility’;
- where the facility is a temporary defence facility; or
- the activity is carried out before 1 July 2000 for the sole purpose of connecting a subscriber to a line forming part of a telecommunications network existing at the commencement of the Act and the connection does not cross over or under a street or a road.

If the installation of a facility is not authorised by the Bill in one of the circumstances listed above, the installation usually would require the approval of an administrative authority (eg, a local government authority) under the terms of a relevant law of a State or Territory.

The clause provides for the Minister by disallowable instrument to determine a facility to be a ‘low impact facility’ (see clauses 5(3) and 5(6)).

- The instrument may provide for a particular class of facility to be determined for the purpose of this Part. For example, a determination could be made by reference to the type of facility, the type of location at which it is installed, whether it is co-located with an existing facility or any other basis of classification. The fact that a particular type of facility may also be a temporary defence facility or a subscriber connection authorised by the Act does not prevent it also being determined to be a low impact facility.
- Section 4 of the *Acts Interpretation Act 1901* will allow the Minister to make a determination before 1 July 1997 so that an instrument is ready when Schedule 3 commences operation on that date. It is open to the Minister before 1 July 1997 to direct AUSTEL under s.327(b) of the 1991 Act to inquire into further issues relevant to the making of a determination.

Division 4—Maintenance of facilities

Clause 6 – Maintenance of facilities

This clause authorises a carrier to maintain an existing facility in similar terms to the existing s.130 and s.131 of the 1991 Act. Carrying out this activity, however, is subject to all the relevant conditions set out in Division 5 of Part 1 of Schedule 3.

The term ‘maintenance’ is defined for the purposes of the clause so as to include, among other things, the replacement of the whole or part of a facility at the same location where the replacement facility emits no more noise and is not apparently larger - that is, either it is contained within an unaltered building or takes up no more space, and, if a tower, is no taller than the previous tower.

Division 5—Conditions relating to the carrying out of authorised activities

This Division sets out conditions which apply to some or all (as indicated in each clause) of the activities authorised under Division 2, 3 or 4 of Part 1 of Schedule 3 (that is, to inspect land, to install a facility in specified circumstances or to maintain a facility).

Clause 7 – Carrier to do as little damage as practicable

This clause provides that, in carrying out an authorised activity, a carrier must take all reasonable steps to ensure that it causes as little detriment, inconvenience and damage as is practicable. This clause continues the obligation set out s.134(1) of the 1991 Act.

Clause 8 – Management of activities

This clause requires a carrier in carrying out an authorised activity to take all reasonable steps to act in accordance with good engineering practice, to protect the safety of persons and property and to ensure that the activity interferes as little as practicable with various activities specified in the clause. These provisions continue the obligations in the Telecommunications National Code.

Clause 9 – Agreements with public utilities

This clause requires a carrier to make reasonable efforts to enter into an agreement with a public utility ('public utility' is defined in clause 2 of Schedule 3) about the manner in which the carrier will engage in an authorised activity that is likely to effect the operations of the utility. A carrier must comply with such an agreement. Clause 9 continues the obligations imposed on carriers by of the Telecommunications National Code.

Clause 10 – Compliance with industry standards

This clause requires a carrier which engages in an authorised activity to do so in accordance with any relevant industry standard recognised by the ACA that is likely to reduce a risk to the safety of the public. This clause continues obligations in the Telecommunications National Code.

Clause 11 – Compliance with international agreements

This clause requires that a carrier which engages in an authorised activity must do so in a manner that is consistent with Australia's obligations under an international agreement prescribed by regulations that is relevant to that activity. This provision continues obligations in the Telecommunications National Code.

Clause 12 – Conditions specified in the regulations

This clause provides that, a carrier which engages in an authorised activity must do so in accordance with any conditions that are specified in regulations made under the Act for that purpose.

