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TELECOMMUNICATIONS LEGISLATION AMENDMENT (DEREGULATION) BILL 2014

TELECOMMUNICATIONS (INDUSTRY LEVY) AMENDMENT BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications,
the Hon. Malcolm Turnbull MP)

TELECOMMUNICATIONS LEGISLATION AMENDMENT (DEREGULATION) BILL 2014

TELECOMMUNICATIONS (INDUSTRY LEVY) AMENDMENT BILL 2014

OUTLINE

The Telecommunications Legislation Amendment (Deregulation) Bill 2014 (the Bill) will streamline telecommunications regulation while maintaining important consumer safeguards. The amendments will contribute to the Government's agenda of cutting red tape by $1 billion every year to reduce the regulatory burden on industry and consumers.

The Bill will implement the Government's 2014 Budget announcement to abolish the Telecommunications Universal Service Management Agency (TUSMA) and transfer its functions to the Department of Communications. The Bill will also transfer provisions relating to the assessment, collection and recovery of the Telecommunications Industry Levy to the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Consumer Protection Act).

The Bill contains consequential and transitional provisions to ensure that contracts and levy arrangements carry on without interruption. It also makes some changes to simplify the existing process for potentially lifting regulation of the universal service obligations (USO) contained in the Consumer Protection Act in the future, and to reduce red tape associated with the industry levy.

Further to the Bill, the Telecommunications (Industry Levy) Amendment Bill 2014 (the Levy Amendment Bill) makes consequential and transitional changes to the *Telecommunications (Industry Levy) Act 2012*, reflecting that the intended abolition of TUSMA will require substantive provisions concerning the assessment, collection and recovery of the industry levy to be transitioned from the *Telecommunications Universal Service Management Agency Act 2012* (TUSMA Act) to the Consumer Protection Act.

The Bill also includes a number of other amendments to the *Do Not Call Register Act 2006* (DNCR Act), the *Telecommunications Act 1997* (Telecommunications Act) and the Consumer Protection Act.

The amendments to the DNCR Act will make the registration period for numbers on the Do Not Call Register indefinite. This measure has been very strongly supported by consumers during consultation, and will enable them to register their telephone and fax numbers indefinitely, avoiding the need to re-register periodically.

The amendments to the Telecommunications Act aim to reduce the regulatory burden on industry by:

- relaxing the pre-selection obligations on telecommunications providers in Part 17 in response to changing technologies and industry practices, thereby reducing regulatory exposure and costs.

- removing some record-keeping and reporting obligations contained in Part 13 in relation to authorised disclosures of information or documents made by telecommunications providers under that Part.

- removing the arrangements contained in Part 6 for e-marketing industry codes to be registered by the industry regulator, the Australian Communications and Media Authority (ACMA).

The Bill also proposes to repeal Part 9A of the Consumer Protection Act, which regulates the supply of telephone sex services via a standard telephone service. Due to changes in technology and consumer behaviour, this regulation is now outdated and no longer necessary.

The amendments in the Bill, other than those relating to the abolition of TUSMA contained in Schedule 1, are the collaborative result of an extensive consultation process undertaken by the Government responding to stakeholder feedback on:

- a discussion paper released on 6 December 2013 seeking comment on the registration period for numbers on the Do Not Call Register;

- a discussion paper released on 15 April 2014 seeking comment on a number of deregulatory proposals through an online discussion board; and

- a Deregulation Stakeholder Forum held on 12 May 2014, where representatives from industry, consumer groups and government agencies reached consensus on a number of proposed deregulatory measures.

Part 1 of Schedule 1 to the Bill provides for an earlier repeal section 89 of the TUSMA Act in advance of the rest of that Act.

Part 2 of Schedule 1 to the Bill provides for the repeal of the TUSMA Act and the redundant *Telecommunications (Universal Services Levy) Act 1997*.

Part 3 of Schedule 1 to the Bill provides for consequential amendments to a number of Acts to replace references to TUSMA or the TUSMA Act with references to new provisions in the Consumer Protection Act. It also provides for policy objectives and functions currently set out in the TUSMA Act in respect of public interest telecommunications services to be transferred to the Consumer Protection Act, along with the arrangements for the assessment, collection and recovery of the industry levy.

Part 4 of Schedule 1 to the Bill provides for application and transitional amendments to ensure the seamless transfer of functions from TUSMA to the Department.

Schedule 2 to the Bill provides for the repeal of Part 9A of the Consumer Protection Act, which regulates the supply of telephone sex services via a standard telephone service. It also includes consequential amendments to the *Australian Communications and Media Authority Act 2005* and the *Export Market Development Grants Act 1997*.

Schedule 3 to the Bill provides the amendments to extend the registration period for numbers on the Do Not Call Register to an indefinite period.

Schedule 4 to the Bill provides the amendments that will repeal the arrangements in Part 6 of the Telecommunications Act for the ACMA to register industry codes in respect of e-marketing.

Schedule 5 to the Bill provides the amendments that will reduce the record-keeping and reporting requirements in Part 13 of the Telecommunications Act.

Schedule 6 to the Bill provides the amendments that will reduce the scope of the pre-selection obligations on telecommunications providers in Part 17 of the Telecommunications Act with a view to reducing industry costs.

Schedule 7 to the Bill provides the amendments that will modernise a number of publishing requirements in the Consumer Protection Act.

Schedule 8 to the Bill provides amendments to streamline and improve the operation of the Customer Service Guarantee arrangements set out in Part 5 of the Consumer Protection Act.

FINANCIAL IMPACT STATEMENT

The Bill repeals the *Telecommunications Universal Service Management Agency Act 2012* in line with the Government's announcement in the May 2014 Budget to abolish the Telecommunications Universal Service Management Agency (TUSMA) and transfer its functions and contractual responsibilities to the Department of Communications. The consolidation of TUSMA and its responsibilities into the Department is cost neutral and there are no expenditure implications expected from the cessation of TUSMA. The repeal of TUSMA will however reduce by $1 million what the industry pays each year in respect of the telecommunications industry levy. It will also increase industry certainty by having a single agency responsible for policy and implementation of telecommunications universal service matters.

The Bill also reduces the regulatory burden of telecommunications legislation through amendments to the *Do Not Call Register Act 2006,* the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. It lowers the cost burden on business and consumers by $6.9 million a year while maintaining necessary consumer safeguards.

The Bill will not otherwise have a significant impact on Commonwealth expenditure or revenue.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Telecommunications Legislation Amendment (Deregulation) Bill 2014

Telecommunications (Industry Levy) Amendment Bill 2014

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

Overview of Bills

The Telecommunications Legislation Amendment (Deregulation) Bill 2014 (the Bill) includes a number of measures to streamline telecommunications regulation and reduce the regulatory burden on industry and consumers, while maintaining important consumer safeguards.

A key measure of the Bill is to transfer the functions of the Telecommunications Universal Service Management Agency (TUSMA) to the Department of Communications, in line with the Government's 2014 Budget announcement. This involves the transfer, in large part, of provisions currently contained in the *Telecommunications Universal Service Management Agency Act 2012* (TUSMA Act) to the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Consumer Protection Act) (Schedule 1 to the Bill). The Bill also contains a number of other measures with a strong deregulatory focus, including:

- repealing outdated regulation in the Consumer Protection Act, and other provisions in related legislation, in respect of the supply of telephone sex services via a standard telephone service (Schedule 2);
- making the registration period for numbers on the Do Not Call Register an indefinite period (Schedule 3);
- repealing outdated provisions in the *Telecommunications Act 1997* in respect of the making of e-marketing industry codes (Schedule 4);
- removing some record-keeping and reporting obligations imposed on telecommunications providers in relation to authorised disclosures of information or documents (Schedule 5);
- relaxing pre-selection obligations on telecommunications providers in response to changing technologies and industry practice (Schedule 6);
- modernising a number of publishing requirements in the Consumer Protection Act (Schedule 7); and

- streamlining notice requirements to improve the operation of the Customer Service Guarantee (Schedule 8).

