

1997

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

TELECOMMUNICATIONS BILL 1996

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and requests for amendments to be moved on behalf of the Government

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

80918 Cat. No. 96 7359 8 ISBN 0644 497629

TELECOMMUNICATIONS BILL 1996

OUTLINE

The proposed amendments to the Telecommunications Bill 1996 will implement the Government's response to the recommendations of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996 and make other minor changes to improve the operation of the proposed legislation.

The proposed amendments will:

- make it an object of the new legislation to provide a framework under which a carriage service that provides digital data capability comparable to an ISDN channel is to become reasonably accessible to all people in Australia as soon as practicable and provide for monitoring and annual reporting by the ACA on progress towards achieving that objective (Amendments (1) and (41) to (43));
 - giving effect to the Government's response to recommendation 10 of the Opposition Senators' Report on the Telecommunications Bills Package 1996;
- make it clear that the ACA's monitoring and annual reporting obligations in relation to carriers and carriage service providers do not apply in relation to content service providers - thereby avoiding content service providers being subject to double monitoring by both the ACA under the Telecommunications Act and the Australian Broadcasting Authority under the *Broadcasting Services Act 1992* (Amendments (2), (3) and (35) to (40));
 - giving effect to the Government's response to recommendation 2.7 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- restructure the provisions of the Bill relating to emergency call services to clarify and reinforce the arrangements for handling of emergency call services, including clarifying definitions, specifying additional objectives relating to calls being transferred to emergency services organisations with a minimum of delay and clarifying funding arrangements for emergency call services (Amendments (4) to (6) and (8), (82) to (90), (114), (115), (147), (176) and (177));
 - giving effect to the Government's response to recommendations 2.1, 3.1, 3.2 and 3.3 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- provide for reciprocal immediate circles in relation to the Commonwealth, States and Territories and their respective authorities which do not carry on a business as a core function (Amendments (9) to (14));

- giving effect to the Government’s response to recommendation 2.3 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- provide for students of tertiary education institutions to be within the immediate circle of the institution (Amendments (15) and (19));
 - giving effect to the Government’s response to recommendation 2.2 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- enable the Minister to make a determination providing that specified Government authorities or institutions are taken to carry on, or not carry on, a business as a core function for the purposes of the immediate circle concept (Amendments (16) to (18));
 - giving effect to the Government’s response to recommendation 2.4 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- make technical amendments to ensure that broadcasters are exempt from carrier licensing and carriage service provider regulation (Amendments (21) to (23), (26), (27), (31), (33) and (34));
 - giving effect to the Government’s response to recommendation 2.5 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- broaden the exemption for transport authorities from carrier licensing and carriage service provider regulation (Amendments (25), (30) and (32));
 - giving effect to the Government’s response to recommendation 2.6 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require the Minister to impose a licence condition on Telstra directed towards achieving the result that Telstra is in a position to make available to at least 93.4% of the Australian population by 1 July 1997, and at least 96% of the Australian population by 1 January 2000, ISDN comparable digital data capability; and require the Minister to conduct a review before the year 2000 to determine whether a requirement to make available ISDN comparable digital data capability should be included in the universal service obligation (Amendments (28) and (62));

- giving effect to the Government’s response to recommendation 9.3 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- include a new provision, based on subsection 63(3) of the *Telecommunications Act 1991*, to enable a condition of a carrier licence to remove or restrict a right or privilege that the carrier would otherwise have under the proposed *Telecommunications Act 1997* or the regulations - this will ensure, for example, that licence conditions can place requirements on Telstra to itself provide directory assistance services (Amendment (29));
- provide that privacy issues relating to the provision of directory products and services are examples of matters which may be dealt with by an industry code or industry standard (Amendments (44) and (45));
 - giving effect to the Government’s response to recommendation 2.8 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- enable industry codes or industry standards addressing privacy-related matters to have effect despite requiring customer equipment, cabling, networks or facilities to have specific characteristics and require the ACA, before requesting the making of such a code or making such a standard to be satisfied that the benefits to the community will outweigh the compliance costs (Amendments (46), (47), (52) and (54));
 - giving effect to the Government’s response to recommendation 2.9 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- prevent codes or standards made under Part 6 from dealing with matters dealt with by a code or standard under the *Broadcasting Services Act 1992* (Amendment (48));
 - giving effect to the Government’s response to recommendation 2.10 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require the ACA, before registering a code, to be satisfied that the ACCC has been consulted about the development of the code (Amendment (49));
- require the ACA, before registering a code, to be satisfied that a body or association representing the interests of consumers has been consulted about the development of the code and to consult such a body before determining, varying or revoking a standard (Amendments (50) and (61));

- giving effect to the Government's response to recommendation 1 (page 165) of the Australian Democrats' Report on the Telecommunications Bills Package 1996;
- require the ACA to give industry bodies at least 120 days to develop an industry code and make the example of an indicative target to develop a preliminary draft '60 days' (Amendments (51) and (53));
- require public consultation requirements for determining or varying an industry standard to run for at least 30 days (Amendments (56), (58) and (60));
 - giving effect to the Government's response to recommendation 2.11 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require the ACA to make copies of draft industry standards available without charge (Amendments (55), (57) and (59));
 - giving effect to the Government's response to recommendation 2.12 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- make a minor technical amendment to clarify that an obligation does not arise under the universal service obligation to supply particular equipment, goods or services if the customer requests not to be supplied with the equipment, goods or services (Amendment (63));
- amend the universal service obligation to clarify that the obligation to supply customer equipment requires the customer to be given the option of hiring the equipment (Amendment (63));
 - giving effect to the Government's response to recommendation 2 (page 166) of the Australian Democrats' Report on the Telecommunications Bills Package 1996;
- require a universal service provider to seek public comment on a draft universal service plan or variation to such a plan before giving it to the Minister (Amendments (65) and (66));
 - giving effect to the Government's response to recommendation 6 (page 167) of the Australian Democrats' Report on the Telecommunications Bills Package 1996;
- enable a person to request information about an ACA decision to declare a net cost area and enable the ACA to have regard to confidentiality undertakings in deciding whether disclosure can reasonably be expected to cause substantial damage to a person's interests (Amendments (68) to (74));

- giving effect to the Government’s response to recommendation 2.14 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- amend Part 9 of the Bill, dealing with the customer service guarantee, to reflect amendments made by the Senate to the Telstra (Dilution of Public Ownership) Bill 1996 (Amendments (75) to (77) and (80));
 - giving effect to the Government’s response to recommendation 2.17 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require persons supplying access to the Internet to enter into the Telecommunications Industry Ombudsman scheme (Amendment (81));
 - giving effect to the Government’s response to recommendation 2.18 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- create a primary disclosure/use offence to apply to the operator of a public number data-base to ensure that the protection of communications provisions in Part 13 will apply to protect information held in the integrated public number database where an industry body takes over the management of the database from Telstra (Amendments (91) to (93), (96), (99), (101) to (103), (107) to (110), (113), (116), (117), (121) to (135), (138) to (142), and (178) to (181));
- require a warrant for access by law enforcement and public revenue agencies to the contents of communications carried, or that have been carried, by a carrier or carriage service provider (Amendments (100) and (104));
 - giving effect to the Government’s response to recommendation 3.4 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require the Privacy Commissioner to be consulted on the requirements for a certificate authorising disclosure of information to law-enforcement agencies (Amendment (104));
 - giving effect to the Government’s response to recommendation 3.6 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- include the organisations responsible to the Australasian Police Ministers’ Council for the facilitation of national law enforcement support in the list of

law-enforcement agencies to whom information can be supplied under clause 267 (Amendments (105) and (106));

- giving effect to the Government’s response to recommendation 3.5 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- enable disclosure of information from the integrated public number database for the purpose of dealing with the matters raised by a call to an emergency service number (Amendments (111) and (112));
- remove a reverse burden of proof for a person defending a prosecution for disclosure of information on the grounds that the disclosure was reasonably necessary to prevent or lessen a serious threat to the life or health of a person (Amendments (118) and (119));
 - giving effect to a Ministerial undertaking to the Senate Standing Committee for the Scrutiny of Bills;
- clarify that help given for national interest purposes includes help by way of the provision of interception services - to ensure that clause 299 which enables the determination of terms and conditions on which help is to be given to also apply to the provision of such services (Amendment (143));
- clarify that help given for national interest purposes must be given on the basis that the person neither profits from, nor bears the costs of, giving that help (Amendment (144));
 - giving effect to the Government’s response to recommendation 3.7 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- enable the ACA’s power to impose pre-selection requirements to be used to extend pre-selection obligations to calls made to or from public mobile telecommunications services (Amendments (145) and (146));
 - giving effect to the Government’s response to recommendation 3.8 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- make a minor technical amendment to ensure that technical standards can relate to the interoperability of equipment for the purpose of the supply of a standard telephone service, not just the service supplied in fulfilment of the universal service obligation (Amendment (148));

- require the ACA to provide interested persons with at least 60 days to make representations on proposed technical standards and certain rules (Amendments (149) to (151), (156) and (166));
 - giving effect to the Government’s response to recommendation 3.9 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require the ACA to give an industry body at least 120 days to develop a technical standard about interconnection thereby ensuring consistency with the proposed requirements for industry codes in Amendment (51) (Amendments (152) and (153));
- require the ACA to maintain a register of connection permits (Amendment (155));
- give the ACA up to 6 months following the commencement of the Act to make the new numbering plan (Amendment (169));
 - giving effect to the Government’s response to recommendation 6.4 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require the ACCC to use its direction power to ensure that at all times while the numbering plan is in force, it sets out rules about number portability (Amendments (170) and (171));
 - giving effect to the Government’s response to recommendation 3.10 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- give the ACA greater flexibility about engaging in consultation about variations to the numbering plan (Amendments (172) to (175));
 - giving effect to the Government’s response to recommendation 3.11 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- improve the operation of the provisions relating to the standard form of agreement by requiring a carriage service provider to give a copy of the agreement to a person for free if the person is a customer and remove the requirement to advertise changes if those changes do not cause detriment to customers (Amendments (184) and (185));
- require the ACA to provide at least 28 days for members of the public to make submissions where the ACA or the ACCC are conducting a public inquiry under the Telecommunications Act (Amendments (186) and (189));

- giving effect to the Government’s response to recommendation 3.12 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- clarify that a standard determined under Part 6 can provide for a person or body other than the Commonwealth Ombudsman or the Telecommunications Industry Ombudsman to handle complaints in relation to breaches of the standard (Amendments (192) to (194));
- allow the ACA to exclude from the publication of reports on investigations information that would unreasonably disclose personal information about any individual, including a deceased individual (Amendment (195));
 - giving effect to the Government’s response to recommendation 3.13 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require a carrier to comply with its industry development plan in so far as the plan relates to its research and development activities (Amendments (204), (207) and (208));
 - giving effect to the Government’s response to recommendation 5 of the Opposition Senators’ Report on the Telecommunications Bills Package 1996 and recommendation 21 (page 174) of the Australian Democrats’ Report;
- require more details to be included in a carrier’s industry development plan, including relevant particulars of carriers’ strategic commercial relationships, research and development activities, export development plans and employment and training (Amendment (205));
 - giving effect to the Government’s response to recommendation 4.1 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require more details to be included in a carrier’s industry development plan about proposed activities in relation to the needs of people with disabilities (Amendments (205) and (206));
 - giving effect to the Government’s response to recommendation 4.2 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- require the Industry Minister to prepare a report about the carriers’ implementation of industry development plans within 6 months of the end of a financial year and table it in the Parliament (Amendment (209));

- giving effect to the Government’s response to recommendation 4.3 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- amend Part 5 of Schedule 1 to make it clear what the ACA must consider (in deciding whether or not access to a telecommunications transmission tower, the site of such a tower or an underground facility sought by a carrier is “technically feasible”) along the lines of a carrier licensing declaration recently made by the Minister (Amendments (210)-(213));
- amend clause 37 of Schedule 1 and clause 46 of Schedule 3 to require that carriers keep records of telecommunications transmissions towers and designated overhead lines and provide that the Australian Communications Authority has discretion to inform members of the public about the kinds and location of telecommunications transmission towers and designated overhead lines (in addition to the current proposed arrangements for underground facilities (Amendments (214)-(218) and (247)-(249)));
 - giving effect to the Government’s response to recommendation 4.5 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- remove the requirement that the installation of a subscriber drop authorised under Schedule 3 must not cross under or over a street or road (Amendment (221));
- insert provisions making it clear that neither a designated overhead line nor a tower (other than a tower less than five metres high attached to a building) may be specified as a “low impact facility” under clause 5(3) (Amendment (222));
 - giving effect to the Government’s response to recommendation 2 of the Opposition Senators’ Report on the Telecommunications Bills Package 1996;
- provide that the authorisation of maintenance activities authorised under clause 6 of Schedule 3 include the installation of additional facilities but only in so far as the facility does not increase noise levels and is located inside a fully-enclosed building or a duct, etc and make minor or consequential changes to related provisions of clause 6 dealing with replacement of facilities (Amendments (223)-(236));
 - giving effect to the Government’s response to recommendation 4.10 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- define the terms “height”, “volume” and “fully enclosed” for the purposes of the definition of “maintenance” in clause 6 of Schedule 3 in a manner consistent with

those used in the National Code 1996, to provide greater clarity (Amendment (237));

- giving effect to the Government's response to recommendation 4.7 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996.
- insert a new provision at proposed clause 7A of Schedule 3 requiring carriers to restore, within a reasonable timeframe, any site disturbance resulting from the activities authorised by Schedule 3 (failure to do this will result in the carrier being subject to the penalty provisions of the Act relating to breach of a licence condition and in some circumstances also liable for compensation under clause 40 of Schedule 3) (Amendment (238));
 - giving effect to the Government's response to recommendations 4.9 and 4.13 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996.
- require that, in giving notice under clause 15 of Schedule 3 of its intention to undertake activities authorised by Schedule, a carrier must inform the owner or occupier of rights to compensation under clause 40 of Schedule 3 should a person suffer loss or damage as a result of that activity (Amendment (239));
 - giving effect to the Government's response to recommendation 4.12 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- bring the definition of a "sensitive area" for the purposes of clause 15 of Schedule 3 in line with other lists of environmentally sensitive areas in that Schedule (Amendment (240)) and also include appropriate references in Schedule 3 to possible effects on an "endangered ecological community" as well as to a "threatened species" (Amendments (220), (242)-(244), (253), (254));
- provide that references to "degradation of environmental amenity" in Schedule 3 be replaced with "degradation of the environment" (Amendments (219), (241));
 - giving effect to the Government's response to recommendation 4.14 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- amend clause 42 of Schedule 3 so as to enable the Minister to exempt the provisions of specified State or Territory laws from the restriction on laws that discriminate against carriers and users of carriage services (Amendment 245));
- insert new proposed clauses 46A and 46B requiring the Minister to have a review undertaken of the options for placing communications and other (eg. electricity) cabling facilities underground and to report to the Parliament by 1 July 1998 and

requiring the Australian Communications Authority to monitor and report to the Minister on progress in relation to efforts to place facilities underground (Amendments (250), (251));

- giving effect to the Government's response to recommendation 8.2 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- insert a new provision at proposed clause 46C of Schedule 3 requiring telecommunications cabling to be removed when all other aerial cabling is removed unless otherwise agreed with a local government body or other body specified by regulations (Amendment (252));
 - giving effect to the Government's response to recommendation 4.6 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996.
- amend drafting of provisions carried over from earlier legislation to reflect the fact that, under the regulatory arrangements in the Act, facilities need not be owned by a carrier (Amendments (246), (255));
- make it clear that facilities installed under former Commonwealth legislation continue to be authorised to remain in place (Amendment (258)) and make minor technical changes to related provisions (Amendments (256),(257));
 - giving effect to the Government's response to recommendation 4.15 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996.
- include notes in various offence provisions to draw the reader's attention to relevant provisions of the *Crimes Act 1914* which have a bearing on the penalties for those offences (Amendments (24) ,(67), (94), (95), (97), (98), (120) (136), (137), (154), (157) to (165), (167), (168), (182), (183), (187), (188), (190), (191), (196) to (203));
 - giving effect to the Government's response to recommendation 9.7 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- correct minor typographical and cross-referencing errors and make consequential amendments (Amendments (7), (20), (64), (78) and (79)).

The proposed requests for amendments will:

- amend clause 138 to enable equipment for people with a disability to be specified in regulations as part of the universal service obligation (Request (1));

- giving effect to the Government’s response to recommendation 2.13 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996;
- provide the ACA with a discretion to retrospectively declare net cost areas where the ACA is satisfied that the person incurs a substantial loss as a result of circumstances beyond the person’s control and the person took all reasonable steps to minimise the loss (Requests (2) and (3));
 - giving effect to the Government’s response to recommendation 2.15 of the Report by the Senate Environment, Recreation, Communications and the Arts Legislation Committee on the Telecommunications Bills Package 1996.

FINANCIAL IMPACT

It is not expected that the proposed amendments will have a significant financial impact on Commonwealth expenditure or revenue. The proposed requests for amendments will extend the definition of supply of a standard telephone service for the purposes of the universal service obligation to cover certain additional goods and services for people with a disability and will enable additional net cost areas to be declared. These measures may have the effect of increasing expenditure payable under standing appropriations. However, the amounts involved are not expected to be significant in the context of the overall cost of universal service and the amounts are paid by the carriers under the Telecommunications (Universal Service Levy) Act.

NOTES ON AMENDMENTS

AMENDMENT (1)

Clause 3 - Objects

Clause 3 sets out the objects of the Telecommunications legislation.

Amendment (1) inserts a new provision, clause 3(2)(aa), providing that a further object is to provide a framework under which a carriage service that provides digital data capability comparable to an ISDN channel is to become reasonably accessible to all people in Australia as soon as practicable.

The new object, clause 3(2)(aa) derives from Recommendation 13 of the Standard Telephone Service Review Group's *Review of the Standard Telephone Service* and related recommendations of the Senate Environment, Recreation, Communications and the Arts Legislation Committee.