Clause 13 – Conditions specified in a Ministerial Code of Practice

This clause provides that the Minister may, by disallowable instrument, make a Code of Practice setting out conditions that are to be complied with by carriers in engaging in any or all authorised activities, other than activities covered by a facility installation permit. Activities covered by a facility installation permit instead will be subject to specific conditions set out in the permit granted by the ACA (see clause 14).

It is expected that the Code will set out different requirements for different classes of activities - for example, the installation of a temporary facility by or on behalf of a defence organisation will be subject to different requirements to other activities..

The clause makes it clear that the provision made by this clause for a Code of Practice governing the conduct of carriers in carrying out these relevant activities is not intended by implication to limit the matters that may be dealt with by the industry codes and the industry standards that are provided for in Part 6 of the Bill.

Section 4 of the *Acts Interpretation Act 1901* will allow the Minister to make a Code of Practice before 1 July 1997 so that an instrument is ready when Schedule 3 commences operation on that date. It is open to the Minister before 1 July 1997 to direct AUSTEL under s.327(b) of the 1991 Act to inquire into further issues relevant to the making of a Code of Practice.

Clause 14 – Conditions to which a facility installation permit is subject

This clause provides that a carrier engaging, or proposing to engage, in an activity that is, or will be, authorised by a facility installation permit must not contravene any of the conditions that are specified by the ACA in the facility installation permit.

Clause 15 – Notice to owner of land – general

This clause requires that, before engaging in an authorised activity in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. The clause provides that notice of at least 2 business days is sufficient simply to inspect land which is not in an environmentally sensitive area (see clause 15(3)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in clause 15(5) or simple inspection of a public place which is not in an environmentally sensitive area (see clause 15(6)).

Clause 16 – Notice to owner of land – lopping of trees etc.

This clause is based on the provisions of s.130(3) and s.130(4) of the 1991 Act. The clause provides that a carrier, before carrying out an activity authorised under Division 3 or 4 of Part 1 of Schedule 3 to cut or lop a tree or remove undergrowth or vegetation on private land, must give 10 business days notice requesting that the owner or occupier do the work as specified in the notice. The carrier only may carry out those activities if that request is not complied with. This requirement to give notice may be waived and does not apply in the case of emergency maintenance in the circumstances set out in clause 16(4).

Clause 17 – Notice to roads authorities, utilities etc.

This clause requires a carrier to give 10 business days notice of any intention to affect existing infrastructure as specified in clause 17(1) before carrying out an activity authorised under Division 3 or 4 of Part 1 of Schedule 3. The notice must be given to the person or authority responsible for the care and management of the relevant existing infrastructure. This provision is based on s.129(5) of the 1991 Act. The requirement to give notice may be waived and does not apply to emergency maintenance in the circumstances set out in clause 17(3).

Clause 18 – Roads etc. to remain open for passage

This clause requires that, in installing a facility pursuant to Division 3 of Part 1 of Schedule 3 over a road, bridge, path or navigable water, a carrier must ensure that the facility when installed does not obstruct reasonable passage. This provision is based on s.129(6) of the 1991 Act.

Division 6—Facility installation permits**Clause 19 – Application for facility installation permit**

This clause provides that a carrier may apply to the ACA for a ‘facility installation permit’ authorising the carrier to install a facility. The application may relate to the installation of a single facility or the installation of a number of facilities which are to form part of a carrier’s network. An application only may be made where a carrier, after negotiations, has not obtained the necessary approval from a relevant State, Territory or local government authority or the owner or occupier of the land.

Clause 20 – Form of application

This clause provides that an application for a facility installation permit must be in writing and in accordance with the form approved in writing by the ACA.

Clause 21 – Application to be accompanied by charge

This clause requires the application for a facility installation permit to be accompanied by any charge fixed by a determination under s.52 of the proposed ACA Act. This charge would relate only to the expenses of the ACA in dealing with the application apart from any expenses arising from holding a public inquiry. A separate charge may be imposed where the ACA holds a public inquiry in order to consider whether the permit should be granted (see clause 23(5)).