The Telecommunications (Industry Levy) Amendment Bill 2014 (the Levy Amendment Bill) makes consequential amendments to the *Telecommunications (Industry Levy) Act 2012* to reflect the arrangements for the assessment, collection and recovery of the telecommunications industry levy being transferred from the TUSMA Act to the Consumer Protection Act.

Human rights implications

The principal human rights engaged by the Bill are:

- the rights of persons with disabilities in relation to the arrangements for the National Relay Service;
- the right to freedom of expression and the right to privacy in relation to making the registration period for numbers on the Do Not Call Register an indefinite period;
- the right to privacy in respect of the collection and disclosure of personal information for purposes related to the provision of public interest telecommunications services; and
- rights that ensure certain minimum guarantees in criminal proceedings.

The Levy Amendment Bill does not engage any human rights.

Rights of persons with disabilities

The Convention of the Rights of Persons with Disabilities (CRPD) requires parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of their disability. There is a general obligation in the CRPD to provide 'reasonable accommodation' to ensure persons with disabilities can enjoy their rights on an equal basis with others. Article 9(1) obliges parties to 'enable persons with disabilities to live independently and participate fully in all aspects of life', including to 'take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to…information and communications, including information and communications technologies and systems'.

New sections 13 and 14 of the Consumer Protection Act, inserted by item 123 of Schedule 1 to the Bill, engage these rights.

New section 13 sets out the policy objectives of new Division 3 of Part 2 of that Act, which relate to public interest telecommunications services. New paragraphs 13(1)(d) and (h) provide that policy objectives include that the National Relay Service (NRS) and the SMS relay service be reasonably accessible to all persons in Australia who are deaf or who have a hearing and/or speech impairment. The NRS is a service that provides persons who are deaf or have a hearing and/or speech impairment with access to a standard telephone service in a manner that is comparable to the provision of standard telephone services to other Australians, while the SMS relay service is a

service that allows users of the NRS to communicate using SMS. Additionally, new paragraphs 13(1)(i) and (j) respectively provide that policy objectives are that:

- a video relay service is reasonably accessible to all persons in Australia who communicate in Auslan; and
- a software application is reasonably available to assist all users of the NRS in communication with emergency call services.

Under new section 14, the Secretary may enter into a contract, or make a grant of financial assistance, for a purpose relating to the achievement of one or more of those policy objectives. Other provisions of the Consumer Protection Act support these provisions.

These provisions largely transfer, with relevant amendment, the substance of current sections 11 and 13 of the TUSMA Act into the Consumer Protection Act. By including these provisions, the Bill promotes the protection of the rights of persons with disabilities by continuing to enable the Commonwealth to enter into arrangements for the provision of the NRS and complementary services.

Freedom of expression and the right to protection against interference with privacy, family and the home

Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) recognises the right to freedom of expression, including the right to receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of a person's choice. This right includes the right to receive and impart information about commercial matters.

Article 19(3) recognises that the exercise of this right carries with it special duties and responsibilities, and that it may be subject to certain restrictions, but only such as are provided by law and are necessary, relevantly, for respect of the rights of others.

Article 17 of the ICCPR recognises one such right of others, namely, that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, and that everyone has the right to the protection of the law against such interference.

These rights are engaged by the amendments to the *Do Not Call Register Act 2006* (DNCR Act).

The Do Not Call Register (the Register), established under the DNCR Act, commenced on 31 May 2007, and now has over 9.4 million registrations. It protects the privacy of Australians by allowing them to opt out of receiving unsolicited telemarking calls and marketing faxes, by listing their numbers on the Register. The DNCR Act was enacted in response to widespread community concern in relation to the growing volume, inconvenience and intrusiveness of telemarketing practices, and the impact of telemarketing on an individual's privacy. The introduction of the DNCR Act was supported by industry to provide telemarketers with a more consistent and efficient operating environment.

While telemarketing and fax marketing are legitimate methods by which businesses can market their goods and services, the DNCR Act enables individuals to express a preference not to be called by telemarketers or receive marketing faxes. Notably, the DNCR Act does not prohibit the making of telemarketing calls, or the sending of marketing faxes, to a number on the Register where the relevant account-holder or their nominee has provided prior consent.

Currently, the registration of a number on the Register remains in force for eight years. A person's registration can be renewed, and so a person's number can remain on the Register indefinitely so long as the registration is renewed periodically.

Schedule 3 to the Bill amends the DNCR Act to make the period of registration for numbers on the Register an indefinite period. This amendment has been prompted by feedback from stakeholders, who have indicated that they would prefer registrations to remain in force indefinitely. It will still be possible to remove a number from the Register.

Since most telemarketing and fax marketing is undertaken by businesses, and many businesses are incorporated entities, these amendments will generally impact on what corporations, rather than individuals, are able to do. Accordingly, the right recognised by Article 19 is only engaged to the extent that persons who engage in telemarketing and fax marketing are individuals.

The amendments will have the following impacts on these rights:

- As telemarketers and other affected parties will be prevented indefinitely from contacting persons on the Register without those persons having to renew their registration periodically (unless an account-holder or their nominee provides prior consent, or the registration is removed), the amendments will reduce opportunities for telemarketers and fax marketers who are natural persons to enjoy the right recognised by Article 19(2).
- The amendments will enhance the right recognised by Article 17(1), by making it easier for a person to guard against interference with their privacy, family and home to the extent that this right would be impacted by telemarketing and fax marketing activities.

The amendments do not change the policy intent of the DNCR Act and do not place any further limitation on the right to impart information about commercial matters. The amendments are intended to recognise and uphold the initial decision individuals make when registering their numbers on the Register to avoid receiving unsolicited telemarketing calls and marketing faxes. Implementing indefinite registration assists individuals protect themselves against the intrusion of unsolicited telemarketing calls and marketing faxes and the impacts these activities may have on their privacy.

To the extent that the right of freedom of expression might be thought to be limited by the amendments, it is considered that there is no incompatibility with Article 19 of the ICCPR. This is because the limitation is one that will be provided by law and that is considered to be necessary for respect of the rights of others. The relevant right of others is the right to privacy as recognised by Article 17 of the ICCPR. As the right recognised by Article 19(2) is necessarily subject to such a law, the amendments made

by Schedule 3 to the Bill are not considered to be inconsistent with the right guaranteed by Article 19.

Right to privacy

As noted, Article 17 of the ICCPR relevantly provides all persons with the right to protection from arbitrary or unlawful interference with their privacy. Article 16 of the Convention on the Rights of the Child and Article 22 of the CRPD provide similar rights specifically for children and persons with disability.

A number of the amendments made by Schedule 1 to the Bill will provide for the collection and disclosure of a range of information in a range of circumstances. Some, but not all, of that information will be personal information covered by these Articles. Accordingly, the right recognised by Article 17 will be engaged by these provisions. However, collection and disclosure of personal information under these provisions as amended will not be inconsistent with the right to privacy as recognised by these Articles. This is because:

- any resulting interference with privacy would not be 'unlawful', as it would be provided for and authorised under the relevant legislation as amended by the Bill; and
- any resulting interference with privacy would not be 'arbitrary', as any limitation of the right to privacy would be reasonable, necessary and proportionate in pursuit of the Bill's legitimate objectives, for the reasons that follow.

New section 12E of the Consumer Protection Act

New section 12E of the Consumer Protection Act is added by item 114 of Schedule 1 to the Bill. This provision enables a current universal service provider ('current provider') to require a former universal service provider ('former provider') to give it information specified in the notice. Information sought under this provision can relate to a wide range of matters, including customer contact details.

To the extent that this provision does engage the right to privacy, for example, because the information concerned is personal information such as customer contact details, it is considered to be reasonable, necessary and proportionate in pursuit of the Bill's legitimate objectives because:

- The objective of new section 12E is to ensure that a current provider is able to carry out its universal service obligations under Part 2 of the Consumer Protection Act (as amended by the Bill). The universal service obligations are those of ensuring that standard telephone services and payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on a business. Accordingly, the information that may be sought is limited to information of this nature.
- The power to seek information is further limited in that:
  - there is a 6-month time-period that applies in relation to the seeking of such information (new subsection 12E(5));

- the information sought must be information that will assist the current provider to do something that it is required or permitted to do by Part 2 of the Consumer Protection Act (new subsection 12E(6)); and
- the requirement to provide information must be reasonable (new subsections 12E(7) to (10)).