“Digital data capability” refers to the ability of a service to carry data and is determined by the data transmission speed and the level of functionality, in terms of speed (eg. download and response times) rather than applications, provided to an end-user by that transmission speed. (Table 4.8b of the *Review of the Standard Telephone Service* describes the functionality enabled by different transmission speeds (pp.52, 54)). It is intended that the level of digital data capability that is accessible to all people in Australia be comparable to that provided by an ISDN (Integrated Services Digital Network) channel, by which is meant a single basic rate customer channel operating at 64 kilobits per second (kbps). A comparable digital data transmission capability would operate a similar (or greater) transmission rate and most importantly would provide a similar level of functionality, in terms of transmission speed rather than service features or facilities, provided to an end-user. It is intended, for example, that a carriage service supplied by satellite or terrestrial radiocommunications facilities should be treated as providing a digital data capability comparable to an ISDN channel, even though the transmission speed of the customer channel may be slower (eg. 56 kbps) providing the functionality of the service (in terms of speed) for the end-user is not significantly impaired.

In the *Review of the Standard Telephone Service*, the Standard Telephone Service Review Group indicated at page 12 that:

The digital data capability should provide a platform for access to services such as fax, email, access to the Internet, electronic commerce and educational applications.

The functionality offered by the digital data capability should be comparable to that currently offered by ETSI [European Telecommunications Standards Institute] ISDN services.

The particular ways of supplying the digital data capability may have different transmission and other characteristics from ISDN services but they must be able

to deliver digital data capability that is measurably superior to currently available services and broadly consistent with the ISDN benchmark.

Within the regulatory framework provided by the Telecommunications Bill, this object is expected to be achieved in three main ways: through a commercial response to competitive pressure; by means of a Telstra-specific licence condition holding Telstra to commercial ISDN roll-out targets (see amendment (28)); and, should it be considered appropriate, via the USO arrangements (see Amendment (62)).

AMENDMENT (2)

Clause 5 - Simplified outline

Clause 5 of the Bill sets out a simplified outline of the Bill. As a consequence of Amendments (35) to (40), Amendment (2) changes the simplified outline in clause 5 to make it clear that the ACA is to monitor, and report each year to the Minister on, significant matters relating to the performance of carriers and carriage service providers (rather than content service providers). This will avoid any overlap with the operation of the *Broadcasting Services Act 1992*.

AMENDMENT (3)

Clause 6 - Main index

Clause 6 of the Bill sets out the main index to the Bill. Amendment (3) changes item 25 in the main index to reflect the changed heading to Part 5 made by Amendment (35).

AMENDMENT (4)

Clause 7 - Definitions

This amendment inserts and defines a new term 'access' as it is used in relation to an emergency call service and refers the reader to the definition provided by clause 18.

AMENDMENT (5)

Clause 7 - Definitions

This amendment omits the definition of 'direct access', a term which was to be used in relation to an emergency call service. The concept of 'direct access' is no longer to be used as access will often not be provided directly by a carriage provider, but by using the networks of another carriage service provider so the definition has been omitted. This amendment is consequential upon Amendment (8) which inserts a new definition of 'access to an emergency call service'.

AMENDMENT (6)**Clause 7 - Definitions**

This amendment substitutes a new definition of an ‘emergency call service’ in clause 7 which expressly refers to the transferring of the emergency call and related information to the relevant emergency service organisation. This amendment is intended to clarify the obligation on recognised persons operating an emergency call service to transfer and connect a legitimate incoming emergency call and to transfer related information to the relevant emergency service organisation.

The definition includes a new clause 7(b)(iv) allows for arrangements in some regions where a third party has been contracted by emergency services organisations to receive calls (and related information) transferred from an emergency call person. The third party then arranges for the despatch of the relevant emergency service. The new definition therefore includes the transferring of emergency calls and related information to a despatch service.

AMENDMENT (7)**Clause 7 - Definitions**

Clause 7 gives definitions of terms used throughout the Bill, including “net cost area”.

This amendment is a formal technical amendment consequential to Request (3) of the Government requests for amendments which inserts a new clause 172B to provide for the ACA to retrospectively declare net cost areas (see the notes on new clause 172B below).

AMENDMENT (8)**Clause 18 - Access to an emergency service number**

Clause 18 as introduced provides a definition of ‘direct access to an emergency service number’, a term used in clause 255(2)(a) as introduced. Clause 255(2)(a) is to be replaced by Amendment (82) with clauses which refer to the provision by carriage service providers of ‘access to an emergency call service’ to end-users. Clause 18 is therefore amended to provide a definition of ‘access to an emergency call service.’

AMENDMENTS (9)–(14)

Clause 23 - Immediate circle

Clause 23 of the Bill provides the principles by which a person's immediate circle may be determined. The concept of an immediate circle is central to determining whether a carrier licence must be held in regard to certain network units (clause 42 of the Bill) and whether a person supplying carriage or content services is a service provider (Part 4 of the Bill).

Amendments (9) to (14) enlarge the immediate circle concept in relation to Commonwealth, State and Territory authorities or institutions (other than authorities or institutions that carry on a business as a core function).

As a result of Amendments (9) and (10), for the purposes of the Bill, if a person is an authority or institution of the Commonwealth (other than an authority or institution that carries on business as a core function), the person's immediate circle will also include the person together with:

- (a) the Commonwealth; and
- (b) another authority or institution of the Commonwealth (other than an authority or institution of the Commonwealth that carries on business as a core function) and a constituent member or employee of such an authority or institution.

As a result of Amendments (11) and (12), for the purposes of the Bill, if a person is an authority or institution of a State (other than an authority or institution that carries on business as a core function), the person's immediate circle will also include the person together with:

- (a) the State; and
- (b) another authority or institution of the State (other than an authority or institution of the State that carries on business as a core function) and a constituent member or employee of such an authority or institution.

As a result of Amendments (13) and (14), for the purposes of the Bill, if a person is an authority or institution of a Territory (other than an authority or institution that carries on business as a core function), the person's immediate circle will also include the person together with:

- (a) the Territory; and
- (b) another authority or institution of the Territory (other than an authority or institution of the Territory that carries on business as a core function) and a constituent member or employee of such an authority or institution.

AMENDMENT (15)

Clause 23 - Immediate circle

Amendment (15) amends clause 23 to provide an immediate circle for a tertiary education institution (such as a university) to reflect the fact that such institutions often have campuses at disparate locations. This will obviate the need for the institution to obtain a carrier licence with respect to network units used for communications with its students or staff.

As a result of Amendment (15), a tertiary education institution's immediate circle will consist of the institution together with:

- (a) a member of the governing body of the institution;
- (b) an officer or employee of the institution; and
- (c) students enrolled at the institution.

Amendment (19) provides a definition of the term 'tertiary education institution' for the purposes of this amendment.

AMENDMENTS (16)–(18)

Clause 23 - Immediate circle

Clause 23(1)(m) of the Bill provides that the immediate circle of any person may be extended to include any person specified in a determination made by the Minister under clause 23(2). Any such determination will be disallowable by the Parliament. This power is included to enable any anomalous situations which emerge with the operation of the new Act to be addressed. An example of a purpose for which the power could be used would be to include additional classes of person in the immediate circle of a tertiary education institution.

Proposed new clauses 23(2A) and 23(2B), inserted by Amendment (16), make it clear that a Ministerial determination under clause 23(2) may be conditional or unconditional and that nothing in the categories of immediate circle in clauses 23(1)(a) to (1a) will limit the operation of clauses 23(2) and 23(2A).

The test of whether an authority or institution carries on a business as a core function (a concept used in clause 23 of the Bill) will require an analysis of the functions of the authority or institution concerned. Proposed clauses 23(2C) and (2D), inserted by Amendment (16), will enable greater certainty to be given in borderline cases by means of a legislative instrument. They will empower the Minister to make a determination providing that specified Government authorities or institutions are taken to carry on, or not carry on, a business as a core function for the purpose of clause 23.

As a result of Amendments (17) and (18), the Minister's determination under clauses 23(2), (2C) or (2D) will have effect accordingly and will be a disallowable instrument

for the purposes of the *Acts Interpretation Act 1901* and will therefore be required to be published in the Commonwealth *Gazette*, tabled in the Parliament and will be subject to Parliamentary disallowance.

AMENDMENT (19)

Clause 23 - Immediate circle

Amendment (19) will insert a new definition of ‘tertiary education institution’ for the purposes of Amendment (15). A tertiary education institution will include universities and other higher education and technical and further education institutions within the meaning of the *Student and Youth Assistance Act 1973*.

AMENDMENT (20)

Clause 25 - Simplified outline

Clause 25 of the Bill sets out a simplified outline of Part 2 of the Bill, dealing with network units. Amendment (20) corrects a minor error in the first dot point of the simplified outline, by replacing the word ‘Division’ with the word ‘Part’.

AMENDMENTS (21)–(23)

Clause 34 - When a base station is part of a terrestrial radiocommunications customer access network

Clause 31 of the Bill provides that a base station which is part of a terrestrial radiocommunications customer access network is a designated radiocommunications facility. Clause 34 establishes the rules by which it can be determined whether a base station is part of a terrestrial radiocommunications customer access network.

Amendments (21) – (23) will amend clause 34 to exempt a base station from being part of a terrestrial radiocommunications customer access network if the sole use of the base station is use by a broadcaster to supply broadcasting services to the public or to supply a secondary carriage service by means of the main carrier signal of a primary broadcasting service, or both.

Note that it is intended that the term ‘base station’ used in clause 34 have a narrow interpretation confined to the transmitter unit used to broadcast the broadcasting service and any ancillary service. It is not intended that a broadcaster lose the exemption where facilities other than the transmitter (such as the site, tower, mast or antenna) are shared between broadcasters.

AMENDMENT (24)

Clause 42 - Network unit not to be used without carrier licence or nominated carrier declaration

Clause 42(5) makes it an offence for a person to contravene clause 42(1), (2), (3) or (4) which prohibit the use of network units without a carrier licence or in accordance with a nominated carrier declaration.

Clause 42(5) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (25)

Clause 47 – Exemption – transport authorities

As a result of Amendment (25), the exemption for transport authorities from carrier licensing requirements contained in clause 47 of the Bill will be widened to enable a network to be used for a particular kind of transport service by the transport authority concerned but not for all transport services.

The exemption contained in clause 47 is too narrow. This is because of the references in clauses 47(1) and (2) to services ‘for which the body is responsible’. For example, State run railways are currently structurally separating their operations and in the future there will be a greater number of private rail operators. Each needs to be able to communicate with the other without the need to get a carrier licence or have a nominated carrier declaration in place. The exemption in clause 47 would permit each rail corporation to operate its own network but not use that of another structurally separate rail corporation without having a carrier licence or nominated carrier declaration in place.

Amendment (25) reconstructs clause 47(1) as new clauses 47(1) to (2B) to provide that clause 42 (which prohibits a network unit being used without a carrier licence or a nominated carrier declaration being in force) does not apply to a network unit if the sole use of the unit is use by:

- (a) Airservices Australia to carry communications necessary or desirable for the workings of aviation services;
- (b) the Australian National Railways Commission to carry communications necessary or desirable for the workings of train services;
- (c) a State or Territory transport authority to carry communications necessary or desirable for the workings of train services, bus or other road services, or tram services of a kind provided by the authority;
- (d) a rail corporation to carry communications necessary or desirable for the workings of train services.

The reference in paragraph (c) above (reflected in clause 47(2A)) to services ‘of a kind provided by the authority’ is intended to ensure, for example, that a State transport authority supplying bus services can carry communications only for the purposes of bus services, whether supplied by it or by another bus company.

In addition, Amendment (25) reconstructs clause 47(2) as new clauses 47(2C) to (2F) to provide that clause 42 does not apply to a network unit:

- (a) if the principal use of the unit is use by:
 - (i) Airservices Australia to carry communications necessary or desirable for the workings of aviation services;
 - (ii) the Australian National Railways Commission to carry communications necessary or desirable for the workings of train services;
 - (iii) a State or Territory transport authority to carry communications necessary or desirable for the workings of train services, bus or other road services, or tram services of a kind provided by the authority;
 - (iv) a rail corporation to carry communications necessary or desirable for the workings of train services; and
- (b) the remaining use of the unit is use by one or more carriers, or by one or more exempt network-users, to supply carriage services and/or content services.

AMENDMENTS (26)–(27)

Clause 48 - Exemption - broadcasters

Clause 48 of the Bill is intended to enable broadcasters to continue to use network units for certain purposes without becoming subject to the primary prohibition in clause 42.

The exemption in clause 48 is too narrow because it confers an exemption only in relation to specifically described communications, which do not cover the entire class of communications undertaken by broadcasters in order to prepare their signal for final delivery and do not accommodate development of new technologies which may permit broadcasting in different ways.

In addition, clause 48 requires the relevant network unit to be used by a broadcaster to attract the exemption. In some cases, however, broadcasters outsource broadcasting functions or they are undertaken by related companies. The exemption should therefore require the relevant use to be for provision of a broadcasting service, rather than use by a broadcaster.

Furthermore, the drafting of clause 48 is not consistent with that in clauses 47 and 49 which exempt network units used to carry communications ‘necessary or desirable’ for the workings of transport services or electricity management or charging for electricity supply.

To address these issues, Amendments (26) – (27) redraft clause 48 to provide a generic exemption for ‘pre-broadcast’ communications.

Clause 48(1) has been redrafted to provide that if the sole use of a network unit is to carry communications that are necessary or desirable for either or both of the following purposes:

- the supply of broadcasting services to the public;
- the supply of a secondary carriage service by means of the main carrier signal of a primary broadcasting service; and
- the unit does not consist of, or include, a facility used to carry communications between the head end of a cable transmission system (as defined in clause 48(5) of the Bill) and the equipment used by an end-user to receive a broadcasting service; and
- the unit does not consist of a broadcasting transmitter (as defined in clause 48(5) of the Bill) transmitting a signal of a broadcasting service to its intended audience;

the prohibition in clause 42 does not apply to the unit.

Clause 48(2) has been redrafted to provide that if the principal use of a network unit is to carry communications that are necessary or desirable for either or both of the following purposes:

- the supply of broadcasting services to the public;
- the supply of a secondary carriage service by means of the main carrier signal of a primary broadcasting service; and
- the unit does not consist of, or include, a facility used to carry communications between the head end of a cable transmission system (as defined in clause 48(5) of the Bill) and the equipment used by an end-user to receive a broadcasting service; and
- the unit does not consist of a broadcasting transmitter (as defined in clause 48(5) of the Bill) transmitting a signal of a broadcasting service to its intended audience; and
- the remaining use of the unit is use by one or more carriers, or by one or more exempt network-users (as defined in clause 7 of the Bill), to supply carriage services and/or content services;

the prohibition in clause 42 does not apply to the unit.

Amendment (27) will amend clause 48(5) to remove the definition of ‘broadcaster’, which is no longer required.

The heading to clause 48 will also be amended to refer to 'broadcasting services' rather than 'broadcasters'.

AMENDMENT (28)

New clause 65A - Conditions about Telstra's ISDN obligations

Division 3 of Part 3 of the Telecommunications Bill 1996 deals with the licensing of telecommunications carriers and, amongst things, enables the Minister to declare licence conditions.

Amendment (28) amends Division 3 of Part 3 by adding a new provision, clause 65A, after the existing clause 65.

New clause 65A requires the Minister to ensure that Telstra's carrier licence is subject to one or more conditions relating to the availability of ISDN-comparable digital data capability.

An appropriate condition is currently being drafted for inclusion in Telstra's carrier licence.

The new provision derives from Recommendation 13 of the Standard Telephone Service Review Group's *Review of the Standard Telephone Service* and related recommendations of the Senate Environment, Recreation, Communications and the Arts Legislation Committee, particularly Recommendation 9.3 of the Majority Report of the Committee. In seeking to give effect to these recommendations, the Government has had regard to Telstra's commercial plans for network development and product release.

Clause 65A is designed to hold Telstra to certain targets for the commercial roll-out of ISDN with a view to providing the public with certainty about Telstra's offering and Telstra with certainty about the Government's expectations of it. As such, clause 65A is one means by which the Government is seeking to progress the new object of the Bill, added by Amendment (1), of facilitating access to ISDN-comparable digital data capability.

Clause 65A(1) provides that the Minister must ensure that Telstra's carrier licence is subject to one or more conditions directed towards achieving:

- the result that, by 1 July 1997, Telstra is in a position to make available to at least 93.4% of the Australian population, a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service; and
- the result that, by 1 January 2000, Telstra is in a position to make available to at least 96% of the Australian population, a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service.

The concepts of “digital data capability” and the use of ISDN, particularly a customer channel of 64 kbps as a benchmark for this capability, have been taken from the Standard Telephone Service Review Group’s *Review of the Standard Telephone Service* (see, for example, pp. 3, 4, 12, 40, 41, 44, 52-54, 56 and 166-167).

Consistent with the Standard Telephone Service Review Group’s *Review of the Standard Telephone Service*, the focus of the requirement is “digital data capability”. To this end the required licence condition must have the result that Telstra be in a position to provide a carriage service providing a specific “digital data capability”. “Digital data capability” is further defined by reference to certain existing services.

The target of 93.4% availability of ISDN-comparable digital data by 1 July 1997 is based on a target publicly announced by Telstra and referred to in a press release by the Minister for Communications and the Arts, Senator the Hon Richard Alston, on 25 September 1996. Appropriately, other aspects of Telstra’s ISDN obligation are also based on Telstra’s undertakings as reported in that press release, as these reflect Telstra’s commercial plans. Accordingly, the level of ISDN digital data capability that Telstra will be required to supply is a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second, which is the data transmission capability of the service discussed in the Minister’s press release. Consistent with the press release, once ISDN is available to customers, Telstra would be expected to supply the service within 90 days of request.