Clause 22 – Withdrawal of application

This clause makes it clear that at any time a carrier may withdraw its application and make a fresh application.

Clause 23 – Issue of facility installation permit

Where it has held a public inquiry under Part 25 of the Bill about whether the permit should be issued, and considered the material provided to it in that inquiry, the ACA may issue a facility installation permit authorising the applicant to carry out any or all of the activities specified in the application.

The ACA does not need to hold a public inquiry if it decides to refuse to issue a facility installation permit, for example, where the application for a permit does not disclose grounds on which the ACA could issue the permit. If the ACA decides to refuse to issue the permit, it must give the applicant a written notice setting out the decision. An application may be made to the Administrative Appeals Tribunal for review of a decision to refuse to issue a permit where a public inquiry has not first been held (see clause 33).

A charge to be paid by the applicant to meet the costs of the ACA in holding the public inquiry may be fixed under s.52 of the proposed ACA Act.

Clause 24 – Deemed refusal of facility installation permit

This clause sets out time limits for dealing with applications for facility installation permits.

The ACA has 10 business days from the date it receives an application for a permit to notify the applicant in writing either that it has decided to refuse to issue the permit or that it has decided to hold a public inquiry about whether the permit should be issued. If this is not done, the ACA is taken to have decided to refuse to issue the permit, thereby giving the applicant a right to apply to the Administrative Appeals Tribunal (see clause 33).

Where the ACA decides to hold a public inquiry about whether the permit should be issued, the ACA will have 65 business days from the date of the application to notify the applicant in writing of its decision either to issue the permit or refuse to issue the permit. Before this period expires, however, the ACA may, by written instrument, extend that period by up to 20 business days. If the ACA has not notified the applicant of its decision at the end of that period (that is, either 65 business days or, where the ACA has extended the period, up to 85 business days, from the date of application), the ACA is taken to have decided to refuse to issue the permit, thereby giving the applicant a right to apply to the Administrative Appeals Tribunal (see clause 33).

Clause 24(4) makes clear the intention that, in determining the validity of any action by the ACA in conducting an inquiry under Part 25 of the proposed Act about whether a facility installation permit should be issued, the obligation of the ACA to meet the time limit imposed on it by this clause must be considered.

Clause 25 – Criteria for issue of facility installation permit

This clause sets out the matters that the ACA must be satisfied about before it may issue a facility installation permit. It also sets out the things that the ACA must take into account in deciding whether the grounds for a permit have been made out.

Clause 25(1) sets out the grounds of which the ACA must be satisfied before it may issue a permit. These are:

- that, despite attempts to negotiate in good faith, the carrier has not obtained the approvals of an administrative authority or a proprietor that usually would be required for that activity within the relevant period designated in clause 25(2) or (8) respectively;
- in the case of an application for a permit to install a designated overhead line - any relevant State, Territory or local government authority has approved the proposed activity;
- the telecommunications network to which the facility relates is or will be of national significance (clause 25(3) sets out the matters that the ACA must have regard to in determining this matter);
- the facility is or will be an important part of that telecommunications network (clause 25(4) provides that, in determining this matter, the ACA must have regard to its importance in technical, economic or social terms);
- the greater part of the infrastructure of the telecommunications network to which the facility relates has been installed, or its installation has been, or will be, approved by the relevant State, Territory or local government authority; and
- the advantages that are likely to be derived from the operation of the facility in the context of the telecommunications network to which it relates outweigh any form of degradation of environmental amenity that is likely to result from the installation of the facility (clauses 25(5), (6) and (7) set out matters which the ACA must consider in determining this).

Clause 25(8) provides definitions of terms used in this clause.