- Should there be a change in universal service providers, it would be necessary for the current provider to be able to contact all of the customers of the former provider. For example, this would enable customers to be notified that a new provider is responsible for the service and to transition billing and payment arrangements.
- Because of this, the provisions, to the extent that they engage the right to privacy, strike a proportionate limitation on this right.

New Subdivision A of Division 4 of Part 2 of the Consumer Protection Act

New Subdivision A of Division 4 of Part 2 of the Consumer Protection Act enables the Secretary to:

- require a carriage service provider to give, or produce, to the Secretary information and documents (new section 23 in item 123 of Schedule 1 to the Bill);
- disclose to a carriage service provider information obtained under the Subdivision (new section 28 in item 123 of Schedule 1 to the Bill); or
- require a carriage service provider to consent to another person contacting the provider's customers (new section 29 in item 123 of Schedule 1 to the Bill).

To the extent that these provisions engage the right to privacy, for example, because the information concerned is personal information such as customer contact details, they are considered to be reasonable, necessary and proportionate in pursuit of the Bill's legitimate objectives because:

- The exercise of these powers is expressly limited to their being for the achievement of the policy objective set out in new paragraph 13(1)(e) of the Consumer Protection Act. The policy objective in new paragraph 13(1)(e) provides for specific programs (and any other measures specified in the regulations) as are necessary to support the continuity of supply of carriage services during the transition to the national broadband network (NBN).
- Information obtained or disclosed under this Subdivision may include, for example, customer contact details and the types of carriage services a customer is provided. To the extent any information obtained or disclosed includes personal information, this limitation on the right to privacy will be proportionate as such information may only be obtained or disclosed by the Secretary if it relates to specific programs (or another measure specified in the regulations) that are necessary to the support the continuity of supply of carriage services during the transition to the NBN.

New Subdivision B of Division 4 of Part 2 of the Consumer Protection Act

New Subdivision B of Division 4 of Part 2 of the Consumer Protection Act enables the Minister to require an NBN corporation to give, or produce, to the Secretary information and documents that are relevant to the exercise of any of the Secretary's powers under new Division 3 of Part 2 of the Consumer Protection Act (new section 30 in item 123 of Schedule 1 to the Bill).

To the extent that this provision engages the right to privacy, for example, because the information concerned is personal information such as customer contact details, it is considered to be reasonable, necessary and proportionate in pursuit of the Bill's legitimate objectives because:

- The objective of new Subdivision B of Division 4 of Part 2 of the Consumer Protection Act is to enable the Secretary to obtain information from an NBN corporation that is relevant to the exercise of his or her powers under new Division 3 of Part 2 of the Consumer Protection Act.
- This power is expressly restricted to situations in which the Minister believes on reasonable grounds that the NBN Corporation has information or a document that is relevant to the exercise of any of the Secretary's powers under new Division 3 of Part 2 of the Consumer Protection Act.
- These powers relate to the Secretary's function of administering contract and grant arrangements entered into for the purpose of providing public interest telecommunications services in line with the policy objectives set out in new section 13 of the Consumer Protection Act.

New Subdivision C of Division 4 of Part 2 of the Consumer Protection Act

New Subdivision C of Division 4 of Part 2 of the Consumer Protection Act enables the Secretary to disclose information to the Australian Communications and Media Authority (ACMA), the Australian Competition and Consumer Commission (ACCC), the Telecommunications Industry Ombudsman (TIO) or the Regional Telecommunications Independent Review Committee if:

- the information was obtained under or for the purposes of new Division 4 of Part 2 of the Consumer Protection Act; and
- the Secretary is satisfied that the information will assist the relevant body or person to perform or exercise any of its functions or powers. (See new section 36 in item 123 of Schedule 1 to the Bill.)

This information is not expected generally to include personal information, and hence the right to privacy is not expected to be engaged. However, to the extent that this provision engages the right to privacy, for example, because the information concerned is personal information such as customer contact details, it is considered to be reasonable, necessary and proportionate in pursuit of the Bill's legitimate objectives because:

- The objective of new Subdivision C of Division 4 of Part 2 of the Consumer Protection Act is to enable the Secretary to disclose information to the ACMA, the ACCC, the TIO or the Regional Telecommunications Independent Review

Committee that will assist the relevant body or person to perform or exercise any of its functions or powers. It is not anticipated that the disclosure of information under this Subdivision will generally include personal information, since ordinarily the Secretary would not collect personal information in the performance or exercise of his or her functions or powers under Part 2 of the Consumer Protection Act (as amended by the Bill) – those functions and powers relating to the administration of public interest telecommunications service contracts and grants. However, to the extent any information disclosed includes personal information, this limitation on the right to privacy will be proportionate, as the Secretary may only disclosure information that:

  - was obtained under or for the purposes of new Division 4 of Part 2 of the Consumer Protection Act; and
  - he or she is satisfied will assist the relevant body or person to perform or exercise any of its functions or powers.

- Under new subsection 36(2), the Secretary will also be able to, by writing, impose conditions to be complied with in relation to information disclosed under this provision.

Accordingly, to the extent that any disclosure of information under this Subdivision includes personal information, this will be a proportionate limitation on the right to privacy.

New Subdivision F of Division 6 of Part 2 of the Consumer Protection Act

New Subdivision F of Division 6 of Part 2 of the Consumer Protection Act enables:

- the public to request information from the ACMA about how it makes assessments of the industry levy (see new section 66 in item 123 of Schedule 1 to the Bill); and
- participating persons (being industry members on which the levy is imposed) to request from the ACMA information about the assessment process that is not available under new section 66 (see new section 67 in item 123 of Schedule 1 to the Bill).

This information is not expected generally to include personal information, and hence the right to privacy is not expected to be engaged. However, to the extent that this provision engages the right to privacy, for example, because the information concerned is personal information, it is considered to be reasonable, necessary and proportionate in pursuit of the Bill's legitimate objectives because:

- The objective of new Subdivision F of Division 6 of Part 2 of the Consumer Protection Act is to allow the process regarding the ACMA's assessment of the industry levy to be open to public and industry scrutiny. The provisions in this Subdivision provide a balance between making information available to the public and ensuring participating persons do not incur substantial damage to their interests as a result of the disclosure of information. A participating person's interests in these circumstances would include any disclosure of personal information in breach of the *Privacy Act 1988* (Privacy Act). Furthermore, new section 67 of the Consumer Protection Act sets out additional requirements about

which the ACMA must be satisfied before disclosing information to a participating person under that provision.

Accordingly, to the extent that any disclosure of information under this Subdivision includes personal information, this will be a proportionate limitation on the right to privacy.

Additionally, the right to privacy in Australia is protected by the Privacy Act. The Australian Privacy Principles under that Act govern all stages of the processing of personal information, setting out standards for the collection, storage, security, use, disclosure and quality of personal information.

The Privacy Act also enables an individual to make a complaint about the handling of their information by both Australian government agencies and private sector organisations. The Office of the Australian Information Commissioner may investigate and enforce Australia's privacy law where a person alleges that an agency or organisation is non-compliant. Depending on the particular complaint, some possible remedies could include compensation for financial or non-financial loss, or change to the respondent's practices. Further information is available on the Office of the Australian Information Commissioner's website at www.oaic.gov.au.

The Bill is consistent with Article 17 of the ICCPR on the basis that its engagement of the right to privacy will neither be unlawful nor arbitrary. To this extent, the Bill complies with the provisions, aims and objectives of the ICCPR.

Minimum guarantees in criminal proceedings

Article 14 of the ICCPR recognises certain minimum guarantees in criminal proceedings such as the presumption of innocence, and fair trial and hearing rights.

Schedule 1 to the Bill transfers some existing criminal offence provisions from the TUSMA Act to the Consumer Protection Act. These provisions are directed at regulating telecommunications industry members, which are in most instances corporations or other organisational bodies, rather than individuals. Accordingly, in general, the amendments that insert criminal offence provisions into the Consumer Protection Act do not engage any of these human rights.