The target of 96% availability of ISDN-comparable digital data by 1 January 2000 is based on information provided to the Government in the course of negotiations with Telstra. Availability to 96% of the population represents the likely maximum that Telstra will achieve rolling-out ISDN on a commercial basis. As it is the likely commercial maximum, it is not appropriate to require the Government to require Telstra to provide greater availability under a licence condition. In finalising the licence condition, the Government will, however, endeavour to negotiate a higher availability target if it is commercially justifiable. In the final analysis, though, the Government cannot, in the commercial, competitive post-1997 environment, expect Telstra to supply service on a non-commercial basis other than under the USO regime. Given the roll-out of ISDN is commercially driven and an early date for achievement can be expected, the Government has decided to set 1 January 2000 as a safeguard.

It is not intended that Telstra should be penalised for breaching this licence condition if it is delayed in the supply of such digital data capability by other regulatory

requirements, for example, requirements in relation to interceptibility of services. This is a matter of detail that will be addressed in the actual licence condition.

Clause 65A(2) defines ‘designated basic rate ISDN service’ for the purposes of clause 65A. For the purposes of the section, a service is a designated basic rate ISDN service if:

- immediately before 1 July 1997, Telstra supplied a basic rate Integrated Service Digital Network (ISDN) service; and
- the service complied with any of the standards for ISDN services made by the European Telecommunications Standards Institute (ETSI).

In requiring such a licence condition to be imposed on Telstra, it is important for both customers and Telstra to ensure that the digital data capability concerned is clearly defined. In part this is achieved in clause 65A(1) by the references to:

data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN.

Clause 65A(2) further assists in this definitional process by defining designated basic rate ISDN. To provide definitional certainty, the intention of clause 65A(2) is to refer to a basic rate ISDN service that Telstra actually supplied immediately before 1 July 1997, that service being Telstra’s ISDN service that is compliant with an ETSI standard. Again, this was the service referred to in the Minister’s press release of 25 September 1996. It is also understood to be the service the Standard Telephone Service Review Group had in mind when it referred to “ETSI ISDN” (eg. pp. 3, 12, 45). ETSI has produced an extensive suite of standards in relation to ISDN and it is not intended that the carriage service supplied by Telstra to provide the required digital data capability need comply with those standards.

Clause 65A(3) explains how the comparability of digital data capability is to be determined. Clause 65A(3) provides that for the purposes of clause 65A, the determination of the comparability of the digital data capability of a carriage service is to be based solely on a comparison of the data transmission speed of the service.

The idea of comparability is fundamental to the requirement to be imposed on Telstra in that it is not intended that Telstra be required to supply one specific product but rather that it be required to supply a product, which may vary, but which falls within a particular range. This reflects the view of the Standard Telephone Service Review Group which noted:

The particular ways of supplying the digital data capability may have different transmission and other characteristics from ISDN services but they must be able to deliver digital data capability that is measurably superior to currently available services [ie. plain old telephone services] and broadly consistent with the ISDN benchmark (p.12).

It is understood that the Group was concerned that other modes of delivering an acceptable digital data capability should not be precluded, providing they essentially deliver the same capability-based functionality. It is intended that Telstra should have the same flexibility in fulfilling its ISDN licence condition. If it is more practical for Telstra to deliver ISDN-comparable digital data capability by satellite, albeit at a different data transmission speed, it should be able to do so.

Clause 65A(3) provides that data transmission speed available to an end-user should be the sole basis for determining the comparability of digital data capabilities. This approach is consistent with the *Review of Standard Telephone Service Review*. The Review Group was conscious, however, that a particular data transmission rate underpinned a certain level of functionality, in terms of speed (eg. download and response times) as distinct from applications, which was important to an end-user. (Table 4.8b of the *Review of the Standard Telephone Service* describes the functionality enabled by different transmission speeds (pp.52, 54)). The focus on data transmission speed also makes it clear that it is not intended that Telstra provide particular facilities or functional capabilities that might be available under the ETSI ISDN standards, other than those deriving directly from the carriage service operating at the specified digital data capability.

Clause 65A(4) provides that clause 65A does not, by implication, limit the application of clause 63 of the Bill to Telstra. Clause 63 provides for the Minister to declare by written instrument that each carrier licence or a specified carrier licence is subject to such conditions as are specified in the licence. Accordingly, clause 65A(4) provides that the requirement for a Telstra specific licence condition in relation to ISDN availability does not affect the Minister's powers to declare other licence conditions in relation to Telstra under clause 63.

AMENDMENT (29)

Clause 66 of the Bill provides that carrier licence conditions have effect subject to radiocommunications licence conditions. Amendment (29) will add a new provision to the end of clause 66, based on s. 63(3) of the *Telecommunications Act 1991*, to the effect that a condition of a licence held by a carrier may remove or restrict a right or privilege that the carrier would otherwise have under a provision of the proposed *Telecommunications Act 1997* or the regulations. (Note that clause 7 of the Bill provides that, unless the contrary intention appears, the words 'this Act' include the regulations.)

This will ensure that Telstra's licence condition can require it, for example, to supply directory assistance services directly when clause 7(2)(b) of Schedule 2 could be read as giving it the right to arrange with someone else to supply those services.

As a result of Amendment (29), the heading to clause 66 will be replaced by the heading ‘**Carrier licence conditions—special provisions**’.

AMENDMENTS (30) and (31)

Clause 86 - Carriage service providers

Clause 86(3) provides that if a carrier or exempt network-user supplies a carriage service to the public using capacity acquired from exempt networks (as described in clauses 45 to 50 inclusive), then the carrier or exempt network-user is a carriage service provider.

Amendment (30) makes a consequential amendment to clause 86(3)(a)(ii) as a result of the proposed reworking of clause 47 (see Amendment (25)) which provides a limited exemption for transport authorities from carrier licensing requirements.

Amendment (31) makes a consequential amendment to clause 86(3)(a)(iii) as a result of the proposed reworking of clause 48 (see Amendments (26) and (27)) which will provide a limited exemption for broadcasting services from carrier licensing requirements.

AMENDMENT (32)

Clause 91 - Exemption from definition - transport authorities

Clause 91 exempts from the carriage service provider definitions in clauses 86(1) and (2) carriage services used by Airservices Australia, the Australian National Railways Commission, State and Territory transport authorities and rail corporations, if the sole or principal use of the carriage service is to carry communications necessary or desirable for the workings of aviation services, train services, bus or other road services, or tram services for which the body is responsible.

Consistent with the changes made to clause 47 by Amendment (25), Amendment (32) will widen the exemption from the service provider rules for transport authorities to enable a network to be used for a particular kind of transport service by the transport authority concerned.

AMENDMENTS (33) and (34)**Clause 92 - Exemption from definition - broadcasters**

Clause 92 of the Bill is intended to exempt carriage services from the carriage service provider definitions in clauses 86(1) and (2) if the sole or principal use of the carriage service is to carry communications between broadcasting studios, between a broadcasting studio and a broadcasting transmitter, or between a broadcasting studio and the head end of a cable transmission system, for the purpose of either or both supplying broadcasting services to the public, or supplying a secondary carriage service by means of the main carrier signal of a primary broadcasting service.

For reasons similar to those discussed in relation to Amendments (26) and (27) (which amend clause 48), Amendments (33) and (34) amend clause 92 to provide a generic exemption for 'pre-broadcast' communications.

Amendment (33) will redraft clause 92(1) to provide that if the sole or principal use of a network unit is to carry communications that are necessary or desirable for either or both of the following purposes:

- the supply of broadcasting services to the public;
- the supply of a secondary carriage service by means of the main carrier signal of a primary broadcasting service; and
- the communications are not carried between the head end of a cable transmission system (as defined in clause 92(3) of the Bill) and the equipment used by an end-user to receive a broadcasting service; and
- the communications are not carried from a broadcasting transmitter (as defined in clause 92(3) of the Bill) transmitting a signal of a broadcasting service to its intended audience;

clauses 86(1) and (2), dealing with the basic definition of carriage service provider and with international carriage service providers, will not apply to the carriage services.

Amendment (34) will amend clause 92(3) to remove the definition of 'broadcaster', which is no longer required.

The heading to clause 92 will also be amended to refer to 'broadcasting services' rather than 'broadcasters'.

AMENDMENTS (35)–(40)

Part 5 - Monitoring of the performance of carriers and service providers

Part 5 of the Bill provides for the ACA to monitor and report annually on carrier and service provider performance. Amendments (35) to (40) will restrict the ACA to monitoring the activities of carriage service providers. Part 5 will not require the ACA to monitor the activities of content service providers. This will avoid content service providers being subject to double monitoring - by the ACA under the proposed Act, as well as by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992*.

AMENDMENT (41)

Part 5 - Monitoring of the performance of carriers and service providers

Clause 104 requires the ACA to monitor and report annually on all significant matters relating to the performance of carriers and carriage service providers. A number of matters are specifically identified in clause 104 as matters to be monitored and reported on.

Amendment (41) inserts new clause 104(4A). New clause 104(4A) provides that the ACA must monitor, and report each financial year on, the progress made by carriers and carriage service providers towards achieving the object referred to in new paragraph 3(2)(aa), namely towards making a carriage service that provides digital data capability comparable to an ISDN channel reasonably accessible to all people in Australia. The amendment effectively identifies roll-out of ISDN-comparable digital data capability as a particular matter that should be monitored and reported on.

This amendment specifically responds to the third part of Recommendation 10 of the Opposition Senators' minority report that "the Bill should also contain provisions to facilitate monitoring of the industry's progress in meeting this [digital data capability] objective".

AMENDMENT (42)

Part 5 - Monitoring of the performance of carriers and service providers

Clause 104 requires the ACA to monitor and report annually on all significant matters relating to the performance of carriers and carriage service providers.

Amendment (42) amends clause 104(5), consequential to amendment (41) to provide that the ACA must give a report under clause 104(4A) (relating to the roll-out of ISDN-comparable digital data capability) to the Minister as practicable after the end of each financial year.

AMENDMENT (43)

Part 5 - Monitoring of the performance of carriers and service providers

Clause 104 requires the ACA to monitor and report annually on all significant matters relating to the performance of carriers and carriage service providers.

Amendment (43) amends clause 104(6), consequential to amendment (41) to provide that the Minister must cause a copy of a report under clause 104(4A) (relating to the roll-out of ISDN-comparable digital data capability) to be laid before each House of Parliament within 15 sitting days of that House after receiving the report.

AMENDMENT (44)

Clause 112 - Examples of matters that may be dealt with by industry codes and industry standards

This is a formal technical amendment consequential to Amendment (45) - see the notes on Amendment (45).

AMENDMENT (45)

Clause 112 - Examples of matters that may be dealt with by industry codes and industry standards

Clause 112(3)(f) sets out examples of matters relating to privacy that may be dealt with by industry codes or industry standards.

In his submissions to the Senate Legislation Committee, the Acting Privacy Commissioner expressed concern that privacy in relation to directory products and services should be identified as an example of a matter that may be dealt with in codes and standards.

This amendment inserts a new subparagraph (v) into clause 112(3)(f) that refers to the provision of directory products and services as an example of a matter relating to privacy that may be dealt with by and industry code or standard. ‘Directory products and services’ include, for example, network-based directory assistance services (eg. “013”) and printed telephone directories. [It is envisaged that a code or standard in relation to such issues may deal with the protection of unlisted (‘silent’) numbers.]

AMENDMENT (46)**Clause 114 - Industry codes and industry standards not to deal with certain design features and performance requirements**

Clause 114(2) provides an exception as to when the rule in clause 114(1) does not apply to an industry code or an industry standard.

Amendment (46) makes a minor technical amendment to clause 114(2) consequential to amendment (47) which adds a further exception to the rule in clause 114(1).

AMENDMENT (47)**Clause 114 - Industry codes and industry standards not to deal with certain design features and performance requirements**

During the Senate Legislation Committee's hearings, the Acting Privacy Commissioner expressed concern that the rule in clause 114(1) would prevent industry codes and industry standards dealing with privacy matters where a code or standard would have the effect of requiring customer equipment, cabling, a telecommunications network or a facility to have particular design features.

Clause 114 is to be amended to insert a new clause 114(3) to provide that the rule in clause 114(1) does not apply to a code or standard to the extent to which it deals with a matter referred to in clause 112(3)(f).

Consequential to Amendment (47), amendments (52) and (54) amend clauses 116 and Division 5 of Part 6 respectively to prevent the ACA requiring a code to be developed or making a standard in relation to privacy matters without regard to balancing the community benefits with the costs involved. This is a safeguard against excessive regulatory intrusion (see clause 111(2)).

AMENDMENT (48)**New clause 114A - Industry codes and industry standards not to deal with matters dealt with by codes and standards under Part 9 of the Broadcasting Services Act**

Clause 114 provides that industry codes and standards will have no effect to the extent that they require customer equipment, customer cabling, a telecommunications network or a facility to have particular design features or performance requirements except as specified in clause 114(2) or to the extent they deal with the content of content services. This prevents industry codes and standards being used for technical and content regulation purposes which are dealt with in Part 21 of the Bill and the *Broadcasting Services Act 1992* respectively.

Amendment (48) inserts a new provision, clause 114A, to provide that an industry code or an industry standard that deals with a matter relating to a content service has no

effect to the extent (if any) to which the matter is dealt with by a code registered, or a standard determined, under Part 9 of the *Broadcasting Services Act 1992*. It should be noted, in this regard, that codes of practice are registered under s. 123(4) of the *Broadcasting Services Act 1992* and certain of the matters they deal with can overlap with matters which would be covered by codes under Part 6 of the Bill. For example, s. 123(k) of the *Broadcasting Services Act 1992* provides for codes of practice developed by subscription broadcasting licensees to cover dealings with customers of the licensees, including methods of billing, fault repair, privacy and credit management.

This amendment addresses concerns on the part of the broadcasting industry that Part 6 codes and standards may be able to deal with matters covered by a code registered or a standard made under the Broadcasting Services Act, thereby creating multiple and possibly conflicting obligations.

It is important to note that the amendment will only limit the effect of a Part 6 code or standard to the extent that matters such a code or standard purports to deal with are matters dealt with under any code registered or standard determined under the *Broadcasting Services Act 1992*.

AMENDMENT (49)

Clause 115 - Registration of industry codes

Clause 115 sets out the process for ACA registration of industry codes.

Amendment (49) amends clause 115(1) to replace the existing clause 115(1)(g) which provides that the ACCC should not object to a code for it to be registered, with a new paragraph requiring that the ACA should be satisfied that the ACCC has been consulted about the development of a code for it to be registered. This amendment means that the ACCC's role in relation to draft codes is consistent with that of other interested parties (ie. Telecommunications Industry Ombudsman and the Privacy Commissioner) and consistent with its role in relation to industry standards (see clause 130).

AMENDMENT (50)

Clause 115 - Registration of industry codes

Clause 115 sets out the process for ACA registration of industry codes.

Amendment (50) amends clause 115(1) to add a new criteria that must be met before the ACA can register a draft code. The new criteria, set out in new clause 115(1)(ha) is that the ACA is satisfied that a least one body or association that represents the interests of consumers has been consulted about the development of the code.

This provision is intended to ensure that consumer representatives are involved in the earlier stages of code development. The amendment specifically responds to the first recommendation of the Democrat Senator's minority report that "consideration should

be given to ensuring public consultation, or even consumer representative involvement, in development of draft Codes”.

New clause 115(1)(ha) is not intended to affect the existing requirement under clause 115(1)(f) for public comment on a draft code and consideration of those comments.

AMENDMENT (51)

Clause 116 - ACA may request codes

Clause 116 provides for the ACA to request industry to develop industry codes in certain circumstances.

Amendment (51) amends clause 116(2) to extend the minimum period the ACA must give an industry body or association to develop an industry code from 90 days to 120 days. This minimum timeframe is seen as more appropriate, given the requirement under clause 115(3) that an industry body or association undertake at least 30 days public consultation on a draft industry code.

AMENDMENT (52)

Clause 116 - ACA may request codes

Clause 116 enables the ACA to request industry to develop industry codes in certain circumstances.

This amendment is related to Amendments (46), (47) and (54) and inserts a new clause 116(3A). Amendment (52) is consequential to amendment (47), which provides that codes and standards relating to privacy matters can have effect even though they may have the effect of requiring particular design features or performance requirements (that is, notwithstanding the rule in clause 114(1)).

New clause 116(3A) prevents the ACA requesting an industry body or association to develop an industry code if:

- the code would deal with a privacy matter (referred to in paragraph 112(3)(f)); and
- compliance with the code would be likely to have the effect (whether direct or indirect) of requiring customer equipment, customer cabling, a telecommunications network or a facility to have particular design features, or to meet particular performance requirements;

unless the ACA is satisfied that the benefits to the community from the operation of the code would outweigh the costs of compliance with the code.

Clause 116(3A) is intended to counterbalance the widening of clause 114 (through the new provision clause 114(3)) to enable codes and standards to deal with privacy matters, even though they may require particular design or performance requirements.

As such the provision is a safeguard against undue regulatory intervention and is consistent with the statement of regulatory policy set out in clause 111. The intention is that the ACA should only be able to request a code relating to privacy that would have the effect of requiring particular design or performance requirements if the benefits of the code will outweigh the costs of compliance. ‘Costs of compliance’ is intended to refer to all costs of compliance, including infrastructure and operational costs, not simply the administrative costs of complying with the code.

Amendment (54) establishes a parallel safeguard in relation to Part 6 industry standards.

AMENDMENT (53)

Clause 116 - ACA may request codes

This amendment, which relates to Amendment (51), amends clause 116(2) to make the example of an indicative target for the preparation of a preliminary draft code ‘60 days’, rather than ‘30 days’. This period is a more realistic indication of the time it would be expected to take to develop a preliminary code.

AMENDMENT (54)

New clause 123A - Industry standards not to be determined for certain privacy matters

Clauses 121 to 123 provide that the ACA may determine industry standards in certain circumstances.