Clause 26 – Special provisions relating to environmental matters

Division 6 of Part 1 of Schedule 3 sets out in detail specific processes and considerations relevant to the assessment of the environmental impact of the activity to which an application for a permit relates. Therefore, clause 26(1) provides expressly that the administrative procedures under s.6 of the *Environment Protection (Impact of Proposals) Act 1974* (which set out general environment assessment procedures to be followed by Commonwealth agencies) are not to apply to the ACA in performing a function or exercising a power under Part 1 of Schedule 3 or, to the extent that they relate to Part 1 of Schedule 3, Parts 25 and 29 of the Bill (which relate to the holding of a public inquiry or to the review of a decision by the ACA).

Clause 26(2) requires the ACA to consult with the Secretary to the Department responsible for environment matters (see the definition of ‘Environment Secretary’ at clause 2) before issuing a permit. In addition, the ACA must consult with the Director of

National Parks and Wildlife or the Australian Heritage Commission in appropriate circumstances (see clauses 26(3) and (4)).

Clause 27 – Consultation with the ACCC

This clause requires the ACA to consult with the ACCC before making a decision to issue, or to refuse to issue, a facility installation permit. It is intended that this be done to ensure that account is taken of the provision of services by means other than the installation of new infrastructure: for example, where access to existing facilities operated by one carrier may be made available to another carrier pursuant to a provision of the Act or of the TPA.

Clause 28 – Facility installation permit has effect subject to this Act

This clause makes it clear that a permit that has been granted has effect subject to the Act.

Clause 29 – Duration of facility installation permit

This clause provides that a permit remains in force for a period specified by the ACA in the permit, or such further period specified by the ACA by written notice to the permit holder where it is satisfied that an extension is warranted because of special circumstances.

Clause 30 – Conditions of facility installation permit

This clause provides that a facility installation permit is subject to such conditions as are specified in the permit by the ACA. The conditions so specified may restrict, limit or prevent the exercise of a power relating to the installation of facilities. The conditions may include requirements relating to further processes that the carrier must undertake or approvals which must be obtained before the carrier can do certain things pursuant to the permit.

Clause 31 – Surrender of facility installation permit

This clause provides that the permit holder may surrender the permit by written notice to the ACA.

Clause 32 – Cancellation of facility installation permit

This clause gives the ACA a power to cancel a permit by written notice given to the permit holder. In deciding whether to cancel the permit, the ACA may have regard to any relevant matter, including any matter which the ACA was entitled to have regard to under clause 25 in deciding whether to issue a permit or whether there has been any contravention of any relevant conditions relating to the activity.

A decision by the ACA under this clause is specified at paragraph 1(y) of Schedule 4 for the purposes of s.539 of the Act. This means that Part 29 of the Bill applies so as to give the permit holder the right to apply to the ACA for reconsideration of that decision. If the ACA, after reconsidering its decision, affirms the decision or fails to make a decision within 90 days of receiving an application for reconsideration, the permit holder may

apply to the Administrative Appeals Tribunal for review of the decision (see clauses 538 - 546 of the Bill).

Clause 33 – Review of decisions by Administrative Appeals Tribunal

This clause provides for application to be made to the Administrative Appeals Tribunal for review of a decision by the ACA to refuse to issue a facility installation permit (including where the ACA is deemed to have refused to issue a permit - see clause 24 above) where the ACA has not first held a public inquiry in relation to that permit.

The Bill provides for a comprehensive regime relating to the conduct of public inquiries; significantly, the public inquiry process requires the ACA to provide a reasonable opportunity for any member of the public to make a written submission to the ACA about the subject matter of the inquiry. Where an inquiry is held, the ACA is further required to prepare a report setting out its findings as a result of the inquiry.

It would not be appropriate to provide for AAT review of a decision made following a public consultation process. There is a recognised exception to merits review which arises in relation to decisions ‘that are the product of processes that it would be difficult (having regard to the time and cost that would be involved) to justify repeating on review. These processes include public inquiries and public consultation processes that involve the participation of, or consultation with, many persons’ (Administrative Review Council 1992/93 *Annual Report*, page 76).