However, some of the offence provisions are capable of applying to individuals:

- New sections 23 and 29 of the Consumer Protection Act seek to ensure that the policy objective in new paragraph 13(1)(e) is met, that is, that programs are available to support the continuity of supply of carriage services during the transition to the NBN. This is ensured, in part, by placing obligations, which are enforced by criminal sanctions, onto 'carriage service providers'. It is possible for a carriage service provider to be an individual although, in the great majority of cases, they will not be.
- New section 30 seeks to ensure that the Secretary is able to access certain information, needed to exercise his or her powers under the new provisions, from an 'NBN corporation'. A criminal penalty applies to an NBN corporation that does not comply with a requirement under this provision. Although the penalty can only

apply to such a corporation, an individual could nevertheless be convicted for, for example, aiding and abetting in the commission of an offence under new section 30. This is because Chapter 2 (other than Part 2.5) of Criminal Code, a Schedule to the *Criminal Code Act 1995*, applies to offences against the Consumer Protection Act (see section 7A of the Consumer Protection Act).

- New section 69 is part of the scheme to ensure that the industry levy to be collected under the new provisions can be calculated accurately. The provision applies to a person who is a 'participating person'. That term is defined in new section 44. An individual will only be a participating person if the individual is a carriage service provider, the Minister makes a written determination under section 44 that carriage service providers are participating persons, and the person is not in a class of persons determined by the Minister to be exempt from section 44. It is envisaged that it would be unlikely that individuals would be participating persons under these provisions; however, it is possible, at least in principle, that an individual could be a 'participating person'.

To the extent that the offence provisions added by the Bill do apply in relation to individuals, the human rights recognised by Article 14 of the ICCPR will be engaged.

These criminal offence provisions have been framed in line with the principles set out in the Attorney-General's Department's publication *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, and are consistent with Article 14 of the ICCPR.

In each case, the offences are governed by the ordinary principles and processes of criminal law that govern Commonwealth offences. Those principles and processes, together with the framing of the offence provisions themselves, ensure consistency with Article 14 of the ICCPR, for example, by guaranteeing equality of all persons before the courts, guaranteeing that everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, and ensuring that no one can be compelled to testify against him or herself or to confess guilt. In addition, these arrangements ensure that an accused would be entitled to be presumed innocent until proved guilty according to law, guaranteeing the right recognised by Article 14(2) of the ICCPR.

The right to the presumption of innocence recognised by this Article is particularly engaged by new section 69, which creates an offence of strict liability. This provision is a sanction for non-compliance with new section 43, under which participating persons are required to provide the ACMA with a written return of their eligible revenue, in order to ensure that the industry levy imposed under the new provisions can be calculated accurately and that all participating persons contribute appropriately to this levy.

Being an offence of strict liability, in accordance with section 6.1 of the Criminal Code, there is no need to prove any fault elements for the physical elements set out in new section 69. Notwithstanding this, it would still be necessary for the prosecution to prove all of the physical elements of the offence. The defence of mistake of fact, as well as any other applicable defence, would be available to a defendant when being

prosecuted under new section 69. Accordingly, the presumption of innocence applies to the offence provision, despite it being an offence of strict liability.

The use of strict liability in the present offence is considered to be appropriate given that the offence is not punishable by imprisonment, there is a relatively low maximum penalty (50 penalty units), and compliance with these provisions is considered essential to ensure the integrity of the industry levy arrangements. In view of that, it is considered that the application of strict liability to this offence is appropriate, and is not inconsistent with Article 14(2) of the ICCPR.

Conclusion

The Bill is compatible with human rights because it advances the protection of human rights and, to the extent that it may also limit human rights, those limitations are reasonable and proportionate. The Industry Levy Bill does not engage any applicable human rights.

REGULATION IMPACT STATEMENT

Introduction

This Regulation Impact Statement (RIS) has been prepared by the Commonwealth Department of Communications (the Department). The purpose of this RIS is to assist the Australian Government to make a decision on the optimal period of registration for the Do Not Call Register (the Register).

This RIS has been developed in accordance with the Australian Government Guide to Regulation, March 2014, issued by the Office of Best Practice Regulation (OBPR) in the Department of the Prime Minister and Cabinet, and in consultation with the OBPR. Relevant guidance notes issued by the OBPR have also been taken into account.

The Department has prepared a standard form RIS as this proposal is considered to have a contained impact on the economy and is likely to impact a limited number of businesses. The issue has previously been considered.

Background

The *Do Not Call Register Act 2006* (the Act) established the Register. Individuals can record their telephone number on the Register to opt out of most unsolicited telemarketing calls and marketing faxes. Unless an exception applies, unsolicited telemarketing calls and marketing faxes may not be made to a number on the Register, regardless of whether the call or fax originates overseas. The Australian Communications and Media Authority (ACMA) is responsible for overseeing the Register's operation. The Register is subject to competitive tender processes and is currently managed under contract by Service Stream Pty Ltd (the Register Operator).

The Register became operational in May 2007. As at 31 March 2014, 9.4 million numbers have been registered[1]. Because individuals register on average 1.2 to 1.5 numbers at a time, there are approximately 7.3 million individuals that have registered numbers to date.

Registrations are time limited. Originally the registration period was set at three years, to address concerns that an indefinite (or very long) period of registration could introduce 'inaccuracies' into the Register. Inaccuracies can occur because individuals have no incentive to update the Register in the event their telephone number changes (i.e. change of address or disconnection).

To date, numbers on the Register have never been allowed to expire. In the past, as the expiration date for the first number registered on the Register has approached, a determination under the Act has been made to extend the period of registration. The

[1] See http://www.acma.gov.au/Industry/Marketers/Do-not-call-register/How-to-comply-with-the-Do-Not-Call-Register/do-not-call-register-rings-up-nine-million-numbers

first extension occurred in 2010[2], and subsequent extensions occurred on 2012 and 2013. The registration period currently sits at eight years. Consequently, without regulatory intervention, numbers on Register will begin to expire from 31 May 2015.

Existing regulatory arrangements

The Act allows a broad range of numbers to be registered:

- telephone numbers used primarily for private and domestic purposes
- emergency service telephone numbers
- government telephone numbers
- telephone numbers used for sending and receiving faxes[3].

In 2009, consideration was given to extending the Register to business numbers. However, consultations with businesses and business groups at the time found that there was not strong enough support to extend the Register to business telephone numbers. Concerns were expressed about whether the benefits from the extension would be outweighed by increased compliance costs.

Unsolicited telemarketing calls and marketing faxes are not permitted to be made to a number on the Register, subject to certain exceptions. 'Telemarketing calls' and 'marketing faxes' are broadly defined in the Act. In general terms, a telemarketing call is a voice call made to an Australian number where one of the purposes of the call is to:

1) offer to supply, advertise, or promote a supplier of, goods or services
2) offer to supply, advertise, or promote a supplier of, land or an interest in land
3) offer to supply, advertise, or promote a provider of, a business opportunity or investment opportunity
4) solicit donations.

Similarly, a marketing fax is a fax sent to an Australian number where one of the purposes of the fax is the same as those listed above.

Exceptions apply to organisations considered to be operating in the public interest. Examples of these include government bodies, registered political parties, Members of Parliament, political candidates, religious organisations, charities and educational organisations.

The washing process

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[2] *Do Not Call Register (Duration of Registration) Specification No 1 2010*

[3] Fax numbers can be registered even where they are not used primarily for private and domestic purposes.

Organisations wishing to undertake unsolicited telemarketing or fax marketing activities must register with the Register Operator through the 'Telemarketer Access Portal' or TAP.

Fax and telephone marketers submit their contact lists to the Register operator, which then 'washes' the list – that is, compares it against the Register and identifies which telephone numbers are on the Register. This process enables fax and telephone marketers to avoid making unsolicited calls to registered numbers.

Subscription fees apply to the washing process. The fees cover the full direct costs of operating the Register. Some indirect costs, such as consumer awareness, are funded from Consolidated Revenue.