This amendment is related to Amendments (46), (47) and (52) and inserts a new clause 123A. The new clause will provide that the ACA may not determine an industry standard that deals with a matter referred to in clause 112(3)(f) where compliance with the standard would require customer equipment, cabling, a telecommunications network or facility to have certain design features or to meet particular performance requirements (paragraph (a)).

However, where the ACA is satisfied that the benefits to the community from the operation of such a standard would outweigh the costs of compliance with the standard, the ACA will be able to make such an industry standard.

Clause 123A is intended to counterbalance the widening of clause 114, through new clause 114(3), to enable codes and standards to deal with privacy matters, even though they may require particular design or performance requirements. As such, the provision is a safeguard against undue regulatory intervention and is consistent with the statement of regulatory policy set out in clause 111.

The intention is that the ACA should only be able to make a standard relating to privacy that would have the effect of requiring particular design or performance requirements if the benefits of the standard will outweigh the costs of compliance. ‘Costs of

compliance' is intended to refer to all costs of compliance, including infrastructure and operational costs, not simply the administrative costs of complying with the code.

This amendment strikes an appropriate balance between the privacy interests that might be advanced by such a standard, and the costs to carriers, carriage service providers, their customers and the wider community from implementing such a standard.

Amendment (52) establishes a parallel safeguard in relation to Part 6 industry codes.

AMENDMENT (55)

Clause 129 - Public consultation on industry standards

Clause 129 sets out procedures the ACA is to follow in undertaking public consultation on a draft industry standard.

Amendment (55) amends clause 129(1)(a)(ii) to require free copies of draft standards to be available to the public, rather than require copies to be available for inspection and purchase. The amendment, together with amendments (57) and (59), is intended to facilitate public access to, and comment on, draft industry standards and draft variations of standards.

AMENDMENT (56)

Clause 129 - Public consultation on industry standards

Clause 129 sets out procedures the ACA is to follow in undertaking public consultation on a draft industry standard.

Amendment (56) amends clause 129(1)(a)(ii) to require draft standards to be available for the period specified in the notice rather than for a period of 90 days. The amendment, together with amendments (58) and (60), is intended to allow the ACA to make draft standard documents available for an appropriate period having regard to the circumstances, rather than requiring the documents to be available for a mandatory 90 days, which may be unwarranted in some situations (for example, where a standard has been developed after the failure of a code, in which case there will already be a high level of public familiarity with the matters involved). This approach aligns the public consultation process for industry standards with that for draft industry codes under clause 115.

Amendment (60) requires that the period specified under clause 129(1)(a)(ii) must run for at least thirty days.

AMENDMENT (57)

Clause 129 - Public consultation on industry standards

Clause 129 sets out procedures the ACA is to follow in undertaking public consultation on a draft industry standard.

Amendment (57) amends clause 129(1)(a)(iii), consequential to Amendment (55), with the effect that a notice should specify the place or places where free copies will be available, rather than be available for inspection and purchase. The amendment, together with amendments (55) and (59), is intended to facilitate public access to, and comment on, draft industry standards and draft variations of standards.

AMENDMENT (58)

Clause 129 - Public consultation on industry standards

Clause 129 sets out procedures the ACA is to follow in undertaking public consultation on a draft industry standard.

Amendment (58) amends clause 129(1)(a)(iv) to provide that interested persons are to have the period specified in the notice under clause 129(1)(a)(ii) as the period within which they are to give written comments about a draft standard, rather than 90 days. (Amendment (60) requires that the period specified under clause 129(1)(a)(ii) must run for at least thirty days.) The amendment, together with amendments (56) and (60), is intended to allow the ACA to specify an appropriate period within which it will accept written comments on a draft standard available having regard to the circumstances, rather than requiring a mandatory 90 days be available for comments, which may be unwarranted in some situations (for example, where a standard has been developed after the failure of a code, in which case there will already be a high level of public familiarity with the matters involved.) This approach aligns the public consultation process for industry standards with that for draft industry codes under clause 115.

AMENDMENT (59)

Clause 129 - Public consultation on industry standards

Clause 129 sets out procedures the ACA is to follow in undertaking public consultation on a draft industry standard.

Amendment (59) amends clause 129(1)(b), consequential to Amendments (55) and (57), with the effect that copies of a draft standard should be available in accordance with the notice, rather than be available for inspection and purchase. As a result of Amendments (55) and (57), copies of the draft standards must be available free of charge. These amendments are intended to facilitate public access to, and comment on, draft industry standards and draft variations of standards.

AMENDMENT (60)

Clause 129 - Public consultation on industry standards

Clause 129 sets out procedures the ACA is to follow in undertaking public consultation on a draft industry standard.

Amendment (60) amends clause 129 by adding a new provision, clause 129(1A). Amendment (60) is consequential to amendments (56) and (58), which provide that periods in relation to public consultation on a draft standard should be those specified in the relevant ACA notice, rather than a mandatory 90 days.

New clause 129(1A) provides that the period specified in clause 129(1)(a)(ii), which is the period for which draft standard must be available and the period within which the ACA must accept public comments on the draft standard, must run for at least 30 days after the publication of the notice. Clause 129(1A) therefore sets a minimum period for public comment and acts as safeguard on public consultation. This is the minimum period for consultation and aligns with that required under clause 115 in relation to draft codes. The ACA is expected to set a longer period for consultation where it considers 30 days is insufficient (for example, where the public is unfamiliar with the matters covered in a draft standard or where a draft standard significantly departs from a pre-existing code).

AMENDMENT (61)

New clause 131A - Consultation with consumer body

Division 5 of Part 6 provides for the ACA to make industry standards in certain circumstances.

Amendment (61) amends Division 5 of Part 6 to add a new provision, clause 131A. New clause 131A provides that before determining, varying or revoking an industry standard, the ACA must consult at least one body or association that represents the interests of consumers.

This provision is intended to ensure that consumer representatives are involved in the earlier stages of standard development. The amendment specifically responds to the first recommendation of the Democrat Senator's minority report that "consideration should be given to ensuring public consultation, or even consumer representative involvement, in development of draft Codes".

New clause 131A is not intended to affect the existing requirements under clause 129 for public comment on draft standards.

AMENDMENT (62)

Clause 137 - Prescribed carriage services

Clause 137 provides that for the purposes of Part 7, a prescribed carriage service is a carriage service specified in the regulations. Prescribed carriage services are one of the three key components of the universal service obligation (USO) along with the standard telephone service and payphones. By prescribing a carriage service to be a

prescribed carriage service, the carriage service is made part of the USO and must be reasonably accessible to all people in Australia and supplied on request.

Amendment (62) amends clause 137 by adding new provisions, clauses 137(2) to 137(6), to require the Minister to cause a review to be conducted, prior to 1 January 2000, to determine whether a carriage service that provides ISDN-comparable digital data capability should be specified as a prescribed carriage service and therefore made part of the USO.

The new provision responds to Recommendation 13 of the Standard Telephone Service Review Group's *Review of the Standard Telephone Service* and related recommendations of the Senate Environment, Recreation, Communications and the Arts Legislation Committee, particularly Recommendation 9.3 of the Majority Report of the Committee.

New clause 137(2) provides that before 1 January 2000, the Minister must cause to be conducted a review to determine whether a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service should be specified in regulations made for the purposes of clause 137(1).

New clause 137(3) provides for the determination of the comparability of digital data capability to be based solely on a comparison of the data transmission speed available to an end-user of the service.

New clause 137(4) provides that the Minister must cause a report of the review to be prepared.

New clause 137(5) provides that the Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report. This provision ensures the findings of the review are brought before the Parliament.

New clause 137(6) provides that "designated basic rate ISDN service" used in new clause 137(2) has the same meaning as in clause 65A of the Bill. Clause 65A provides that a service is a designated basic rate ISDN service if:

- immediately before 1 July 1997, Telstra supplied a basic rate Integrated Service Digital Network (ISDN) service; and
- the service complied with any of the standards for ISDN services made by the European Telecommunications Standards Institute (ETSI).

Amendment (62) effectively provides a mechanism to require the Minister to consider adding a carriage service providing ISDN-comparable digital data capability to the USO. The consequence of defining such a service to be a prescribed carriage service would be to make it part of the universal service obligation.

Whether the Minister would add such a service to the USO as part of the review would obviously depend on the outcome of the review. In this context, the Standard Telephone Service Review Group (*Review of Standard Telephone Service*, Chapter 7) considered such a service should be made a prescribed carriage service “unless such prescription is not necessary to achieve this objective” but recommended that prior to confirming such an approach, the issue be assessed, applying four key criteria:

- whether the services under consideration are of social importance;
- the extent to which they are available in the market;
- the costs of intervention through the USO mechanism; and
- whether the benefits of intervention outweigh the costs.

Providing for possible inclusion of a carriage service providing ISDN-comparable digital data capability in the USO is the third main way by which the Telecommunications Bill will progress the new object in clause 3(2)(aa) which is to facilitate the making of a carriage service, that provides digital data capability comparable to an ISDN channel, reasonably accessible to all people in Australia as soon as practicable. Such an approach would complement the licence condition to be placed on Telstra under new clause 65A, that it be in a position to supply a carriage service providing ISDN-comparable digital data capability to 96% of people in Australia by 1 January 2000. It is intended that Telstra meet this condition by supplying ISDN on a commercial basis. If 100% availability cannot be provided on a commercial basis, then it would be appropriate to consider achieving that target under the USO.

By referring in clause 137(2) to the same kind of carriage service referred to in clause 65A (that is, a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service), the Government has intentionally established a link between the two provisions. The implication is that, in the first instance, the carriage service that should be considered for inclusion in the USO by way of the prescribed carriage service mechanism in clause 137, should be the same as the one that Telstra has been required to supply under its licence condition. This would provide continuity between the Telstra licence condition and the USO. This does not mean, however, that another carriage service might be added to the USO if the review found this to be more appropriate and the Government agreed.

Amendment (62) requires that the review be conducted prior to 1 January 2000, rather than prior to 1 July 1998 as recommended by the Standard Telephone Service Review Group and the Senate committee. The Government considers that a further review so soon after that conducted by the Standard Telephone Service Review Group will do little to confirm whether ISDN-comparable digital data capability should be added to the USO. Moreover, the Government is requiring Telstra to provide at least 96% availability by 1 January 2000, thereby setting a firm target well in advance for the benefit of consumers and Telstra alike. In this context, it is sensible for the Bill to give

the Minister flexibility as to when a review on this issue is conducted, providing it is conducted by 1 January 2000.

AMENDMENT (63)

Clause 144 - Universal service obligations

Clause 144 defines the universal service obligation. In summary, the universal service obligation is the obligation to ensure that standard telephone services, payphones and prescribed carriage services are reasonably accessible to all people in Australia and to supply standard telephone services and prescribed carriage services on request and to supply, install and maintain payphones.

Amendment (63) amends clause 144 by adding three new provisions, clauses 144(8), (9) and (10).

New clause 144(8) provides that an obligation does not arise under paragraph (2)(a) in relation to particular customer equipment, goods or services the supply of which is treated under clause 138 as the supply of a standard telephone service, if the customer concerned requests not to be supplied with the customer equipment, goods or services.

New clause 144(9) performs a similar function in relation to clause 139. New clause 144(9) provides that an obligation does not arise under paragraph 2(c) in relation to particular customer equipment, goods or services the supply of which is treated under s. 139 as the supply of a prescribed carriage service, if the customer concerned requests not to be supplied with the customer equipment, goods or services.

These provisions have been added to clause 144 to address concerns that, as previously drafted, a universal service provider might technically fail to fulfil the USO if it failed to supply the standard telephone service or a prescribed carriage service together with all the items (customer equipment, goods and services) required to be supplied in connection with those services, even though a customer may have asked not to be supplied with one or more of those ancillary items. For example, the supply of customer equipment has been open to competition since 1 July 1989 and a large number of customers have purchased their own customer equipment. Many of these customers may not wish to have customer equipment supplied with their standard telephone service, particularly given an additional rental cost is involved. The new provisions will enable these customers to say they do not want to be supplied with a particular component of the standard telephone service or prescribed carriage service and universal service providers will be able to comply with their customers' wishes without fear of contravening their universal service obligation.

A customer would need to advise the universal service provider that they did not wish to be supplied with an item for the universal service provider to be released from its obligation to supply the equipment, goods or services concerned. Failure by a customer to explicitly request equipment, goods or services that are to be supplied as part of a standard telephone service or a prescribed carriage service is not to be taken as a request not to be supplied with those components. Nothing prevents a universal

service provider suggesting to a customer that the customer request not to be supplied with particular equipment, goods or services.

To avoid doubt, new clause 144(10) provides that an obligation arising under clause 144(2)(a) (which concerns the supply of standard telephone services to people in Australia on request) in relation to customer equipment requires the customer concerned to be given the option of hiring the equipment. This provision makes it explicit that in supplying customer equipment for use in connection with a standard telephone service (as provided for under clause 137), the universal service provider must give the customer the option of hiring the equipment. The provision does not preclude the universal service provider also fulfilling its obligation in other ways (for example, by providing equipment for purchase) providing it offers the option of hiring.

New clause 144(1) responds specifically to the second recommendation of the Democrat minority report that “the right to retain a rental handset should be explicitly a part of the standard telephone service”.

AMENDMENT (64)

Clause 150 - Multiple national universal service providers

Clause 150(1) of the Bill provides that the regulations may authorise ‘a Minister’ to declare that 2 or more carriers are to be national universal service providers. The reference to ‘a Minister’ should be to ‘the Minister’. Amendment (64) corrects this typographical error.

AMENDMENT (65)

New clause 155A - Public comment - draft plan

Division 4 of Part 7 requires universal service providers to develop and comply with universal service plans which must be approved by the Minister.

Amendment (65) amends Division 4 of Part 7 to insert a new provision, clause 155A, requiring a universal service provider to undertake public consultation on a draft universal service plan before submitting it to the Minister for approval.

This provision is intended to ensure that the public has an opportunity to comment on draft universal service plans as they are being developed. The amendment specifically responds to the sixth recommendation of the Democrat Senator’s minority report that public/consumer comment on universal service plans should be required.

New clause 155A(1) requires that, before giving the Minister a draft universal service plan under clause 155, a universal service provider must:

- publish a preliminary version of the draft plan and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and

- give consideration to any submissions that were received from members of the public within that period.

This provision provides a mechanism for the public to comment on draft universal service plans and for the public's comments to be considered. A universal service plan sets out how a universal service provider will progressively fulfil its USO (clause 153).

New clause 155A(2) requires that the period specified in the invitation to comment must run for at least 30 days. This provides the public with a guaranteed minimum period within which to make comments.

New clause 155A(3) provides that clause 155A does not apply to a draft plan given to the Minister in accordance with a direction under clause 155(3). Clause 155(3) enables the Minister to direct a universal service provider to provide a fresh draft universal service plan where the Minister refuses to approve an original plan. Given that the Minister's direction will take into account the public comments which occurred in relation to the original plan and there are timing pressures if a revised plan is required, it is not appropriate to require public consultation in these circumstances.

New clause 155A(4) provides that clause 155A does not apply to a draft plan given to the Minister in accordance with a notice under clause 161. Clause 161 enables the Minister to require a universal service provider to give the Minister a draft variation of a current plan or draft replacement plan. Given that public consultation will have occurred in relation to the original plan and there are timing pressures if a revised plan is required, it is not appropriate to require public consultation in these circumstances.

AMENDMENT (66)

New clause 159A - Public comment - variation of plan

Division 4 of Part 7 requires universal service providers to develop and comply with universal service plans which must be approved by the Minister.

Amendment (66) amends Division 4 of Part 7 to insert a new provision, clause 159A, requiring a universal service provider to undertake public consultation on a variation of an approved universal service plan before submitting the variation to the Minister for approval. As such, the amendment parallels Amendment (65).

This provision is intended to ensure that the public has an opportunity to comment on variations to approved universal service plans. The amendment specifically responds to the sixth recommendation of the Democrat Senator's minority report that public/consumer comment on universal service plans should be required.

New clause 159A(1) requires that, before giving the Minister a draft variation to a universal service plan under clause 159, a universal service provider must:

- publish a preliminary version of the draft variation and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
- give consideration to any submissions that were received from members of the public within that period.

This provision provides a mechanism for the public to comment on draft variations to universal service plans and for the public's comments to be considered.

New clause 159A(3) provides that clause 159A does not apply to a draft variation given to the Minister in accordance with a notice under clause 161. Clause 161 enables the Minister to require a universal service provider to give the Minister a draft variation of a current plan or draft replacement plan. Given that public consultation will have occurred in relation to the original plan and there are timing pressures if a revised plan is required, it is not appropriate to require public consultation in these circumstances.

AMENDMENT (67)

Clause 182 - Participating carriers must lodge returns of eligible revenue

Clause 182(4) makes it an offence for a person to contravene clause 182(1) which requires each carrier to lodge a return with the ACA within 90 days of the end of each financial year setting out the carrier's eligible revenue for that last financial year.

Clause 182(4) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (68)

Subdivision D - Disclosure by the ACA of information about the basis and methods of an assessment

Subdivision 6D of Part 7 currently deals with the disclosure by the ACA of information about the basis and methods of a USO assessment.

Amendment (68) amends the title of Subdivision 6D to read: “Disclosure by the ACA of information about decisions relating to net costs areas and assessments”. This amendment is consequential to Amendments (69) to (74) to clauses 191 and 192 which widen the scope of the disclosure provisions.

Amendments (68) to (74) to Subdivision 6D of Part 7 specifically respond to Recommendation 2.14 of the Majority Report of the Senate Committee which, amongst other things, recommended that “Part 7 of the Telecommunications Bill 1996 be amended to ensure that “eligible persons” for the purposes of clause 192 may request information in relation to an ACA decision to declare an area a net cost area”.

AMENDMENT (69)

Clause 191 - Public may request information

Clause 191 provides that the public may request information about the basis and methods of a USO assessment.