Division 7—Exemptions from State and Territory laws

Clause 34 – Activities not generally exempt from State and Territory laws

This clause makes clear the intention that the authority given by Division 2, 3 and 4 of Part 1 of Schedule 3 to a carrier to carry out the activities specified in those Divisions is not intended to permit the carrier to do those things in a manner which would be inconsistent with the provisions of any State or Territory legislation. The extent to which a carrier in engaging in the activity authorised by Division 2, 3 or 4 of Part 1 of Schedule 3 is exempt from a State or Territory law is determined by clause 35.

Clause 35 – Exemption from State and Territory laws

This clause specifies the State and Territory laws which do not apply to a carrier when engaging in an activity authorised by Division 2, 3 or 4 of Part 1 of Schedule 3. The laws specified are those currently specified by the *Telecommunications (Exempt Activities) Regulations* made under s.116(1) of the 1991 Act.

Clause 36 – Concurrent operation of State and Territory laws

This clause makes it clear that the exemption from State laws provided by clause 35 is not intended to affect the operation of any law of a State or Territory so far as that other law is capable of operating concurrently with the Act.

Clause 37 – Liability to taxation not affected

This clause states that the provision made in Division 7 of Part 1 of Schedule 3 relating to the application of State and Territory laws does not affect the liability of a carrier to taxation under a law of a State or Territory. This clause continues the provision made by s.116(4) of the 1991 Act. This does not mean, however, that a State or Territory may impose a tax that discriminates against a carrier (see clause 42).

Division 8—Miscellaneous

Clause 38 – Constitution of the ACA – performance of functions under this Part

This clause provides that, for the purposes of the performance of its functions and the exercise of its powers under Part 1 of Schedule 3 (and under Parts 25 and 29 of the Bill to the extent that they relate to that Part), the ACA is to be constituted by the Chairman of the ACA and at least two and not more than four, associate members of the ACA who hold an appropriate appointment for this purpose.

Section 18 of the proposed ACA Act provides that members may be appointed as associate members of the ACA in relation to certain matters as specified in the instrument of appointment of the member.

Clause 39 – Guidelines

This clause provides that the ACA may, by written instrument, make guidelines that it must have regard to in performing its functions or exercising its powers under Part 1 of Schedule 3.

Clause 40 – Compensation

This clause provides for a carrier to pay compensation to a person who suffers financial loss or damage in relation to property because of anything done by a carrier under the powers conferred on it under Division 2, 3 or 4 of Part 1 of Schedule 3. It is derived from ss. 134(2), (3), and (4) of the 1991 Act.

Clause 41 – Power extends to carrier’s employees etc.

This clause makes it clear that the powers given to a carrier under Division 2, 3 or 4 of Part 1 of Schedule 3 extend to employees and agents and other people acting on behalf of the carrier. This clause is derived from s.133 of the 1991 Act.

Clause 42 – State and Territory laws that discriminate against carriers

This clause provides that a State or Territory law has no effect to the extent to which it discriminates, or has the effect of discriminating, directly or indirectly against a carrier, or a user or potential user of a carrier’s services. It is based on s.120 of the 1991 Act. The clause is intended to deal with laws which have an indirect effect of discriminating against carriers or users of carrier services, not just a law which, for example, on its face treats a person differently to someone else. The indirect discrimination which this clause is intended to prevent includes the following examples:

- laws that impose a burden on facilities of a carrier that is not imposed on similar facilities (for example a tax on ‘street furniture’ which is in effect discriminatory against carriers because other bodies owning such equipment such as electricity authorities would be exempt from paying that tax);
- laws which have the effect of giving powers or immunities to a person or body in relation to the installation, maintenance or operation of a facility which do not apply to carriers generally (for example, where a public utility may rely on general land access powers given to that utility under State or Territory law to install telecommunication facilities without obtaining the approvals which would ordinarily be required for that activity under the law of that State or Territory); and
- laws which discriminate against people by reason of their use of the facilities of a carrier.