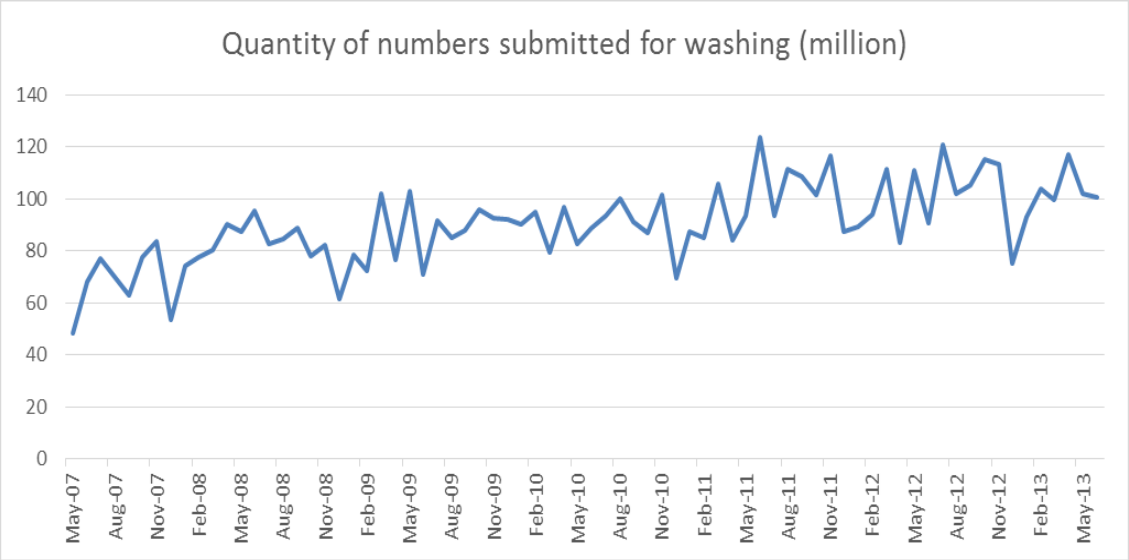
The subscription fees currently range from subscription type A, that allows fax and telephone marketers to submit 500 numbers for checking free of charge, through to subscription type H, which allows 100,000,000 numbers to be checked for $90,000.[4] The table below shows the full range of subscription fees.

Subscription type	**Quantity of numbers able to be submitted**	**Annual subscription fee (2014)**
A	500	$0
B	20,000	$79
C	100,000	$370
D	1,000,000	$3,200
E	10,000,000	$27,000
F	20,000,000	$45,000
G	50,000,000	$67,500
H	100,000,000	$90,000

Demand for the washing service has remained strong, and steadily increased[5]. The average quantity of numbers submitted for washing has increased – in 2007, 67.6 million numbers were submitted on average per month. By 2013, 102.6 million numbers were submitted on average per month. The increase in demand for washing services has continued despite extensions of the registration period in 2010, 2012 and

[4] See www.donotcall.gov.au/dncrtelem/sub_oview.cfm for more information. Multiple subscriptions can be purchased for telemarketers that wish to check more than 100 000 000 numbers.
[5] See www.acma.gov.au/Industry/Marketers/Do-not-call-register/Telemarketing-standard/do-not-call-register-statistics

2013. The graph below illustrates the quantity of numbers being washed through the Register, each month, since May 2007.



Most paid subscriptions are on the lower end of the spectrum, and 'free' subscriptions make up almost a third of total subscriptions. In the three years to 31 January 2014, 2,560 TAP accounts purchased 11,541 subscriptions and paid a total of $10 million in access fees. In this period, most access-seekers (57%) washed between 1 and 20,000 numbers per year; only a small proportion (6%) washed more than 1 million numbers per year[6]. The table below illustrates the number of accounts at different subscription levels in the three years to January 2014.

Quantity of numbers washed	**Number of TAP accounts**	**Proportion of TAP accounts**
0 – Not used or use pending	347	13%
1 to 500	734	29%
500 to 20,000	727	28%
20,000 to 200,000	397	16%
200,000 to 1 million	194	8%

[6] ACMA, DNCR operator records

1 to 4 million	101	4%
Greater than 4 million	60	2%

Businesses engaging in telemarketing and fax marketing make an important contribution to Australia's growth and prosperity. If fax and telephone marketing becomes more costly or difficult, firms engaged in these activities will naturally pass on this additional cost to consumers through additional fees and charges, reducing the competitiveness of their products and services. Firms using fax and telephone marketing may also move to other potentially less efficient channels (such as social media and direct mail) or potentially more intrusive channels (such as door to door sales or email marketing) to market their products and services.

Other regulation

The Register is one of a number of regulatory mechanisms that allows individuals to protect their privacy. For example, the *Privacy Act 1988* regulates the handling of personal information about individuals. This includes the collection, use, storage and disclosure of personal information, and access to and correction of that information[7]. The *Privacy Act* does not directly regulate fax and telephone marketing – while the *Privacy Act* can assist individuals to determine how their personal information is used or disclosed, it does not prevent marketing faxes or telemarketing calls from being made.

Similarly, an 'unlisted' or 'silent' number can also help an individual or business protect their privacy by prohibiting it from being published in a public number directory (such as the White Pages). However, having an unlisted number does not directly prevent unwanted marketing faxes or telemarketing calls. For example, organisations can use random or sequential dialling techniques to conduct telemarketing campaigns or individuals may inadvertently disclose unlisted numbers on application forms or competition entries[8].

Assessing the problem

By definition, unwanted telemarketing and fax marketing are a negative externality that costs consumers in terms of lost time and productivity[9]. When an unwanted telemarketing call is made, a consumer must either answer the call or ignore it. Because of the end-to-end interconnected nature of the telephony network, it is not

[7] For more information about the *Privacy Act* see www.oaic.gov.au.
[8] See www.acma.gov.au/Citizen/Consumer-info/Rights-and-safeguards/Phone-contracts-and-charges/how-private-is-your-number
[9] Conversely, 'wanted' telemarketing calls are not negative externalities. It may be that from a consumer's perspective, there are classes of telemarketing calls that are unwanted and classes that are wanted. In these cases consumers make a decision, whether overall, the benefit of wanted telemarketing calls outweighs unwanted telemarketing calls and may on that basis register on the Register.

possible for consumers to 'filter' calls, except using heuristics (such as deciding to only answer calls with recognised caller ID, or to only answer calls at specific times of the day). Unwanted fax marketing poses a similar problem, except the cost is generally in lost toner and paper, and wear and tear to the fax machine. As a result, telemarketing and fax marketing companies do not internalise all of the cost of unsolicited telemarketing calls or marketing faxes. While telemarketers and fax marketers pay call costs, staffing costs etc, they do not internalise the costs associated with the nuisance caused by unwanted telemarketing calls or marketing faxes (albeit there may be some reputational damage[10]).

Unwanted telemarketing and fax marketing can also disproportionally impact vulnerable consumers, such as the elderly, whom can become confused and distressed by this activity and may find it physically difficult to answer unwanted calls or replace used toner.

Recent empirical studies have sought to quantify the extent to which the community is receptive to unsolicited direct marketing. A 2013 study by the Office of the Australian Information Commissioner (OAIC) has found that[11]:

- 56 per cent of respondents felt annoyed by unsolicited marketing approaches.
- 39 per cent of respondents expressed concern about how their details were obtained by the organisation contacting them.

Community attitudes to unsolicited marketing have been shifting – the 2013 survey showed that the community generally felt more annoyed by telemarketing than a similar survey in 2007[12]. The 2013 survey also found that only three per cent of respondents indicated that unsolicited marketing information doesn't bother them and, of this, two per cent indicated that they enjoy receiving it. There is little data on consumer views about unsolicited 'telemarketing' in comparison to other marketing channels.

The ACMA provides a mechanism that allows registrants to de-register their number[13]. The Department understands that this mechanism has not been used frequently, and is a further indication of the general attitude that consumers have toward unsolicited telemarketing.

Despite these reported preferences, fax and telephone marketing remain popular marketing channels. As noted on page 4, demand for washing services has continued

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[10] See 'Consumer Policy Toolkit', OECD for additional discussion on this point. See www.oecd.org/internet/consumer/consumerpolicytoolkit.htm

[11] See www.oaic.gov.au/privacy/privacy-resources/privacy-reports/oaic-community-attitudes-to-privacy-survey-research-report-2013 for more information.