Amendment (69) is a technical drafting amendment consequential to Amendment (70).

AMENDMENT (70)

Clause 191 - Public may request information

Clause 191 provides that the public may request information about the basis and methods of a USO assessment, subject to certain commercial confidentiality requirements.

Amendment (70) amends clause 191 to insert a new paragraph in clause 191(1) providing that a person may also request the ACA to make available to the person specified information or documents relating to a decision by the ACA under clause 172 or proposed new clause 172B (see request 3) to declare an area as a net cost area for a financial year.

Amendment (70), together with Amendments (69) and (71)-(73), are intended to provide the public with access to information in relation to the declaration of net cost areas, subject to commercial confidentiality requirements. Net cost areas are areas in which a universal service provider expects to make a loss and will therefore seek compensation. As net cost areas are a fundamental determinant of total USO costs, it is appropriate that such information be available for scrutiny by the public, subject to

commercial confidentiality safeguards, and other participating carriers, subject to alternative safeguards. The amendments address industry concerns about a lack of information about the declaration of net cost areas and thus the basis of USO costs.

AMENDMENT (71)

Clause 192 - Request for information that is unavailable under section 191

Clause 192 provides that an eligible person, (ie. a universal service provider or a participating carrier) in relation to a financial year may request the ACA to make available specified information or documents of a kind referred to in s.191(1) that s.191(3) prevents the ACA from making available to such a person under s. 191.

Amendment (71), together with Amendments (68) and (69), provide for the ACA to make available to an eligible person information not available under clause 191 relating to the declaration of an area to be a net cost area.

Amendment (71) amends clause 192(4)(d) to make the provision apply only to requests under clauses 191(1)(a) and (b), but not the new clause 191(1)(c) inserted by Amendment (70). New clause 192(4)(e) to be inserted by Amendment (73) applies to requests under clause 191(1)(c).

AMENDMENT (72)

Clause 192 - Request for information that is unavailable under section 191

Clause 192 provides that an eligible person (ie. a universal service provider or a participating carrier) in relation to a financial year may request the ACA to make available specified information or documents of a kind referred to in s.191(1) that s.191(3) prevents the ACA from making available to such a person under s. 191.

Amendment (72) is a technical drafting amendment consequential to Amendment (73).

AMENDMENT (73)

Clause 192 - Request for information that is unavailable under section 191

Clause 192 provides that an eligible person (ie. a universal service provider or a participating carrier) in relation to a financial year may request the ACA to make available specified information or documents of a kind referred to in s. 191(1) that s.191(3) prevents the ACA from making available to such a person under s. 191.

Amendment (73) inserts a new provision, clause 192(4)(e) in clause 192(4) providing that, the ACA must not make available to a requesting eligible person information in relation to the declaration of a net cost areas requested under new clause 191(1)(c) unless, amongst other things, the ACA is satisfied that:

- the eligible person requesting the information (the first eligible person) has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, the ACA made the decision to make the declaration concerned; and
- having regard to the policy principles in clause 134, the first eligible person's interest in being able to examine that decision outweighs the interests of the person to whom the information relates in avoiding substantial harm to their commercial or other interests.

Amendment (73) will enable universal service providers and participating carriers to have greater access to information relating to the declaration of net cost areas than is available to the general public, reflecting their direct financial stake in the USO process. Their access to such information is, however, subject to the conditions set out in the amendments with a view to protecting the commercial confidentiality of the person to whom the request relates.

AMENDMENT (74)

Clause 192 - Request for information that is unavailable under section 191

Clause 192 provides that an eligible person (ie. a universal service provider or a participating carrier) in relation to a financial year may request the ACA to make available specified information or documents of a kind referred to in s. 191(1) that s.191(3) prevents the ACA from making available to such a person under s. 191.

Amendment (74) inserts new provisions, clauses 192(5), (6) and (7), in clause 192 requiring the ACA to have regard to whether a person seeking information under clause 192 has given an undertaking about non-disclosure of that information.

This amendment specifically responds to Recommendation 2.14 of the Majority Report of the Senate Committee which, amongst other things, recommended that the ACA “should be given the discretion to release information which would otherwise be considered confidential if it seeks and receives undertakings, such as solicitor’s undertakings, that the information will not be divulged to any person other than those specified in the undertaking.

New clause 192(5) provides that the ACA, in determining the question referred to in clause 192(4)(b) (that is, whether the making available of a document or information to an eligible person requesting such a document or information can reasonably be expected to cause substantial damage to the commercial or other interests of the eligible person supplying the document or information), must have regard to:

- whether any undertakings concerning non-disclosure of information by a recipient, have been given under clause 192(6); and
- such other matters (if any) as the ACA considers relevant.

New clause 192(6) provides that for the purposes of clause 192, a person may give the ACA a written undertaking that, in the event that specified information, or the whole or part of a specified document, is made available to the person under this clause, the person will not disclose the information, or the contents of the document, except to one or more specified persons. It is envisaged that such an undertaking might restrict access to a document or information to persons such as an eligible person's accountant, solicitor or finance director, however, the persons specified in an undertaking are ultimately a matter for the person giving the undertaking. It is up to the ACA to determine whether the persons specified are appropriate.

New clause 192(7) provides that if a person gives an undertaking under clause 192(6), the person must comply with the undertaking.

AMENDMENT (75)

Clause 224 - Performance standards

Clause 224 provides for the ACA to make performance standards for the purposes of the Customer Service Guarantee.

Amendment (75) amends clause 224(1)(e) consequential to Amendment (76) which adds a new provision, clause 224(1)(f).

AMENDMENT (76)

Clause 224 - Performance standards

Clause 224(1) gives the ACA the power to make standards to be complied with by carriage service providers in relation to:

- (a) the making of arrangements with customers about the period taken to comply with requests to connect customers to specified kinds of carrier services;
- (b) the periods that carriage service providers may offer to customers when making the above arrangements;
- (c) compliance by carriage service providers with the terms of those arrangements;
- (d) the period taken to comply with requests to rectify faults or service difficulties relating to specified kinds of carriage services; and
- (e) the keeping of appointments to meet customers (or their representatives, eg. family members) about such connections and rectifications.

In order to reflect amendments made by the Senate to the Telstra (Dilution of Public Ownership) Bill 1996, Amendment (76) will add a new clause 224(1)(f) to enable the ACA to make standards in relation to ‘any other matter concerning the supply, or proposed supply, of a carriage service to a customer’. This approach differs from the previous version by making it clear that the matters about which standards may be made under the customer service guarantee must relate to the supply of carriage services to customers and accordingly cannot be matters wholly unrelated to telecommunications.

AMENDMENT (77)

Clause 226 - Scale of damages for breach of performance standards

Clause 226 provides that the ACA may specify a scale of damages for contraventions of standards by carriage service providers under clause 224. In order to reflect amendments made by the Senate to the Telstra (Dilution of Public Ownership) Bill 1996, Amendment (77) will increase the maximum amount of damages payable for contraventions covered by each specified category of contraventions of performance standards from \$3,000 to \$25,000.

AMENDMENTS (78)–(80)

Clause 229 - Savings of other laws and remedies

Clause 229 of the Bill is intended to ensure that Part 9 of the Bill, dealing with the customer service guarantee, is not interpreted as excluding, limiting, restricting or affecting any right a person may otherwise have under Commonwealth, State or Territory or common law where a carriage service provider fails to comply with a performance standard.

Amendments (78) and (79) replace incorrect references in clause 229 to ‘this Division’ by references to ‘this Part’.

In order to reflect amendments made by the Senate to the Telstra (Dilution of Public Ownership) Bill 1996, Amendment (80) will insert new clauses 229(3) and (4) to provide that Part 9 does not limit, restrict or otherwise affect the operation of the Telecommunications Industry Ombudsman scheme. It will also provide that, in particular, Part 9 does not affect a customer’s right to complain to the Telecommunications Industry Ombudsman.

AMENDMENT (81)

Clause 235 - Eligible carriage service providers

Clause 235 defines who is an eligible carriage service provider for the purposes of Part 10 and therefore required to enter into the Telecommunications Industry Ombudsman scheme.

Amendment (81) amends clause 235(a) to make a carriage service provider who supplies a carriage service that enables end-users to access the Internet an eligible carriage service provider for the purposes of Part 10. This amendment addresses concerns that, with the rapid growth in the use of the Internet, persons providing access to the Internet should be required to be members of the TIO scheme, thereby giving customers the protection afforded by the scheme.

AMENDMENT (82)

Clause 255 - Provision of emergency call services

Clause 255 requires the ACA to make a written determination imposing requirements on carriers, carriage service providers and emergency call persons in relation to emergency call services. Clause 255(2) sets out the objectives that the ACA must have regard to in making a determination under clause 255(1).

Clause 255 is to be amended in the following manner:

- to clarify the obligation to provide emergency call services to end-users;
- to clarify the issue of funding of emergency call services; and
- to require the ACA to have regard to additional objectives.

Obligation to provide emergency call services

As introduced, clause 255(2)(a) states that the ACA must have regard to the objective that each end-user of a standard telephone service should have direct access, free of charge, to an emergency call service, unless the ACA considers it would be unreasonable to provide such access.

Clause 255(2)(a) is to be replaced by a new paragraph which makes it clear that the obligation to ensure that end-users have access to emergency call services is to be placed on the carriage service provider supplying the standard telephone service to the end-user concerned. The reference to 'direct' access is to be removed to allow for arrangements where access is provided using services supplied by another carrier or carriage service provider.

Funding of emergency call services

Part 12 as introduced is silent on the issue of the funding of emergency call services. The proposed amendment to clause 255 makes it clear that in making a determination

under clause 255(1), the ACA must have regard to the objectives that emergency service organisations should not be responsible for the cost of:

- the carriage services used to connect calls and transmit the related information from customers of the carriage service provider to an emergency call service;
- the services of the recognised person who operates the emergency call service for receiving and handling the calls to an emergency service number; and
- the carriage services used to transfer the emergency call and related information to the relevant emergency service organisation from the emergency call service.

It is anticipated that the terms and conditions under which the cost of providing access for end-users to emergency call services will continue to be resolved by the industry. However, proposed new clause 256A (see below) will allow for arbitration where commercial negotiation breaks down. New clause 256B (see below) will allow for a Ministerial pricing determination in relation to the provision of access to emergency call services to end-users.

It should be noted that the relevant provisions of the previous *Telecommunications Act 1991* and subordinate instruments do not set out arrangements for the funding of emergency call services. However, the telecommunications industry has negotiated funding for emergency call handling on a commercial basis as part of general access agreements.

ACA must have regard to certain objectives in making a determination

Clause 255(2) is to be amended to require the ACA, in making a determination under clause 255, to have regard to a number of additional objectives to those previously set out in clause 255(2).

These additional objectives are:

- that, as far as practicable, a common system is used for the transferring of emergency calls and related information;
- that calls made to an emergency service number are transferred to an appropriate emergency service organisation with the minimum of delay;
- that from the perspective of end-users, there appears to be a single national emergency call system; and
- that reasonable community expectations for the handling of calls to emergency service numbers are met.

The new objectives are intended to ensure that any determination made by ACA provides for, as far as practicable, a uniform, national system for the transfer of emergency calls and related information to an emergency service organisation for the benefit of recognised persons operating an emergency call service, emergency service organisations and end-users.

AMENDMENT (83)**Clause 255 - Provision of emergency call services**

Clause 255 allows the ACA to impose requirements on carriers, carriage service providers and emergency service organisations in relation to the provision of emergency call services. Clause 255 as introduced does not specify what type of requirements the ACA could impose on the persons listed in clause 255(1). Proposed new clause 255(4A) provides that requirements imposed by the ACA under clause 255(1) may include, but are not limited to, performance requirements relating to:

- the answering of an emergency call from an end-user;
- the delay in transferring emergency calls to the relevant emergency service organisation;
- handling of complaints relating to an emergency call service.

AMENDMENT (84)**Clause 255 - Provision of emergency call services**

Clause 255(7) as introduced requires the ACA to consult with carriers, carriage service providers, recognised persons who operate an emergency call service and emergency service organisations prior to making a determination under clause 255(1). This amendment amends clause 255(7) to require the ACA to consult with representatives of consumers of standard telephone services in addition to those groups already listed.

AMENDMENT (85)**Clause 255 - Provision of emergency call services**

This amendment inserts a new clause 255(7A) to allow a carriage service provider to arrange with another person to meet the obligation to provide access to an emergency call service as set out in amended clause 255(2).

AMENDMENT (86)**Clause 255 - Provision of emergency call services**

This is a minor technical amendment consequential to Amendment (87).

AMENDMENT (87)**Clause 255 - Provision of emergency call services**

This amendment amends the definition of “emergency call organisation” in clause 255(8) to include reference to a third party providing a despatch service for emergency service organisations. This ensures consistency with the proposed new definition of ‘emergency call service’ to be substituted by Amendment (6).

AMENDMENT (88)

Clause 256 - Compliance with determination

This is a minor technical amendment consequential to Amendment (89).

AMENDMENT (89)

New clause 256A - Access to emergency call services

New clause 256A allows for the arbitration of disputes between carriage service providers and recognised persons operating an emergency call service. Amended clause 255(2) makes it clear that carriage service providers supplying the standard telephone service must provide end-users of that standard telephone service with access, free of charge, to an emergency call service. Amended clause 255(2) makes it clear that an emergency service organisation should not be responsible for the costs of providing access to an emergency call service.

Where a carriage service provider is required to provide such access, the terms and conditions under which this access is provided will be determined by commercial agreements between carriage service providers and the recognised person operating the emergency call service. Where these parties are unable to agree on the terms and conditions, the terms and conditions shall be those determined by an arbitrator appointed by the parties. If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

The results of any arbitration made under new clause 256A must not be inconsistent with a Ministerial pricing determination in force under clause 256B (see Amendment (90) below).

AMENDMENT (90)**New clause 256B - Ministerial pricing determinations**

New clause 256B gives the Minister the discretion to make a written determination setting out principles in relation to the price-related terms and conditions under which access to an emergency call service is provided to end-users of the standard telephone service. A determination made under clause 256A may not be inconsistent with a Ministerial pricing determination under clause 256B. The power to make a written determination is discretionary and will only be exercised where commercial negotiations are unable to resolve the terms and conditions under which the costs of providing emergency call services are allocated.

AMENDMENT (91)**Clause 258 - Simplified outline**

This amendment is a formal technical drafting amendment consequential to Amendment (92) - see the notes on Amendment (92).

AMENDMENT (92)**New clause 259A - Number-database operator and eligible number-database person**

This amendment inserts a new clause 259A to define two new terms: ‘number-database operator’ and ‘eligible number-database operator’. Both these terms relate to Amendment (96) which introduces a new offence for such operators to disclose or use information or documents relating to carriage services or another person’s particulars.

A ‘number-database operator’ means a person who is determined by the Minister under clause 456 to be the operator of the integrated public number database.

An ‘eligible number-database operator’ means a person who is a number-database operator, their employee or contractor, or such a contractor’s employee.

AMENDMENT (93)**New clause 261A - Number-database contractor**

This amendment inserts a new clause 261A to define a new term ‘number-database contractor’. This amendment relates to Amendments (92) and (96). A ‘number-database contractor’ means a person who performs services for or on behalf of a number-database operator (defined in new clause 259A inserted by Amendment (92)), but does not include such a person who performs the services as an employee of the operator.

AMENDMENT (94)**Clause 262 - Primary disclosure/use offence - eligible persons**

This amendment numbers the existing note to clause 262(3) as 'Note 1'. This is a minor amendment consequential to Amendment (95) below - see the notes on Amendment (95).

AMENDMENT (95)**Clause 262 - Primary disclosure/use offence - eligible persons**

Clause 262(3) makes it an offence for a person to contravene clause 262(1) or (2) which prohibit eligible persons, or persons who have been eligible persons, from disclosing or using information or documents relating to the carriage of communications over a carriage service.

Clause 262(3) is to be amended to include a second note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (96)**New clause 262A - Primary disclosure/use offence - eligible number-database persons**

This amendment inserts a new clause 262A to make it an offence for a person, who is determined by the Minister under clause 456 to be the operator of the integrated public number database, to disclose or use information or a document, relating to the supply of carriage services or to the affairs or personal particulars of another person, that is obtained by the person in the course of operating that database (new clause 262A(1)).

The offence applies to an eligible number-database person, which, under proposed clause 259A(2), includes the operator's employees, contractors and employees of the contractors.

The amendment also includes the same offence for a person who has been an eligible number-database person (new clause 262A(2)).

The penalty for breach of these offences is imprisonment for a maximum of 2 years (new clause 262A(3)).

Clause 262 includes a similar offence in relation to 'eligible persons', a term that includes Telstra who would be the operator of the database where the Minister does not make a determination under clause 456. However, 'eligible persons' does not include a person determined under clause 456. It is therefore necessary to include a separate

offence provision in relation to any such person the Minister may determine under clause 456.

AMENDMENT (97)

Clause 263 - Primary disclosure/use offence - emergency call persons

This amendment numbers the existing note to clause 263(3) as 'Note 1'. This is a minor amendment consequential to Amendment (98) below - see the notes on amendment (98).

AMENDMENT (98)

Clause 263 - Primary disclosure/use offence - emergency call persons

Clause 263(3) makes it an offence for a person to contravene clause 263(1) or (2) which prohibit emergency call persons, or persons who have been emergency call persons, from disclosing or using information or documents relating to the operation of an emergency call service.

Clause 263(3) is to be amended to include a second note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (99)

Clause 264 - Performance of person's duties

This amendment is consequential to Amendment (96) which inserts a new primary disclosure offence in relation to an eligible number-database operator. Clause 264 provides an exemption from the offences in Division 2 for disclosures in the performance of a person's duties. This amendment creates an equivalent exemption to apply to the new offence.