Clause 43 – State and Territory laws may confer powers and immunities on carriers

This clause makes it clear that Part 1 of Schedule 3 is not intended to prevent a State or Territory from conferring powers or immunities on carriers where those laws are capable of operating concurrently with the Act. This means, for example, that clause 42 would not prevent a State or Territory Law making special rules to facilitate the installation of telecommunications infrastructure, provided that those rules did not have the effect of directly or indirectly discriminating against the carrier, a class of carriers or carriers in general and was not otherwise inconsistent with the Act.

Clause 44 – ACA may limit tort liability in relation to the supply of certain carriage services

This clause gives the ACA power, by written instrument, to impose limits on amounts recoverable in tort in relation to acts done or omissions made, in relation to the supply of those carriage services specified in the instrument. That instrument may determine the liability limit in respect of a single event which gives rise to liability, or in respect of the maximum liability to a single plaintiff, or both, and may specify an amount or a method of calculating an amount for these purposes.

This clause is based on the provision made by ss. 121 and 122 of the 1991 Act.

The clause makes it clear that such an instrument cannot affect any liability of a carrier under Part 9 of the Bill (which deals with the customer service guarantee) or under clause 40 (which deals with compensation for loss or damage resulting from a carrier’s activities under Division 2, 3 or 4 of Part 1 of Schedule 3).

Clause 45 – Ownership of facilities

This clause provides that a facility or part of facility supplied, installed, maintained or operated by a carrier remains its property unless the circumstances indicate otherwise. This is so whether or not the equipment is attached to the ground in such a way as to be a ‘fixture’. At law, an object which is a ‘fixture’ usually is the property of the owner of the land on which is situated. This clause restates s.123 of the 1991 Act.

Clause 46 – ACA may inform the public about underground facilities

This clause gives the ACA the function of informing the public about the kinds and location of underground facilities. This function need not be exercised by the ACA as especially constituted as provided for by clause 38. Clause 46(2) sets out matters that the ACA must have regard to in performing this function.

It is a condition of a carrier licence that a carrier keep accurate records about the kinds and location of underground facilities (see Schedule 1, clause 37).

Clause 47 – Commonwealth laws not displaced

This clause puts it beyond doubt that the authority given to a carrier under Part 1 of Schedule 3 to carry out various activities does not give the carrier any authority to do those things contrary to the requirements of another Commonwealth law.

Clause 48 – Subdivider to pay for necessary alterations

This clause requires a person who subdivides land to pay the reasonable costs of a carrier incurred in moving a facility situated on that land as a consequence of the subdivision. This clause continues the provision made for the payment of a carrier's costs in these circumstances set out in s.132(2) of the 1991 Act.

Clause 49 – Service of notices

This clause sets out a procedure that a carrier may follow if unable to identify the owner or occupier of the land who must be given notice as provided for in Division 5 of Part 1 of Schedule 3. The clause provides for alternative arrangements in those circumstances. It is based on s.135 of the 1991 Act.

Clause 50 – Facilities installed before 1 January 1999 otherwise than in reliance on Commonwealth laws – environmental impact

This clause, until 1 January 1999, imposes special requirements on carriers installing facilities where the installation is not authorised under clauses 5(1)(a), (b) (c) or (d) and there are special Commonwealth environmental or heritage concerns. In addition to whatever approvals the carrier must obtain from the owner of the land and the relevant State, Territory or local government authority, the carrier must notify the Environment Secretary (see definition at clause 2) of the proposed installation where it gives rise to any of the environment or heritage concerns specified in clause 50(2). The notice will provide such information as is specified in the regulations. It must be given at least 25 business days before the installation is proposed to be commenced.