[12] In 2013, 45 per cent were annoyed by unsolicited marketing versus 27 per cent from a similar survey done by the OAIC in 2007. In the 2013 survey, respondents were less likely to feel that unsolicited marketing was 'a bit annoying, but mostly harmless' (11 per cent in 2013 versus 23 per cent in 2007).

[13] See https://www.donotcall.gov.au/remove-a-number.cfm

to increase. Since 2006, the average quantity of numbers submitted for washing through the Register has risen by approximately 35 million numbers per month. As commercial entities, fax and telephone marketers will only utilise a channel where it is effective. Given that demand for washing services has increased, it is reasonable to assume that this is partly because the telephone and fax remain effective sales channels, which are relatively efficient mechanisms for buyers and sellers to be connected. It would appear that consumers tend to overstate their reported preferences in the survey data, whilst at the same time purchasing products through unsolicited fax and telemarketing.

This highlights an important characteristic of the current 'opt-out' arrangement, in that it maximises consumer choice, while largely minimising the negative externality caused by unwanted fax and telemarketing. Consumers that are entirely opposed to unsolicited fax and telephone marketing have an effective way to opt-out. Consumers that wish to 'tailor' the fax and telephone marketing offers that they receive can selectively consent to their firms of choice. Finally, consumers that support unsolicited fax and telephone marketing can retain their unregistered number (or de-register their number if it is registered). The flexibility of the current system allows consumers to express conveniently and effectively their preference, and places a collective onus on the fax and telephone marketing industries to improve their marketing practices, to motivate consumers to de-register their number or decide not to register their number in the first place.

Current arrangements mean that without regulatory intervention, consumers will need to begin re-registering their numbers from 31 May 2015 to continue to receive the protections provided by the Register. The re-registration process imposes costs on consumers in terms of lost time and productivity. Moreover, consumers may not be aware that the registration of their number is time limited – the ACMA's pre-emptive re-registration information campaign in 2010 showed that of the consumers that the ACMA was unable to contact, most did not realise that re-registration was required. Consequently, consumers may begin to receive unwanted fax and telemarketing before they realise that their registration has expired.

The Government has been considering what changes could be made to the Register to reduce this burden on consumers and determine the optimal period of registration, while ensuring that compliance costs on industry remain low and any costs to tax payers is minimised.

Various exempt organisations (i.e. charities, political parties) also impose costs on consumers through their fax and telephone marketing activities. However, these activities are not being considered in this RIS, given that they are exempt under the Act.

Objectives of Government action

In considering the optimal period of registration on the Register, the Department has identified a range of competing objectives:

- ensuring the Register allows consumers to express an effective choice about their preference for unsolicited fax and telephone marketing. For those consumers that do not want to receive unsolicited fax and telephone marketing, a key objective is to minimise the cost on consumers in expressing their choice.
- minimising the regulatory or administrative impact on businesses engaging in fax and telephone marketing activities as far as possible, including providing a certain, consistent and efficient environment for legitimate marketing activity to occur.
- limiting the impact on government resources, for example, the need for the ACMA to undertake a long and costly education campaign to remind registrants that they need to re-register.

There is a need to balance the interests of consumers, while recognising the benefits that can flow from fax and telephone marketing. These channels can play a legitimate role, as they may be more cost effective than alternatives and may be useful to small and medium enterprises and new entrants that do not have established relationships with existing customers. Determining a long term solution to the registration period will also provide certainty to both industry and consumers.

Options that may achieve the objectives

This RIS considers four options:

- Option 1: Three year registration period
- Option 2: Eight year registration period
- Option 3: Indefinite registration
- Option 4: Remove the need to register (opt-in scheme)

The first three options would maintain the Register in list form – fax and telephone marketing would need to continue to wash their calling lists against the Register. Under these three options, it is expected that the registration rate will continue on its current trajectory – that is approximately 1 million new registrations would be recorded on the Register each year[14].

The final option considered in this RIS – 'removing the need to register' would be a substantial departure from the current regulatory environment, as it would effectively prohibit all unsolicited fax and telephone marketing unless there was consent or an

[14] See page 4 for further detail – the length of registration has not impacted on the rate of registration. That is, in 2007 when registrations were valid for three years the registration rate was similar to the rate in 2013, when registrations were valid for eight years.

exemption applied.

> The Department canvased these options in its December 2013 public discussion paper. Full details on this consultation process is available on page 23.

Option 1: Three year registration period

Under Option 1, the registration period would be set at three years. This was the original registration period when the Register was introduced. Registrants would need to re-register their number every three years to maintain the protections provided by the Register. Under this option, the Government would not act to extend the period of registration, and allow registrations to expire from May 2015.

It is likely that the ACMA would need to undertake an education initiative to advise existing registrants (7.3 million individuals, covering 9.4 million numbers) that they may wish to re-register their numbers. Because numbers are registered at different times, they would also expire at different times. Consequently, the ACMA would need to maintain an ongoing education initiative. This would impose a significant administrative cost on the ACMA, which would ultimately be met by taxpayers. An ongoing campaign would not have the same momentum as a standalone campaign and would likely be less effective in reaching all registrants.

In 2010, the ACMA commenced a pre-emptive education initiative to inform registrants of the need to re-register in anticipation of the expiration of the original registration period. This resulted in only 50 per cent of numbers being re-registered due to the difficulty in reaching consumers using the contact details provided at the point of registration.

In responding to the Department's discussion paper process, the overwhelming majority of consumer stakeholder submissions (1,246) did not support a shorter period of registration and the need to re-register generally, due to the inconvenience of having to do so. These submissions generally argued that consumers were unlikely to change their preference about unsolicited fax and telephone marketing.

Industry stakeholders supported a registration period of three years, with many suggesting that the original objective of a three year registration period, to ensure the ongoing accuracy of the Register, was still an important consideration. Industry respondents were concerned that the Register has become inaccurate over time and a three year registration period would restore the accuracy of the information on the Register.

Option 2: Eight year registration period

Option 2 would require no regulatory action, and would maintain the registration period at eight years. Registrants would need to re-register their number every eight years to maintain the protections provided by the Register. Under this option, the Government would not act to extend the period of registration, and allow registrations to expire from May 2015.

The same considerations would apply as Option 1 in relation to the actions registrants would need to undertake to re-register. Re-registration would not need to be done as frequently, but would also mean that it is more likely for registrants to forget that they need to re-register. It also makes contact from the ACMA more difficult, given that people may have changed their preferred contact details (such as their email address). The ACMA would then need to rely on contacting registrants through their registered number, which may lead to criticism by registrants, whom may be sensitive to unsolicited calls even where they are not commercially motivated.

Some industry respondents expressed support for this option, albeit, industry support for Option 1 was stronger. Consumer respondents did not support an eight year registration period, as many considered the need to re-register every eight years onerous.

Option 3: Indefinite registration

Under Option 3, registrations would be indefinite. Once a number was registered it would remain on the Register until such time as it was removed (for example, through a request from the account-holder).

Despite the limited registration period set down in the legislation, registrants to date have never needed to re-register their number because the registration period has always been extended prior to reaching the expiration date.

There was substantial support for this option in response to the Department's December 2013 discussion paper on the basis that it would remove the inconvenience associated with re-registering (albeit, most submissions supported Option 4 in the first instance).

Industry respondents raised concerns about the impact that an indefinite period of registration would have on the accuracy of the Register. This is discussed in detail on page 11, under the heading 'Cleansing Mechanism'.

Option 4: Remove the need to register (opt-in scheme)

Under Option 4, the Register would be closed and replaced with an opt-in approach. Consumers that wish to receive fax and telephone marketing would need to provide their express or implied consent to organisations on a case by case basis.

This option does not contemplate the creation of a centralised 'opt-in' list (i.e. the creation of a 'Call' Register). As noted on pages 6 and 7, there appears to be a mismatch between consumers' reported preferences and their actual behaviour. Based on the evidence available, it appears that a centralised 'opt-in' list would have very few registrations, which reduces the incentive on fax and telephone marketers to wash their lists against any 'Call' Register, which in turn would call into question the ability of the Government to cost-recover the scheme.