AMENDMENT (100)

Clause 265 - Authorisation by or under law

This amendment relates to Amendment (104) which excludes the content or the substance of communications from access by an enforcement agency (defined in clause 267(7) to mean a law-enforcement, civil penalty-enforcement or public revenue agency) through the certification scheme under clause 267. The policy intention is that such information only be accessible under the authority of a warrant.

This amendment omits the current clause 265 and substitutes a new clause 265 to provide that the primary disclosure or use offence provisions in Division 2 of Part 13 do not apply where the disclosure or use is made in connection with the operation of an enforcement agency (which has the same meaning as in clause 267(7) - see new clause 265(2)) under the authority of a warrant (new clause 265(1)(a)), or in other cases where the disclosure or use is required or authorised by or under law (new clause 265(1)(b)).

AMENDMENT (101)

Clause 267 - Law enforcement and protection of the public revenue

This is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (102)

Clause 267 - Law enforcement and protection of the public revenue

This is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (103)

Clause 267 - Law enforcement and protection of the public revenue

This is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (104)

Clause 267 - Law enforcement and protection of the public revenue

This amendment inserts new clauses 267(5A), (5B) and (5C).

New clause 267(5A) will provide that the certification scheme under clauses 267(3), (4) and (5), whereby information or documents may be disclosed or used if an authorised officer of an enforcement agency has certified that the disclosure or use is reasonably necessary for enforcement purposes, does not apply to information relating to the content or substance of a communication that has been carried by a carrier or carriage service provider.

The insertion of new clause 267(5A) relates to Amendment (100) and accords with the policy approach reflected in the *Telecommunications (Interception) Act 1979* that the

content of communications should be protected unless access is authorised under a warrant (Amendment (100) amends clause 265 to allow disclosure or use for enforcement purposes where a warrant authorises the disclosure or use).

New clause 267(5B) requires a certificate issued by an authorised enforcement officer under clause 267(3), (4) or (5) to comply with requirements determined by the ACA.

New clause 267(5C) requires the ACA to consult the Privacy Commissioner when determining the requirements of such a certificate.

AMENDMENT (105)

Clause 267 - Law enforcement and protection of the public revenue

This is a formal technical amendment consequential to Amendment (106).

AMENDMENT (106)

Clause 267 - Law enforcement and protection of the public revenue

This amendment inserts a new paragraph (h) into the definition of ‘criminal-law enforcement agency’ in clause 267(7) to include a body or organisation (including the National Exchange of Police Information) responsible to the Australasian Police Ministers’ Council for the facilitation of national law enforcement support. This amendment will allow other organisations, such as the Australian Bureau of Criminal Intelligence, which are established, or perform functions, to provide common services to police forces and other intelligence agencies across Australia, to participate in the certification scheme provided by clauses 267(3), (4) and (5).

AMENDMENT (107)

Clause 269 - Assisting the ACA, the ACCC or the Telecommunications Industry Ombudsman

This is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (108)

Clause 269 - Assisting the ACA, the ACCC or the Telecommunications Industry Ombudsman

This is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (109)

Clause 269 - Assisting the ACA, the ACCC or the Telecommunications Industry Ombudsman

This is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (110)

Clause 270 - Integrated public number database

This is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (111)

Clause 270 - Integrated public number database

This is a formal technical amendment consequential to Amendment (112).

AMENDMENT (112)

Clause 270 - Integrated public number database

This amendment inserts new clause 270(1)(c)(iii) to allow disclosure of information or a document from the integrated public number database for the purposes of dealing with matters raised by a call to an emergency service number.

AMENDMENT (113)

Clause 270 - Integrated public number database

This amendment is a formal technical amendment consequential to Amendment (178) which removes the possibility of an association being determined by the Minister under clause 456 to be the operator of the integrated public number database.

AMENDMENT (114)**Clause 271 - Calls to emergency service number**

This is a formal technical amendment consequential to Amendment (115).

AMENDMENT (115)**Clause 271 - Calls to emergency service number**

Clause 271(c) provides an exception to the disclosure offences for emergency calls. Clause 271(c) provides an exception where the disclosure is made to a member of an emergency service organisation. This amendment amends clause 271(c) to ensure that relevant information can be disclosed to a third party performing a despatch service for emergency service organisations without committing an offence.

AMENDMENT (116)**Clause 277 - Circumstances prescribed in the regulations**

This is a technical amendment consequential to Amendment (96) which inserts a new primary disclosure or use offence provision at new clause 262A in relation to the operator of the integrated public number database determined by the Minister under clause 456.

This amendment inserts a new clause 277(1A) to provide that the new offence does not prohibit a disclosure or use in circumstances specified in the regulations.

AMENDMENT (117)**Clause 278 - Use connected with exempt disclosures**

This is a formal technical amendment consequential to Amendment (96) which inserts a new primary disclosure or use offence provision at new clause 262A in relation to the operator of the integrated public number database determined by the Minister under clause 456.

This amendment inserts a new clause 278(1A) to provide that the new offence does not prohibit a disclosure or use if the disclosure or use is made for the purposes of, or in connection with a disclosure otherwise authorised by Division 3 of Part 13. This is to ensure that administrative uses or disclosures, made to facilitate a disclosure or use that is exempted under Division 3 from the prohibitions in Division 2, are not caught by those prohibitions.

AMENDMENT (118)

Clause 280 - Burden of proof

This amendment has been made in response to concerns of the Senate Standing Committee for the Scrutiny of Bills raised in their Alert Digest No. 1 of 1997. Clause 280(1) as introduced provided that for the purposes of determining the persuasive burden of proof for prosecutions for an offence against Division 2 of Part 13, the exceptions provided in Division 3 are taken to be part of the description of the offence. The consequence of this is that the prosecution will have the burden of proving that an exception does not apply in the case being prosecuted. (The evidential burden of adducing or pointing to evidence that suggests a reasonable possibility that the exception exists in relation to the case would lie with the defendant (clause 280(2))).

However, this persuasive burden of proof was not applied to the exception provided under clause 272 which allowed a disclosure or use of information or document where the person believes on reasonable grounds that the disclosure or use was reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person. The consequence of this would be that a person accused of breaching Division 2, who wanted to rely on the exception provided by clause 272 as a defence, would have to raise it in defence and would have the burden of proving that the exception applied at the time of the alleged offence. The reason this exception was treated differently was because it was considered that matters crucial to determining such an issue would have been peculiarly within the knowledge of the defendant and would have been too difficult or costly for the prosecution to establish.

The Senate Committee expressed the view that treating the exception provided by clause 272 in this way may act as a deterrent for necessary and timely action in emergency situations, and that the public interest in such action being taken outweighed the public interest in the privacy protection of information.

Accordingly, clause 280(1) is to be amended to remove the bracketed reference to clause 272 thereby ensuring that the respective burdens of proof apply in the same manner in relation to clause 272 as they do to the other exceptions in Division 3.

AMENDMENT (119)**Clause 280 - Burden of proof**

This amendment is consequential upon Amendment 118 - see the notes on that amendment.

AMENDMENT (120)**Clause 288 - Secondary offence - contravening this Division**

Clause 288 makes it an offence for a person to contravene Division 4 of Part 13 which prohibits the secondary disclosure or use of information or documents that were disclosed or used under certain exemptions provided for in Division 3 of Part 13.

Clause 288 is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (121)**Clause 289 - Associate**

This amendment is a technical amendment to the definition of 'associate' as used in Division 5, and is consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (122)**Clause 289 - Associate**

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (123)**Clause 289 - Associate**

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (124)**Clause 290 - Certificates issued by authorised officers of enforcement agencies**

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (125)

Clause 290 - Certificates issued by authorised officers of enforcement agencies

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (126)

Clause 290 - Certificates issued by authorised officers of enforcement agencies

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (127)

Clause 290 - Certificates issued by authorised officers of enforcement agencies

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (128)

Clause 290 - Certificates issued by authorised officers of enforcement agencies

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (129)

Clause 290 - Certificates issued by authorised officers of enforcement agencies

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (130)

Clause 291 - Record of disclosures

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (131)

Clause 291 - Record of disclosures

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (132)

Clause 291 - Record of disclosures

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (133)

Clause 291 - Record of disclosures

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (134)

Clause 291 - Record of disclosures

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (135)

Clause 291 - Record of disclosures

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (136)

Clause 291 - Record of disclosures

Clause 291(7) makes it an offence for a person to contravene clause 291 which provides for various requirements in relation to the recording of disclosures of information or documents made under Part 13.

Clause 291(7) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (137)

Clause 292 - Incorrect records

Clause 292(2) makes it an offence for a person to contravene clause 291 which prohibits the making of a false recording of disclosures of information or documents made under Part 13.

Clause 292(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (138)

Clause 293 - Annual reports to the ACA by carriers or carriage service providers

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (139)

Clause 293 - Annual reports to the ACA by carriers or carriage service providers

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (140)

Clause 293 - Annual reports to the ACA by carriers or carriage service providers

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (141)

Clause 294 - Monitoring by the Privacy Commissioner

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (142)**Clause 294 - Monitoring by the Privacy Commissioner**

This amendment is a technical amendment consequential to the creation of the new offence in clause 262A by Amendment (96).

AMENDMENT (143)**Clause 298 - Obligations of carriers and carriage service providers**

This amendment makes it clear that in giving help to law enforcement and national security agencies, carriers and carriage service providers must provide interception services. The amendment reflects the existing requirement in clause 3.7 of the Telecommunications (General Telecommunications Licences) Declaration (No.2) of 1991 that applies to carriers.

The extended meaning of ‘giving help’ as provided by this amendment would carry over to clause 299, which deals with the terms and conditions on which such help is to be provided.

AMENDMENT (144)**Clause 299 - Terms and conditions on which help is to be given**

This amendment inserts a new clause 299(1A) to make it clear that the help which must be given by carriers and carriage service providers to Commonwealth, State and Territory officers under clause 298 must be given on a not-for-profit basis. This amendment has been made following a submission to the Senate Legislation Committee by the National Exchange of Police Information requesting such an amendment.

AMENDMENTS (145) and (146)

Clause 334 enables the ACA to require carriers and carriage service providers to provide pre-selection in favour of carriage service providers.

Clause 334(8) excludes requirements for pre-selection for calls that involve the use of a public mobile telecommunications service. This was included on the basis of previous consultation which indicated that such pre-selection was either not technically feasible or unnecessary to facilitate the development of competition.

These matters may change in the future as a result of technological developments or changes in the market for the provision of telecommunications services.

Amendment (145) deletes clause 334(8). Any decision by the ACA to introduce pre-selection for these calls would have regard to the matters in clause 334(3) and the results of consultation with the ACCC under clause 334(6).

Amendment (146) deletes clause 335(5) as a consequence of the deletion of clause 334(8).

AMENDMENT (147)

Clause 361 - ACA's power to make technical standards

Clause 361(2), which allows for the ACA to make technical standards to ensure that customer equipment can be used to gain access to emergency services, has been amended as consequence of the proposed new clause 18 to be inserted by Amendment (8).

AMENDMENT (148)

Clause 361 - ACA's power to make technical standards

Clause 361(2)(d) is to be amended to clarify its intended operation.

Clause 361 gives the ACA the power to make technical standards for customer equipment and customer cabling proposed to be connected to a network operated by a carrier or carriage service provider.

Clause 361(2) sets out the purposes or matters in relation to which the ACA may make a standard.

Clause 361(2)(d) allows the ACA to make technical standards to ensure, for the purpose of the supply of the standard telephone service in fulfilment of the universal service obligation, the interoperability of customer equipment with a telecommunications network to which the equipment is, or is proposed to be, connected.

This amendment clarifies that interoperability standards may be made concerning all customer equipment that could be used with a standard telephone service.

The amendment omits the words 'in fulfilment of the universal service obligation' from clause 361(2)(d).

AMENDMENT (149)**Clause 363 - Procedures for making technical standards**

Clause 363 is to be amended to require a minimum period of 60 days for consultation on proposed technical standards.

Clause 363(1)(a) requires the ACA to ensure that interested persons have had an adequate opportunity to make representations about a proposed technical standard before it is formally made as a standard.

In submissions to the Senate Legislation Committee, various industry representatives indicated that it would be appropriate to require at least 60 days for parties to make any representations.

A new clause 363(5) is to be inserted to provide that interested persons are not taken to have had an adequate opportunity to make representations unless a period of at least 60 days was allowed for the making of representations.

AMENDMENT (150)**Clause 367 - Procedures for making disability standards**

Clause 367 is to be amended to require a minimum period of 60 days for consultation on proposed disability standards.

Clause 367(1)(a) requires the ACA to ensure that interested persons have had an adequate opportunity to make representations about a proposed disability standard before it is formally made as a standard.

In submissions to the Senate Legislation Committee, various industry representatives indicated that it would be appropriate to require at least 60 days for parties to make any representations.

A new clause 363(5) is to be inserted to provide that interested persons are not taken to have had an adequate opportunity to make representations unless a period of at least 60 days was allowed for the making of representations.

AMENDMENT (151)**Clause 371 - Procedures for making technical standards**

Clause 371 is to be amended to require a minimum period of 60 days for consultation on proposed interconnection standards.

Clause 371(1)(a) requires the ACA to ensure that interested persons have had an adequate opportunity to make representations about a proposed interconnection standard before it is formally made as a standard.

In submissions to the Senate Legislation Committee, various industry representatives indicated that it would be appropriate to require at least 60 days for parties to make any representations.

A new clause 371(5) is to be inserted to provide that interested persons are not taken to have had an adequate opportunity to make representations unless a period of at least 60 days was allowed for the making of representations.

AMENDMENT (152)

Clause 372 - Procedures for making technical standards

This amendment amends clause 372(1)(a) as a consequence of Amendment (153) below - see the notes on Amendment (153).

AMENDMENT (153)

Clause 372 - Procedures for making technical standards

Clause 372 is to be amended to ensure that an industry body or association has a minimum period of 120 days in which to make an interconnection standard before the ACA is permitted to make such a standard on the basis that the industry has not produced a standard.

Clause 372 provides that the ACA may not make an interconnection standard unless it has first given a notice to a body or association requesting it to make an interconnection standard, and, among other things, the body or association does not make the requested standard.

In submissions to the Senate Legislation Committee, various industry representatives indicated that it would be appropriate to require that the body or association be given at least 120 days in which to comply with the ACA's request.

A new clause 372(1A) is to be inserted to require the ACA to give the body or association at least 120 days in which to make a requested interconnection standard.

AMENDMENT (154)**Clause 384 - Offence of contravening condition**

Clause 384, which makes it an offence to contravene a condition of a connection permit, is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (155)**Proposed new clause 387A - Register of connection permits**

This amendment will insert a new clause 387A to require the ACA to establish and maintain a Register of connection permits.

In submissions to the Senate Legislation Committee, various industry representatives indicated that it would be appropriate to require the ACA to keep a register of connection permits so that it would be possible to check whether the proposed connection of customer equipment or customer cabling to a network operated by a carrier or carriage service provider is authorised by a connection permit. It would be necessary to have this information where the equipment or cabling concerned either was not labelled or was labelled as not complying with applicable technical standards made under clause 361.

New clause 387A(1) requires the ACA to maintain a Register that includes all connection permits currently in force, as well all the conditions applying to those permits.

New clause 387A(2) allows the Register to be kept in an electronic form.

New clause 387A(3) allows a person to inspect and make copies of, or take extracts from, the Register on payment of any relevant cost recovery charges determined by the ACA.

New clause 387A(4) makes it clear that copying from the Register includes obtaining a printout from the Register.

New clause 387A(5) makes provision for how the ACA may satisfy a request for a copy from the Register in an electronic form.

AMENDMENT (156)**Clause 389 - Procedures for making connection rules**

Clause 389 is to be amended to require a minimum period of 60 days for consultation on proposed connection rules.

Clause 389(1)(a) requires the ACA to ensure that interested persons have had an adequate opportunity to make representations about a proposed connection rules before they are formally made.

In submissions to the Senate Legislation Committee, various industry representatives indicated that it would be appropriate to require at least 60 days for parties to make any representations.

A new clause 389(5) is to be inserted to provide that interested persons are not taken to have had an adequate opportunity to make representations unless a period of at least 60 days was allowed for the making of representations.

AMENDMENT (157)

Clause 395 - Connection of customer equipment or customer cabling - breach of section 361 standards

Clause 395(2) makes it an offence to connect customer equipment or customer cabling to a network or facility operated by a carrier or carriage service provider unless certain requirements under clause 395(1) relating to labelling have been complied with.

Clause 395(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (158)

Clause 396 - Connection of labelled customer equipment or customer cabling not to be refused

Clause 396(2) makes it an offence for a manager of a network or facility operated by a carrier or carriage service provider to refuse to give consent to the connection of customer equipment or customer cabling to the network or facility, where labelling requirements applying to the equipment or cabling have been complied with.

Clause 396(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (159)**Clause 397 - Supply of unlabelled customer equipment or unlabelled customer cabling**

Clause 397(2) makes it an offence to manufacture or import customer equipment or customer cabling without complying with labelling requirements required by a notice made under clause 391.

Clause 397(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (160)**Clause 398 - Applying labels before satisfying requirements under subsection 392(5)**

Clause 398(2) makes it an offence to apply a label to customer equipment or customer cabling before complying with any pre-labelling requirements required under clause 392(5).

Clause 398(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (161)**Clause 399 - Failure to retain records etc.**

Clause 399(2) makes it an offence not to comply with any post-labelling requirements in a notice under clause 391(1).

Clause 399(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (162)**Clause 400 - Application of labels containing false statements about compliance with standards**

Clause 400(2) makes it an offence to make false statements regarding compliance with a standard in a label applied to customer equipment or customer cabling in purported compliance with a labelling requirement specified in a notice under clause 391.

Clause 400(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (163)

Clause 401 - Protected symbols

Clause 401(2) makes it an offence to use a protected symbol unless authorised.

Clause 401(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (164)

Clause 404 - Prohibition of unauthorised cabling work

Clause 404(2) makes it an offence to perform a particular type of cabling work unless authorised by cabling provider rules or by a cabling licence.