Where the Environment Secretary makes a recommendation to the ACA, the ACA, after consulting with the Director of National Parks and Wildlife or the Australian Heritage Commission where appropriate, may give the carrier a written direction relating to the installation. The direction must be given within 25 business days after the notice was given by the carrier. The carrier must comply with such a direction. A decision of the ACA to give a direction, to vary a direction and to refuse to revoke a direction (powers to amend or revoke an instrument are implicit by reason of s.33(3) of the *Acts Interpretation*

Act 1901), are specified at paragraph 1(z) of Schedule 4 for the purposes of s.539 of the Act. This means that Part 29 of the Bill applies so as to give the permit holder the right to apply to the ACA for reconsideration of that decision. If the ACA, after reconsidering its decision, affirms the decision or fails to make a decision within 90 days of receiving an application for reconsideration, the permit holder may apply to the Administrative Appeals Tribunal for review of the decision (see clauses 538 - 546 of the Bill).

Part 2—Transitional provisions

Clause 51 – Continued application of sections 116, 117, 118 and 119 of the *Telecommunications Act 1991* - general

This clause continues the present arrangements provided for carriers under ss. 116, 117, 118 and 119 of the 1991 Act (that is, the exemption from compliance with State and Territory laws as specified in the *Telecommunications (Exempt Activities) Regulations* subject to the requirement to comply with the Telecommunications National Code) in relation to a particular exempt activity that was notified before 1 July 1997 in accordance with the requirements of the Telecommunications National Code and commenced on or before 30 June 1997. These transitional arrangements expire on 30 September 1997 in the case of the installation of a designated overhead line (see definition at clause 3), and in any other case, on 31 December 1997. The clause also makes necessary consequential provisions to facilitate the transitional arrangements (see clause 51(2)).

Clause 52 – Continued application of Division 3 of Part 7 of the *Telecommunications Act 1991* - general

This clause makes provision in a similar way and to similar effect to clause 51 for the continued application of Division 3 of Part 7 of the 1991 Act (the land access powers) in relation to an activity that a carrier had given notice of as required under Division 3 of Part 7 before 1 July 1997.

Clause 53 – Continued application of sections 116, 117, 118 and 119 of the *Telecommunications Act 1991* – special rule where injunction restrains activity

This clause is similar in effect to clause 51. It enables a carrier who gave the requisite notice of a proposal before 30 June 1997, but was prevented from carrying out relevant work because of an injunction or similar order of a court granted on or after 5 December 1996 (the date of introduction of the Bill) which subsequently is removed, to have a period of time under the transitional arrangements to complete the project equivalent to that the carrier would have had if the injunction had not been made.

Clause 54 – Continued application of Division 3 of Part 7 of the *Telecommunications Act 1991* – special rule where injunction restrains activity

This clause makes provision to similar effect to clause 52 for the application of Division 3 of Part 7 of the 1991 Act (the land access powers) where circumstances of the kind dealt with in clause 53 occur.

Clause 55 – Existing buildings, structures and facilities – application of State and Territory laws

This clause ensures that a building, structure or facility that was, when built, authorised by s.116 of the 1991 Act or Division 3 of Part 7 of the 1991 Act is not made now subject to State laws relating to building approvals, etc. by virtue of the repeal of those provisions of the 1991 Act. This clause is adapted from a similar provision in s.33 of the *Telstra Corporation Act 1991* passed as a consequence of what is now Telstra becoming subject to State laws of kinds which had not applied to it, or its predecessors, in the past.

Schedule 4—Reviewable decisions of the ACA

Part 1—Decisions that may be subject to reconsideration by the ACA

Clause 1 – Reviewable decisions of the ACA

This clause lists the decisions made under the Act in relation to which application may be made to the ACA for reconsideration.

Part 2—Decisions to which section 540 does not apply

Clause 2 – Decisions to which section 540 does not apply

This clause specifies those decisions in relation to which clause 540 does not apply. Clause 540 requires primary decisions to be made within a period of 90 days, or 90 days following the request by the ACA for further information. The decisions referred to in this clause are already subject to specified deadlines obviating the need for clause 540 to apply.