Rather than running a 'Call' Register, this option contemplates prohibiting all unsolicited fax and telephone marketing, unless there was consent or an exemption

applies. Consumers would be unable to express a broad preference about receiving unsolicited fax or telephone marketing and would instead need to opt-in to fax or telephone marketers on a case by case basis.

This option would operate in a similar way to the *Spam Act 2003* (the Spam Act). The Spam Act prohibits the sending of 'unsolicited commercial electronic messages' (known as spam) with an 'Australian link'. A message has an Australian link if it originates or was commissioned in Australia, or originates overseas but was sent to an address accessed in Australia. The Spam Act covers email, mobile phone text messages (SMS), multimedia messages (MMS), instant messages (IM), and other electronic messages of a commercial nature.

Many registrants responding to the discussion paper were supportive of a Spam Act style approach to fax and telephone marketing. Some consumer groups, such as CHOICE and the Australian Communications Consumer Action Network, were also supportive of this option, arguing that the default position should acknowledge that consumers generally do not want to receive fax and telephone marketing.

Industry respondents were concerned about the impact of this option on the telemarketing and fax marketing industries, and in particular on new businesses seeking to utilise these channels to market their goods and services.

Cleansing mechanism

Industry respondents have raised concerns about the accuracy of the Register as numbers are reallocated to new account-holders when the number is disconnected after a period of quarantine. This practice is in accordance with industry standards for dealing with disconnections and the reallocation of numbers.

The extent of inaccuracy on the Register has not been quantified. A baseline estimate has been made using Australian Bureau of Statistics house moving data[15], which indicates the average Australian has lived at their current place of residence for at least five years. Nearly three in five people (58 per cent) lived in their current place of residence five years ago.

There are also a number of other factors[16], which act to prevent inaccuracy in the future or reduce the need for a cleansing mechanism:

- Local Number portability allows consumers to keep their geographic number (i.e. 02 6271 XXXX) when they switch providers. For example, a person changing telephone providers can keep their number when they move to a new

[15] See the ABS' Australian Social Trends, April 2013 http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30April+2013

[16] Some telecommunications providers have noted that the closure of some telecommunications providers could have increased the inaccuracy of the Register. However, it is likely that customers of these providers will have ported their numbers to new providers, which would not impact the accuracy of the Register.

provider[17]. In 2011-12, there were 627,160[18] geographic numbers ported. By October 2013, there were 5 million landline numbers on the Register. Since the commencement of the Register, a total of 3.7 million geographic numbers have been ported. Access to Local Number Portability may mean that consumers are less likely to need to seek a new number when they swap providers, and this may therefore reduce the quantity of numbers entering quarantine for eventual reallocation.

- Mobile Number Portability allows consumers to retain their mobile telephone number when they change providers. For example, a person changing mobile telephone service providers can keep their number when they move to a new provider[19]. In 2011-12, there were 2.6 million mobile numbers ported[20]. By October 2013, there were 3.85 million mobile numbers on the Register[21]. Since the commencement of the Register, a total of 8.9 million mobile numbers have been ported. Mobile Number Portability, like Local Number Portability, may mean that consumers are less likely to need to seek a new number when they swap providers, and this may therefore reduce the quantity of numbers entering quarantine for eventual reallocation. However, it is worth noting that pre-paid numbers have a high turnover (that is, a consumer may simply discard their number). Likewise, prepaid mobile services may also be passed on from person to person without anyone contacting the supplier. Hence, pre-paid mobile phone numbers on the Register have an increased likelihood of inaccuracy.

- Location portability allows individuals (and organisations) to retain their fixed line number when they move[22]. This is possible when an individual is moving house within the same general geographic area (for example within Canberra or Gosford). Some providers do not allow location portability, which may limit the ability of consumers to access this service when they move. The ACMA has relaxed these rules for Voice over Internet Protocol (VoIP) services – in certain circumstances, individuals can acquire a VoIP number that does not relate to the geographic area that they live in (for example, in certain circumstances a person living in Canberra can be issued a Melbourne number – e.g. 03 9963 XXXX).

- Changing a place of residence does not normally require any change in the existing mobile numbers, so the accuracy of the mobile numbers on the Register are not usually affected by moving. As of 15 July 2013, there were

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[17] See http://www.acma.gov.au/Citizen/Citizen-info/All-about-numbers/Keeping-your-number/local-number-portability-keeping-your-number-i-acma

[18] ACMA Communications Report 2011-12, p.23

[19] See http://www.acma.gov.au/Industry/Telco/Numbering/Portability/mobile-number-portability-numbering-i-acma

[20] ACMA Communications Report 2011-12, p.23

[21] See http://www.acma.gov.au/Industry/Marketers/Do-not-call-register/How-to-comply-with-the-Do-Not-Call-Register/do-not-call-register-rings-up-nine-million-numbers

[22] See http://www.acma.gov.au/Citizen/Citizen-info/All-about-numbers/Keeping-your-number/local-number-portability-keeping-your-number-i-acma

3.85 million mobile phone numbers registered. ACMA statistics show that the overall number of landlines in Australia is decreasing (approximately 1.1 per cent decline each year) while mobile phone services are increasing (approximately 3 per cent increase each year).

Inaccuracies in the Register mean some consumers' numbers may be inadvertently registered. In these cases, these consumers may be missing out on wanted unsolicited telephone and fax marketing. Under the current arrangements, these consumers could check the Register to determine whether their number has been registered. It should be noted that the ACMA has not received complaints from individuals who have their number registered, but did not want it to be. The lack of complaints may be a result of registrants not being aware their number is registered, or alternatively, it may mean they do not mind their number being registered.

Nonetheless, as part of its consultation for this proposal, the Department has considered whether there is a case to introduce a 'cleansing mechanism'. The key objectives of a cleansing mechanism would be to:

- reduce the reliance on a limited registration period to maintain the accuracy of the Register
- remove numbers from the Register that have not been registered by the current account-holder of that number
- minimise any cross-subsidy between industry sectors (for example, from the telecommunications industry or from taxpayers to the fax and telephone marketing industries)
- minimise the cost on businesses engaging in fax and telephone marketing as far as possible.

The most cost effective model is a data cleansing mechanism using the Integrated Public Number Database (IPND). The IPND is a centralised database of all Australian telephone numbers and associated subscriber details[23]. The process would work as follows:

- The ACMA or Register Operator would examine IPND disconnection and reconnection data to determine where a number has been disconnected and reallocated to a new subscriber. Where the length of time between disconnection and reconnection is greater than 30 days[24], it is assumed that this is a genuine reallocation (rather than a consumer having their service disconnected because of unpaid bills, for example).
- Using this data the ACMA or Register Operator would generate a list of

[23] See http://www.communications.gov.au/telephone_services/telephone_numbering/integrated_public_number_database_ipnd

[24] The length of this period is subject to change – as the ACMA or Register Operator become more familiar with the data this period could be adjusted (although it is unlikely to be shortened).

numbers that have a high probability of having been re-allocated since the last cleansing process[25].

- The ACMA or Register Operator would compare the list generated from the IPND and compare it to the Register to generate a list of numbers that are candidates for removal from the Register.
- The ACMA or Register Operator would then remove those numbers from the Register and may also contact the registrant to indicate that their number will be shortly removed.
- The cost of undertaking this cleansing process is expected to be approximately $1.4 million in the first year, and $1.3 million for each subsequent year, which would be recovered from industry through washing fees. If introduced, the cleansing mechanism would likely increase washing fees by between 15 and 20 per cent. The precise impact would be dependent on the frequency of the cleansing process.

The Government does not propose to introduce a cleansing mechanism, and the subsequent higher washing fees, unless there is strong support across the fax and telephone marketing industries. Consultations with industry stakeholders on a preferred cleansing mechanism have not generated the level of support within industry to justify the introduction of a cleansing mechanism. If, at a future point, there was consensus industry support for the introduction of a cleansing mechanism, the Government would consider the request. Any regulatory impact would be determined at that time.

Net benefits

Option 1: Three year registration period

Impact on businesses

Option 1 does not have any regulatory impact or compliance cost on businesses, as it would not alter the obligation on business prohibiting unsolicited fax and telephone marketing to registered numbers.