Clause 404(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (165)

Clause 405 - Cabling provider rules

Clause 405(2) makes it an offence for a person, to whom cabling provider rules apply, to contravene those rules.

Clause 405(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (166)

Clause 406 - Procedures for making cabling provider rules

Clause 406 is to be amended to require a minimum period of 60 days for consultation on proposed cabling provider rules.

Clause 406(1)(a) requires the ACA to ensure that interested persons have had an adequate opportunity to make representations about proposed cabling provider rules before they are formally made.

In submissions to the Senate Legislation Committee, various industry representatives indicated that it would be appropriate to require at least 60 days for parties to make any representations.

A new clause 406(5) is to be inserted to provide that interested persons are not taken to have had an adequate opportunity to make representations unless a period of at least 60 days was allowed for the making of representations.

AMENDMENT (167)

Clause 418 - Offence of contravening condition

Clause 418(2) makes it an offence to contravene conditions applying to a cabling licence.

Clause 418(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (168)

Clause 436 - Operation of prohibited customer equipment or customer cabling

Clause 436(2) makes it an offence to operate, supply, or possess for the purpose of operating or supplying, prohibited customer equipment or customer cabling.

Clause 436(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (169)

Clause 439 - Numbering plan

This amendment inserts a new clause 439(12) to make it clear that the ACA is not required to make a numbering plan under clause 439 before 1 January 1998. This will allow the ACA enough time to prepare a new numbering plan and conduct public consultation on the draft plan before it is formally made. Proposed clause 66B of the Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996 (see the explanation for Amendment (8) in the Supplementary Explanatory Memorandum for that Bill) provides that the current numbering plan made under s.239 of the *Telecommunications Act 1991* continues in force until 1 January 1998 or until replaced by a plan made under clause 439.

AMENDMENT (170)

Clause 442 - Numbering plan - rules about portability of allocated numbers

Clause 442(1) gives the ACCC the power to direct the ACA in relation to the inclusion of number portability rules in the numbering plan made under clause 439.

This amendment inserts a new clause 442(2A) to require the ACCC to ensure that the numbering plan, at all times it is in force, includes rules relating to number portability.

AMENDMENT (171)

Clause 442 - Numbering plan - rules about portability of allocated numbers

This amendment inserts the word ‘particular’ into clause 442(4) to require the ACCC to have regard to whether portability of specific numbers would promote the long-term interests of end-users of carriage services when directing the ACA about the rules about number portability to be included in the numbering plan.

AMENDMENTS (172) - (175)

Clause 444 - Consultation about numbering plan

Clause 444 requires the ACA to engage in public consultation in relation to a draft numbering plan or a planned variation of an existing numbering plan, except where the proposed variation is of a ‘minor nature’. Questions have been raised about the meaning of minor nature, particularly because the plan is subject to a number of variations each year when unallocated number ranges have their purposes changed, or are specified for the first time, before they are allocated. To require public consultation on all such changes would be resource consuming and unnecessarily delay the allocation of ranges of numbers leading to delays in the provision of services.

Amendment (175) would substitute a new clause 444(3) which would require the ACA only to engage in public consultation in relation to a proposed variation of an existing numbering plan where it is of the opinion that:

- (a) the proposed variation will require a change to a number issued to a customer of a carriage service provider in a State; or
- (b) that it is in the public interest that public consultation occur in a particular State in relation to a proposed variation.

Paragraph (b) is designed to give the ACA a discretion to consult in the situation where there is a change to a number in general use, such as a 113 or 127 number, which has not been issued to a particular customer. Amended clause 444 also gives the ACA the discretion to limit public consultation to those States where a proposed variation will require a change in the number of a customer or where it is in the public interest to engage in public consultation.

Where the ACA is of the opinion that the proposed variation will not require a change to the numbers of customers in any State, or it is not in the public interest that public consultation occur in relation to the proposed variation, the ACA does not need to engage in public consultation.

New clause 444(3A) requires the ACA to have due regard to the comments made by interested persons in relation to a proposed variation.

AMENDMENT (176)

Clause 450 - Emergency service numbers

Clause 450 allows for the identification of emergency service numbers in a numbering plan made by the ACA under clause 439. A numbering plan may specify emergency service numbers for use in different areas and in connection with different types of services. Clause 450(1) is to be amended to ensure that only numbers used for the purpose of contacting an emergency call service may be specified in the numbering plan as “emergency service numbers”. This will ensure that numbers used by emergency service organisations (ie business contact numbers) are not specified as emergency service numbers in the numbering plan.

AMENDMENT (177)

Clause 450 - Emergency service numbers

This amendment inserts new clauses 450(6) and (7) to require the ACA, in making a numbering plan under clause 439(1), to have regard to the objective that, as far as is practicable, there should be no more than one emergency service number for use nationwide (clause 450(6)).

New clause 450(7) makes it clear that clause 450(6) is not to be taken to limit the meaning of clause 439.

AMENDMENT (178)**Clause 456 - Integrated public number database**

This amendment omits the words ‘or association’ from clause 456(1) following advice from industry that any body established to operate the integrated public number database would be some form of legal person, such as a corporation. This change enables a simplified form of the offence provision for the operator of an integrated public number database in Amendment (96).

AMENDMENT (179)**Clause 456 - Integrated public number database**

This amendment is a minor technical amendment consequential to Amendment (178).

AMENDMENT (180)**Clause 456 - Integrated public number database**

This amendment is a minor technical amendment consequential to Amendment (178).

AMENDMENT (181)**Clause 456 - Integrated public number database**

This amendment is a minor technical amendment consequential to Amendment (178).

AMENDMENT (182)**Clause 459 - ACA may give directions to declared manager of electronic addressing**

Clause 459(7) makes it an offence not to comply with a direction given by the ACA to a manager of electronic addressing under clause 459(1).

Clause 459(7) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (183)

Clause 460 - Operation of prohibited customer equipment or customer cabling

Clause 460(7) makes it an offence not to comply with a direction given by the ACCC to a manager of electronic addressing under clause 460(1).

Clause 460(7) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENTS (184) and (185)

Clause 464 - Standard form of agreement to be publicly available

Under Part 23 of the Bill, the terms and conditions on which certain telecommunications-related goods and services are supplied are as agreed between the supplier and the customer or, failing agreement, as set out in a standard form of agreement formulated for the purposes of Part 23. Clause 464 of the Bill requires the standard form of agreement to be publicly available.

As a result of clauses 464(3) and (4), if so requested, the carriage service provider that has formulated a standard form of agreement will be required to provide a copy of the whole, or of a specified part, of the agreement to the person who has requested the copy on payment by that person of such reasonable charge (if any) as the provider requires.

As a result of clauses 464(6) and (7), if the agreement is relevant to ascertaining the terms and conditions governing the commercial relationship between the provider and a customer, the provider will be required, before varying the agreement, to arrange for a copy of a summary of the effect of the proposed variation to be published in one or more newspapers circulating generally in the capital city of each State, the Northern Territory and the Australian Capital Territory.

Amendment (184) will amend clause 464(4) to provide that if a standard form of agreement is relevant to ascertaining the terms and conditions governing the commercial relationship between a carriage service provider and a person requesting a copy of the agreement, the provider must comply with the request free of charge. In other cases, the provider must comply with the request on payment, by the person who made the request, of such reasonable charge (if any) as the provider requires.

Amendment (185) will amend clause 464(6) so that if a carriage service provider proposes to vary a standard agreement and the variation will affect only customers in a particular State or Territory, the provider will not be required to advertise the variation in other States or Territories. In addition, the requirement to advertise variations of a standard agreement will not apply if the variation would not cause detriment to any customers eg. where a carriage service provider proposes to give a weekend discount in relation to the supply of particular goods or services.

AMENDMENT (186)**Clause 474 - Written submissions and protection from civil actions**

Under clause 474(1) of the Bill, the ACA will be required to provide a reasonable opportunity for any member of the public to make a written submission to it about the matter to which a public inquiry relates.

Amendment (186) will provide that for the purposes of clause 474(1) the ACA will not be taken to have provided a reasonable opportunity for any member of the public to make a submission to the ACA unless the ACA has allowed at least 28 days for the lodgement of such a submission.

AMENDMENT (187)**Clause 477 - Confidential material not to be published**

Clause 477(4) makes it an offence not to comply with an order given by the ACA under clause 477(2) that certain evidence or other material relating to a hearing of the ACA not be published, or its disclosure be restricted.

Clause 477(4) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (188)**Clause 478 - Directions about private hearings**

Clause 478(4) makes it an offence not to comply with a direction given by the ACA under clause 478(2) about a private hearing of the ACA.

Clause 478(4) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (189)**Clause 484 - Written submissions and protection from civil actions**

Under clause 484(1) of the Bill, the ACCC will be required to provide a reasonable opportunity for any member of the public to make a written submission to it about the matter to which a public inquiry relates.

Amendment (189) will insert a new clause 484(1A) to provide that, for the purposes of clause 484(1), the ACCC will not be taken to have provided a reasonable opportunity

for any member of the public to make a submission to the ACCC unless the ACCC has allowed at least 28 days for the lodgement of such a submission.

AMENDMENT (190)

Clause 487 - Confidential material not to be published

Clause 487(4) makes it an offence not to comply with an order given by the ACCC under clause 487(2) that certain evidence or other material relating to a hearing of the ACCC not be published, or its disclosure be restricted.

Clause 487(4) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (191)

Clause 488 - Directions about private hearings

Clause 488(4) makes it an offence not to comply with a direction given by the ACCC under clause 488(2) about a private hearing of the ACCC.

Clause 488(4) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (192)

Clause 498 - Reference of matters to Ombudsman or other responsible person

This amendment amends clause 498(1)(a)(iii) to include reference to a standard determined under Part 6 to avoid any implication that a standard may not provide for a person or body other than the Commonwealth Ombudsman of the Telecommunications Industry Ombudsman to handle complaints. In practice, it is expected that the ACA would not include such an arrangement in a standard unless the other person or body consented to performing the function.

AMENDMENT (193)

Clause 498 - Reference of matters to Ombudsman or other responsible person

This amendment is a minor technical amendment consequential to Amendment (192).

AMENDMENT (194)

Clause 498 - Reference of matters to Ombudsman or other responsible person

This amendment is a minor technical amendment consequential to Amendment (192).

AMENDMENT (195)**Clause 501 - Publication of reports**

Clause 501 of the Bill deals with the publication of the ACA's reports of its investigations.

Amendment (195) will amend clause 501 to allow the ACA to exclude from publication of reports on investigations information that would unreasonably disclose personal information about any person, including a deceased person.

AMENDMENT (196)**Clause 506 - The ACA may obtain information and documents from other persons**

Clause 506(4) makes it an offence not to comply with a written notice given by the ACA under clause 506(2) to produce information or documents to the ACA, or to appear before the ACA and give evidence.

Clause 506(4) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (197)**Clause 509 - Giving false or misleading information or evidence**

Clause 509 makes it an offence to give false or misleading information or evidence to the ACA.

Clause 509 is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (198)**Clause 510 - Provision of false or misleading documents**

Clause 510(1) makes it an offence to give false or misleading documents to the ACA.

Clause 510(1) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (199)**Clause 515 - Incorrect records**

Clause 515(2) makes it an offence to keep incorrect records in purported compliance with any record-keeping rules made by the ACA under clause 513.

Clause 515(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (200)**Clause 518 - Identity cards**

Clause 518(3) makes it an offence for a person who ceases to be an inspector not to return his/her identity card to the ACA as soon as practicable.

Clause 518(3) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (201)**Clause 532 - General powers of inspectors**

Clause 532(2) makes it an offence for a person to contravene a requirement required by an inspector under clause 532(1).

Clause 532(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (202)**Clause 533 - Power to require information etc.**

Clause 533(2) makes it an offence for a person not to provide documents required by an inspector, or not to answer questions put by an inspector under clause 533(1).

Clause 533(2) is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (203)**Clause 562 - False or misleading statements**

Clause 562 makes it an offence for a person to make a false or misleading statement to a regulator under the Act.

Clause 562 is to be amended to include a note referring the reader to provisions of the *Crimes Act 1914* relating to penalty units, and converting terms of imprisonment to fines for individuals and corporations. This is a minor technical drafting amendment.

AMENDMENT (204)**Schedule 1 Part 2 Clause 2 - Simplified outline**

This amendment inserts into the simplified outline an extra dot point as a consequence of amendment (208).

AMENDMENT (205)**Schedule 1 Part 2 Clause 6 - Contents of industry development plan**

This amendment replaces clause 6(2) to set out in more detail the matters which are to be included in a carrier's industry development plan. In particular, it includes matters in relation to meeting the needs of people with disabilities.

AMENDMENT (206)**Schedule 1 Part 2 Clause 6 - Contents of industry development plan**

The amendment provides that the definition of disability in this clause has the same meaning as in the *Disability Discrimination Act 1992*.

AMENDMENT (207)

Schedule 1 Part 2 New Clause 9A - Requirements relating to research and development activities

New clause 9A allows the Industry Minister to impose requirements in relation to research and development activities that must be complied with in carrier industry development plans. The instrument is a disallowable instrument for the purposes of s. 46A of the *Acts Interpretation Act 1901* (clause 9A(5)).

Clause 9A(2) prevents industry development plans being made or varied in contravention of the Industry Minister's requirements imposed under clause 9A(1).

Clause 9A(4) provides carriers with a period of 180 days to establish arrangements to meet any new Minister's requirements and vary their industry development plans accordingly. Under paragraph (b), if at the end of the 180 day period, the plan contravenes the requirements, then the plan terminates. This provides the enforcement mechanism because not having a current industry development plan, unless exempt under clause 5, is a breach of a carrier licence condition because of the operation of clause 4(1) and clause 1 of Schedule 1, and clauses 61 and 67.

AMENDMENT (208)

Schedule 1 Part 2 New Clause 10A - Compliance with provisions of a plan relating to research and development activities

New clause 10A requires a carrier to comply with the research and development activities in its current industry development plan. To not do so is a breach of a carrier licence condition of the operation of clause 1 of Schedule 1, and clauses 61 and 67.

AMENDMENT (209)

Schedule 1, new clause 12A - Annual report by Minister

New clause 12A(1) requires the Industry Minister to prepare an annual report within 6 months of the end of the financial year on the progress made by carriers in implementing current industry development plans. Clause 12A(2) requires the report to be laid before each House of the Parliament within 15 sitting days of the completion of the report.

AMENDMENT (210)**Schedule 1, new clause 28A - Extended meaning of access**

This amendment inserts clause 28A into Schedule 1 to provide an extended meaning of the word “access” for the purposes of Part 5 of Schedule 1. It is not intended that access to a tower be refused on the grounds that it is not technically feasible where access could be achieved by an existing tower on a site being replaced with another tower located on the site and access being given to the replacement tower. Note, however, that any such access must be on agreed terms or conditions or, failing agreement, determined by arbitration (see clause 32 of Schedule 1).

AMENDMENT (211)**Schedule 1, clause 29 - Access to telecommunications transmission towers**

This amendment inserts proposed clause 29(3A) into Schedule 1 so as to provide for the matters that the ACA must have regard to in determining whether granting access to a telecommunications transmission tower under clause 29(1) is technically feasible.

AMENDMENT (212)**Schedule 1, clause 30 - Access to sites of telecommunications transmission towers**

This amendment inserts proposed clause 30(3A) into Schedule 1 to provide for the matters that the ACA must have regard to in determining whether the granting of access to a site of a telecommunications transmission tower under clause 30(1) is technically feasible.

AMENDMENT (213)**Schedule 1, clause 31 - Access to eligible underground facilities**

This amendment inserts proposed clause 31(3A) into Schedule 1 to provide for the matters that the ACA must have regard to in determining whether access to an eligible underground facility under clause 31(1) is technically feasible.

AMENDMENT (214)**Schedule 1, clause 36 - Simplified outline**

This amendment amends proposed clause 36 of Schedule 1 (the simplified outline of Part 6) to indicate that the obligation to keep records under Part 6 will apply to designated overhead lines and telecommunication transmission towers as well as to underground facilities.

AMENDMENTS (215), (216), (217) AND (218)**Schedule 1, clause 37 - Records relating to underground facilities**

These amendments make amendments to proposed clause 37 of Schedule 1 so that the obligation on a carrier to keep records of underground facilities proposed in that clause applies similarly to designated overhead lines and telecommunications transmission towers.

AMENDMENT (219)**Schedule 3, clause 1 - Simplified outline**

This amendment amends the simplified outline of Part 1 of Schedule 3 in proposed clause 1 to reflect the use of the broader term “environment” rather than “environmental amenity” (see also Amendment 241)).

AMENDMENT (220)**Schedule 3, clause 2 - Definitions**

This amendment inserts into proposed clause 2 of Schedule 3 a definition of “endangered ecological community”.

AMENDMENT (221)**Schedule 3, clause 5 - Installation of facilities**

This amendment omits the requirement for the installation of a subscriber connection to a telecommunications network that the connection not cross over or under a street or road in order to be authorised under clause 5(1)(d) of Schedule 3.

AMENDMENT (222)**Schedule 3, clause 5 - Installation of facilities**

This amendment inserts new clauses 5(3A) and 5(3B) of Schedule 3 to provide that neither a designated overhead line nor a tower (other than a tower attached to a building which does not exceed 5 metres in height) may be included in any determination of a “low impact facility” for the purposes of clause 5 of Schedule 3.

New clause 5(3C) makes it clear that a "tower" does not include an antenna

AMENDMENTS (223) - (236)

Schedule 3, clause 6 - Maintenance of facilities

These amendments amend the definition of “maintenance” for the purposes of clause 6 of Schedule 3 so as to include the installation of an additional facility inside a fully enclosed building or a duct, pit, hole, tunnel or underground conduit where no increase in noise is likely to result from the operation of the additional facility and the original facility. The amendments also make consequential amendments to the provisions in proposed clause 6 dealing with the replacement of a facility for greater clarity and to make their terms consistent with the new provisions relating to the installation of an additional facility.

AMENDMENT (237)**Schedule 3, clause 6 - Maintenance of facilities**

This amendment inserts new clause 6(5A) into Schedule 3 to provide definitions of the “height” of a tower, the “volume” of a facility and a “fully enclosed building” for the purposes of the definition of “maintenance” in clause 6.

AMENDMENT (238)**Schedule 3, new clause 7A - Carrier to restore land**

This amendment inserts proposed clause 7A into Schedule 3 which provides an additional requirement to which a carrier will be subject when carrying out the activities authorised by Schedule 3. If a carrier engages in an activity authorised under Division 2, 3 or 4 of Part 1 of Schedule 3 (to inspect land, to install certain facilities or to maintain facilities), the carrier must take all reasonable steps to ensure that the land is restored to a condition that is similar to its prior condition. Restoration must begin within 10 business days after completion of the activity authorised by the Act unless otherwise agreed with the owner and any other occupier of the land.

AMENDMENT (239)**Schedule 3, clause 15 - Notice to owner of land - general**

This amendment inserts proposed clause 15(2A) requiring that the notice that a carrier must serve before carrying out an activity authorised by Schedule 3 must contain notification of the possible right to compensation that may arise from financial loss or damage resulting from the action of the carrier (see also clause 40 of Schedule 3).

AMENDMENT (240)**Schedule 3, clause 15 - Notice to owner of land - general**

This amendment amends proposed clause 15(7) of Schedule 3 to include in the “sensitive areas” that are subject to special notice requirements under clause 15 areas registered under Commonwealth, State or Territory law relating to heritage and areas of particular significant to Aboriginal persons or Torres Strait Islanders.

AMENDMENT (241)**Schedule 3, clause 25 - Criteria for issue of facility installation permit**

This amendment amends clause 25(1)(g) of Schedule 3 to replace the reference to “degradation of environmental amenity” with the broader concept of “degradation of the environment”. A corresponding change is made to the heading to clause 25(5).

AMENDMENTS (242) AND (243)**Schedule 3, clause 25 - Criteria for issue of facility installation permit**

These amendments insert new subparagraphs at the end of clause 25(7)(a) of Schedule 3 which will require the ACA expressly to have regard to the possible effect of a proposal on an “endangered ecological community” (see definition to be inserted by amendment (220)).

AMENDMENT (244)**Schedule 3, clause 26 - Special provisions relating to environmental matters**

This amendment inserts at the end of proposed clause 26(3)(a) of Schedule 3 specific references to the possible effect on an “endangered ecological community” (see definition to be inserted by amendment (220)) which give rise to a requirement that the ACA consult with the Director of National Parks and Wildlife.

AMENDMENT (245)**Schedule 3, clause 42 - State and Territory laws that discriminate against carriers and users of carriage services**

This amendment amends proposed clause 42 of Schedule 3 to authorise the Minister by written instrument to exempt a specified law of a State or Territory from the provisions of proposed clause 42 which provide that laws that discriminate against carriers and users of carriage are of no effect. Any such exemption will be a disallowable instrument. The exemption maybe made in relation to a particular provision of a State or Territory Act or a provision of a legislative instrument made under such an Act. An

exemption maybe unconditional or subject to such conditions (if any) as are specified in the exemption. It is not the Government's intention that it would give an exemption from a State or Territory law which imposed a discriminatory tax on telecommunications carriers.

AMENDMENT (246)

Schedule 3, clause 45 - Ownership of facilities

Clause 45 of Schedule 3 provides that a facility, or part of a 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 *Telecommunications Act 1991*.

Concerns have been raised that clause 45 may not operate in a situation where a nominated carrier declaration is in force. For example, under a lease-back arrangement with a bank, a carrier could sell the bank its optical fibre cables connecting the capital cities and lease these cables back from the bank. In this situation, the carrier would be the nominated carrier in relation to the cables. There is an argument that clause 45 will not operate once ownership of the cable is transferred to the bank because the cable will not remain the property of the carrier. Under the law of fixtures, the cable may become the property of the owner of the land that the cable traverses.

To overcome this difficulty, Amendment (246) will redraft clause 45 to provide that unless the circumstances indicate otherwise, a facility, or part of a facility, that is supplied, installed, maintained or operated by a carrier will remain the property of its owner:

- (a) in any case – whether or not it has become (either in whole or in part), a fixture; and
- (b) in the case of a network unit – whether or not a nominated carrier declaration is in force in relation to the network unit.

AMENDMENTS (247), (248) AND (249)

Schedule 3, clause 46 - ACA may inform the public about underground facilities

This amendment omits the present proposed clause 46(1) of Schedule 3 and inserts a new proposed clause 46(1) which provides that the ACA may inform members of the public about the kinds and locations of: designated overhead lines, telecommunications transmission towers and underground facilities. A corresponding change is made to the heading to clause 46. These changes complement the changes made to clause 37 in Part 6 of Schedule 1 which extend the proposed obligation on carries to keep records relating to underground facilities also to designated overhead lines and telecommunications transmissions towers.

AMENDMENTS (250) AND (251)

Schedule 3, new clause 46A - Review of options for placing facilities underground **Schedule 3, new clause 46B - Monitoring of progress in relation to placing facilities underground**

These amendments insert new proposed clauses 46A and 46B into Schedule 3 so as to require the Minister to conduct a review on the options for placing facilities underground before 1 July 1998 and to report to Parliament on that review and for the ACA to monitor and report to the Minister on progress in relation to the implementation of efforts to place facilities underground.

AMENDMENT (252)

Schedule 3, new clause 46C - Removal of certain overhead lines

This amendment inserts proposed clause 46C into Schedule 3. This clause will require that where:

- an overhead line has been installed on a pole; and
- the line is connected to another pole; and
- there is any other cable (such as an electric power cable) that is not a “line” for the purpose of the Act attached to that pole; and
- all such cables are permanently removed and not replaced

the owner of the line must within 6 months remove that line. The owner of the line can be exempted from this requirement or the time for removal extended either by the relevant local government body or an administrative authority for the State or Territory if prescribed by regulations or, in the absence of either of these, as otherwise prescribed in regulations.

AMENDMENTS (253) AND (254)

Schedule 3, clause 50 - Facilities installed before 1 January 1999 otherwise than in reliance on Commonwealth laws - environmental impact

These amendments add new subparagraphs to clause 50(2)(a) of Schedule 3 to include specific references to the possible effect on an “endangered ecological community” (see definition in amendment (220)) where the Environment Secretary must be notified.

AMENDMENT (255)**Schedule 3, clause 55 - Existing buildings, structures and facilities - application of State and Territory laws**

This amendment makes a minor amendment to clause 55 of Schedule 3 to reflect the fact that the regulatory regime in the Act does not require that every facility be owned by a carrier.

AMENDMENTS (256) AND (257)**Schedule 3, clause 55 - Existing buildings, structures and facilities - application of State and Territory laws**

These amendments make minor amendments to proposed clause 55 of Schedule 3 consistent with the provision made in the new proposed clause 55A (see Amendment (258)).

AMENDMENT (258)**Schedule 3, new clause 55A - Existing buildings, structures and facilities - application of the common law**

This amendment inserts proposed clause 55A into Schedule 3. This provision is intended to put it beyond doubt that a carrier facility installed under the authority of a repealed Commonwealth law does not, merely by remaining in place, constitute a trespass to the land on which it is located.

NOTES ON REQUESTS FOR AMENDMENTS

AMENDMENT (1)

Clause 138 - Supply of standard telephone services

Clause 138 provides that a reference to the supply of the standard telephone service in Part 7 includes a reference to the supply of a telephone handset or prescribed customer equipment, including the equivalent for people with a disability, other prescribed goods and prescribed services. This provision ensures that customer equipment and other ancillary goods and services are supplied for use in connection with a standard telephone service.

The requested amendment adds a new provision, clause 138(2), to clause 138 to provide that the supply of a standard telephone service also includes a reference to the supply to a person with a disability of:

- customer equipment of a kind specified in the regulations; and
- other goods of a kind specified in the regulations; and
- services of a kind specified in the regulations;

where the equipment, goods or services, as the case may be, are for use in connection with the standard telephone service.

The requested amendment also inserts subclause 138(3) which indicates that “disability” in clause 138 has the same meaning as in the *Disability Discrimination Act 1992*).

The requested amendment has the potential to increase payments out of the Universal Service Reserve, which are covered by a standing appropriation in the *Audit Act 1901* and the proposed *Financial Management and Accountability Act 1997*.

These amendments to clause 138 respond to concerns that the Government should be able to explicitly specify that particular equipment, goods or services should be made available to people with a disability under the USO, rather than relying on the broad requirements of the *Disability Discrimination Act 1992*. It is intended that the regulations should be able to specify the particular kinds of customer equipment, other goods and services that are required to be supplied upon request as part of a standard telephone service to people with a disability. Goods which may be prescribed include both customer equipment that is used to access the standard telephone service (eg. teletypewriters, telebrailers) and goods used in association with customer equipment (eg. “holdaphone” handset holders, finger guides, visual signal alerts).

The ability for goods and services for people with a disability to be prescribed to be part of a standard telephone service is not intended to erode such people’s rights under the *Disability Discrimination Act 1992*. The regulation power and the Disability Discrimination Act are complementary mechanisms. The regulation power enables

the Government to require the provision of certain goods and services where it considers there is a clear case for doing so. A number of groups, for example, have suggested that products currently available under Telstra's Disability Tariff Concession policy should be prescribed to be part of the standard telephone service, rather than leaving their supply to the requirements of the Disability Discrimination Act. Such an approach is suggested in Recommendation 7 of the Given Committee's *Report on the Standard Telephone Service* (p.10). It is understood that such an approach is seen as providing greater certainty for both people with a disability, as to their rights, and industry, as to its obligations.

Whether or not regulations prescribe goods and services for supply to people with a disability, industry will still have an underlying obligation to supply customer equipment as required in order to comply with the Disability Discrimination Act. These obligations are ultimately a matter for the Human Rights and Equal Opportunity Commission and the courts.

In effect, the regulation power will be able to set a clear baseline of goods and services that must be supplied to people with a disability; industry may still have obligations to supply additional goods and services under the Disability Discrimination Act.

AMENDMENT (2)

New clause 172A - Universal service provider may propose service areas for declaration as net cost areas - special declaration

Division 6 of Part 7 provides for the assessment, recovery and distribution of universal service levy. Part of this process involves the declaration by the ACA of net cost areas, which are areas in which a universal service provider expects to make a loss and in relation to which it will be eligible to claim compensation.

The requested amendment adds a new provision, clause 172A, to Division 6 to enable a universal service provider to seek to have new areas declared as net cost areas after the ordinary declaration process where circumstances beyond the universal service providers control justify such late declaration.

Requested Amendments (2) and (3) have the potential to increase payments out of the Universal Service Reserve, which are covered by a standing appropriation in the *Audit Act 1901* and the proposed *Financial Management and Accountability Act 1997*.

This amendment specifically responds to Recommendation 2.15 of the Majority Report of the Senate Committee that "Part 7 should be amended to provide the ACA with a discretion to retrospectively declare an area to be a net cost area where a universal service provider incurs a substantial unanticipated loss in an area as a result of circumstances beyond its control". It is intended that the special declaration process put in place by new clauses 172A and 172B only be used where, after the ordinary declaration process, a universal service provider becomes aware that an area will incur a substantial loss due to circumstances beyond its control. The special declaration process is not intended to allow losses to be claimed, in retrospect, that simply result from poor planning or management on the part of the universal service provider.

New clause 172A is similar in construction to clause 171, but differs as to the timing of claims.

New clause 172A(1) provides that clause 172A applies if a person is a universal service provider on the first day of a financial year. If a person is a universal service provider in relation to a financial year, the person is eligible to seek the declaration of net cost areas in relation to that year.

New clause 172A(2) provides that during the financial year, or 45 days after the end of the financial year, the person may give the ACA written notice that:

- specifies service areas for which the person is the universal service provider and that, in the person's opinion, the ACA should declare under clause 172B (see below) as net cost areas for the financial year; and
- sets out why, in the person's opinion, the ACA should so declare the specified area.

This provision generally mirrors clause 171(2), but departs from it to allow a person to seek the declaration of areas as net cost areas at any time during the financial year or in the first 45 days of the following financial year. This allows the person to seek special declaration of such areas where circumstances warrant it, outside the ordinary declaration process set out in clause 171. Under clause 171, the person must propose areas within the first 60 days of the financial year, effectively requiring the net cost areas to be declared in advance. Clause 172A enables net cost areas to be declared retrospectively, subject to the criteria in clause 172(6).

This timing constraint is imposed to ensure declarations are made within the 90 day period allowed under clause 174 for the making of claims. Together with the ACA's 30 days to consider special declaration applications, the special declaration process can extend for up to 75 days into the new financial year. This will leave a universal service provider a maximum of 15 days to put in a claim if a new net cost area is specially declared at this time. This is considered sufficient given that the person will have to provide the ACA with the same kind of information for the declaration process and for a claim.

New clause 172A(3) provides that a notice under clause 172A(2) must be in a form approved in writing by the ACA. This allows the ACA to specify the information and format it requires for declaration notices for administrative convenience. The provision mirrors clause 171(3).

New clause 172A(4) provides that in addition to the matters set out in clauses 172A(2)(a) and 172A(2)(b), a notice under clause 172A(2) must contain such other information (if any) as the approved form of notice requires. The provision mirrors clause 171(4). This provision ensures that the ACA is provided with the information it requires for the purposes of special declaration of net cost areas. Given the strict criteria that apply under clause 172B(6) to the special declaration of net cost areas, the ability of the ACA to obtain appropriate information is vital.

Notes 1 and 2 to clause 172A provide that the headings to clauses 171 and 172 are amended consequential to the insertion of clauses 172A and 172B by adding “- ordinary declarations”. This distinguishes the “ordinary” (clauses 171 and 172) and special (clause 172A and 172B) process for declaration of net cost areas.

AMENDMENT (3)

New clause 172B - Net cost areas - special declarations

Division 6 of Part 7 provides for the assessment, recovery and distribution of universal service levy. Part of this process involves the declaration by the ACA of net cost areas, which are areas in which a universal service provider expects to make a loss and in relation to which it will be eligible to claim compensation.

The requested amendment adds a new provision, clause 172B, to Division 6 requiring the ACA to consider applications for the special declaration of new net cost areas outside the ordinary declaration process where circumstances beyond the universal service provider’s control justify such declaration.

This amendment specifically responds to Recommendation 2.15 of the Majority Report of the Senate Committee that “Part 7 should be amended to provide the ACA with a discretion to retrospectively declare an area to be a net cost area where a universal service provider incurs a substantial unanticipated loss in an area as a result of circumstances beyond its control”. It is intended that the special declaration process put in place by new clauses 172A and 172B only be used where, after the ordinary declaration process, a universal service provider becomes aware that an area will incur a substantial loss due to circumstances beyond its control. The special declaration process is not intended to allow losses to be claimed, in retrospect, that simply result from poor planning or management on the part of the universal service provider.

New clause 172B is similar in construction to clause 172, but differs as to the timing of ACA decisions and because it specifies the matters about which the ACA must be satisfied before making a declaration.

New clause 172B(1) provides that the ACA must comply with clause 172B within 30 days after receiving a notice under section 172A from a person. This timing constraint is imposed to ensure declarations are made within the 90 day period allowed under clause 174 for the making of claims.

New clause 172B(2) provides that for each service area specified in the notice the ACA must decide:

- to declare the area as a net cost area for the financial year; or
- not to declare as mentioned in paragraph (a).

This provision generally mirrors clause 172(2).

New clause 172B(3) provides that if the ACA makes a decision under clause 172B(2)(a), the ACA must make a written declaration stating that the area concerned is a net cost area for the financial year. The declaration has effect accordingly. The provision mirrors clause 172(3).

New clause 172B(4) provides that before making a decision under clause 172B(2), the ACA must make whatever inquiries it thinks necessary or desirable in order to determine what decision it should make under that clause. The provision mirrors clause 172(4). The provision is important in ensuring the ACA applies a high level of scrutiny to net cost area applications. In relation to special declarations under clause 172B, ACA inquiries should be directed towards, but not limited to, the matters specified in clause 172B, about which the ACA must be satisfied if it is to make a special net cost area declaration.

New clause 172B(5) provides that the ACA, in making a decision under clause 172B(2), must:

- have regard to the reasons specified in accordance with clause 172A(2)(b); that is, the reasons why, in the universal service provider's opinion, the ACA should declare the area to be a net cost area; and
- comply with any directions in force under clause 173, being Ministerial directions about declaring net cost area.

This provision generally mirrors clause 172(2).

New clause 172B(6) is the provision in relation to the special declaration of net cost areas which specifies the particular criteria that the ACA must be satisfied of before it can make a special declaration.

New clause 172B(6) provides that the ACA must not make a declaration under this section stating that an area is a net cost area for the financial year in relation to which the application for the declaration applies unless the ACA is satisfied that:

- the person has incurred, or is likely to incur, a substantial loss attributable to the supply by the person of services to the area during the financial year; and
- the loss is wholly the result of circumstances beyond the person's control; and
- when the person became aware of those circumstances, the person took all reasonable steps to minimise the loss.

It is important to note that these criteria are intended to prevent universal service providers seeking to use the special declaration process to claim losses resulting from their poor planning, management or operations. The ACA needs to be satisfied of all three criteria.

New clause 172B(7) is a definitional provision providing that a reference in clause 172B(6) to “a person supplying services during a financial year” is a reference to the person supplying services under the universal service obligation. This is to remove any possible grounds for the universal service provider seeking declaration of an area as a net cost area on the ground it incurs losses in supplying services other than those it is required to supply under the USO. Clause 177(3) serves an analogous function in clause 177 which deals with the calculation of net universal service costs of a universal service provider for a financial year.