Impact on individuals

Option 1 would negatively impact registrants by requiring them to re-register a number every three years if they wished to continue to receive the protections of the Register. While the current arrangements require re-registration every eight years, in practice, registrants have never had to re-register.

[25] The Department has considered how far back in time connection and disconnections records should be examined, and considers that this period should be linked to the frequency of running the cleansing mechanism. For example, if the cleansing mechanism was being run every three years, the first time the cleansing process was run (in this example, on 1 January 2016), the ACMA or Register operator would examine disconnection and reconnection records from 1 January 2013.

Consultations have indicated that consumers find the re-registration process to be an inconvenience and intrusion into their productivity and privacy. Furthermore, the Department's consultation indicated that registrants were highly likely to re-register their number, although many may only do so once they begin to receive unwanted fax and telephone marketing.

Consequently, if Option 1 was implemented consumers would face the direct costs in time and lost-opportunity of re-registering their number.

Consumers would also face indirect costs – some registrants will not re-register their number immediately, either because they forget or because they will not have seen the awareness activities undertaken by the ACMA, and will only re-register once they begin to receive unwanted fax and telephone marketing. Because this cost is indirect, it has not been incorporated into the cost estimates used in this RIS.

The impact may generally be more onerous for vulnerable or disadvantaged individuals that may have more difficulty re-registering, for example, because they have limited options for accessing the registration process or they need assistance from someone to register.

Impact on Government

The ACMA would need to run an education campaign to ensure that registrants are aware of the need to re-register. While the ACMA may be able to use registrants' email addresses to inform them of the need to re-register, it is likely that many of these will no longer be in use, making it difficult to ensure registrants have been adequately informed.

As not all numbers will expire at the same time (that is, registrations are currently valid for eight years from the date that the number was registered) there would be a need for the ACMA to establish systems to constantly inform registrants as numbers nears expiration. This would create a significant impost on the ACMA in terms of the resources required to develop and run such systems.

It is likely that there would be some numbers that are not re-registered because the registrant is unaware of the need to do so, leading to some registrants receiving marketing calls or faxes. This could impact on consumers in lost time and productivity. It may lead to the perception that the Register is ineffective in reducing the inconvenience of unsolicited fax and telephone marketing.

Costs

The costs of Option 1 are averaged over ten year period and based on the costs individuals will incur to re-register their number in lost time.

It is assumed that all current registrants (7.3 million) would wish to continue their registration for each of their numbers currently registered. It is assumed that it would

take an average of five minutes to re-register a number[26], including the time taken to read the general information on the Register and complete the form or enter details when registering over the phone.

In determining costs, the Department has projected a conservative increase in the size of the Register, based on average registration rates from the last 6 years of registration data.

Conclusion

Option 1 is the highest cost option, because of the significant impost on consumers. It would create a significant and ongoing cost burden on the ACMA. For these reasons, this option is not recommended. Option 1 does not meet the Government's objectives.

[26] Based on data provided by the ACMA on the time taken to register by method of registration

Option 1: Regulatory Burden and Cost Offset

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	$0	$0	$8.66m	$8.66m
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$22.02m	$0	$0	$22.02m
Are all new costs offset? ☑ **Yes, costs are offset** ☐ **No, costs are not offset** ☐ **Deregulatory—no offsets required**				
Total (Change in costs – Cost offset) ($ million) = -$13.36m				

The regulatory costs identified in the above table reflect the average cost on consumers per year, averaged over a ten year period. These compliance costs represent the incremental cost of a consumer having to undertake two additional registrations over the ten-year assessment period.

The regulatory cost offsets noted in the above table have been identified within the Communications portfolio. These cost offsets relate to the Identity Checks for Prepaid Mobile Services reforms.

Option 2: Eight year registration period

Impact on businesses

Option 2 does not have any regulatory impact or compliance cost on businesses, as it would not alter the obligation on business prohibiting unsolicited fax and telephone marketing to registered numbers.

Impact on individuals

Consumers would need to re-register their number every eight years (once in every ten year period). Although an eight year registration period is currently in place, incremental extensions to the Register have prevented registrants from ever needing to re-register their numbers.

Impact on Government

The impact on the ACMA would be as above for Option 1, noting that it may be more difficult to contact registrants, as contact email addresses are more likely to have changed over an eight year period than a three year period.

Costs

The costs of Option 2 are averaged over a ten year period and based on the costs individuals will incur to re-register a number in lost time.

It is assumed that all current registrants (7.3 million) would wish to continue their registration for each of their numbers currently registered. It is assumed that it would take an average of five minutes to re-register a number[27], including the time taken to read the general information on the Register and complete the form or enter details when registering over the phone.

In determining costs, the Department has projected a conservative increase in the size of the Register, based on average registration rates from the last 6 years of registration data.

Conclusion

Option 2 is the second highest cost option, because of the significant impost on consumers. It would create a significant and ongoing cost burden on the ACMA. For these reasons, this option is not recommended. Option 2 does not meet the Government's objectives.

Option 2: Regulatory Burden and Cost Offset

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	$0	$0	$0	$0
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$0	$0	$0	$0
Are all new costs offset? **☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required**				
Total (Change in costs – Cost offset) ($ million) = $0				

[27] Based on data provided by the ACMA on the time taken to register by method of registration.

The regulatory costs identified in the above table reflect the average cost borne by consumers per year, averaged over a ten year period. Consumers will need to re-register once over the ten-year assessment period. As this is the status quo, incremental compliance costs have been assessed as zero.

Option 3: Indefinite registration

Impact on businesses

Option 3 does not have any regulatory impact or compliance cost on businesses, as it would not alter the obligation on business prohibiting unsolicited fax and telephone marketing to registered numbers.

As noted above (under 'Existing regulatory arrangements') demand for washing services has steadily increased since the Register's establishment, despite one million new registrations on average each year, and extensions in the registration period. Although indefinite registration would be legislated under this option, there would be no change to the operational impact of the Register, given that to date a number on the Register has never expired.

The low compliance cost for businesses for Option 3 is supported by the experiences in other jurisdictions. The United States, India, Spain, Singapore and the United Kingdom have adopted indefinite registration models. Despite an indefinite registration period, the telemarketing and call centre industries in these jurisdictions have successfully diversified[28] and adapted. In Australia, the growth of the digital economy and online consumer engagement has also established new and emerging channels and opportunities for direct marketing activity.

Impact on individuals

Option 3 is supported by the overwhelming majority of consumers that responded to the discussion paper. Consumers generally argued that this option would ensure that they can avoid the inconvenience of re-registering a number.

Like Options 1 and 2, Option 3 protects the capacity of consumers to choose whether or not they wish to receive unsolicited fax or telephone marketing. Maintaining the Register in current form maximises the choice available to consumers.

If an indefinite registration period was implemented, individuals would be able to remove their number from the Register at any time. The de-registering mechanism has seldom been used and registrations on the Register have constantly increased each month since its establishment, despite extensions to registration period. On this basis, a move to indefinite registration is unlikely to accelerate registrations.

[28] See http://www.anythingresearch.com/industry/Telemarketing-Call-Centers.htm

Impact on Government

As registrants would not need to re-register a number once included on the Register, there would be no need for the ACMA to undertake an education campaign reminding registrants to re-register.

Costs

This option may have some indirect costs associated with the impact it will have on fax and telephone marketing businesses, but has no direct compliance costs for the purposes of this RIS over the forecast ten year period.

Conclusion

Option 3 is the lowest cost option. This option addresses consumer concerns over the need to re-register and strikes an appropriate balance between the needs of consumers and industry. Industry has expressed some concerns about the reduction of numbers available for fax and telephone marketing activities. However, the current strong registration rates, the strong demand for washing services, and that to date numbers have never expired on the Register, suggests this option is most likely to have a modest impact on industry and a positive impact on consumers.

Under this option, the ACMA would not be required to undertake an education initiative to advise registrants of the need to re-register. While this option will have some indirect costs and impacts on business, it has no compliance costs. For these reasons, this option is preferred.

Option 3: Regulatory Burden and Cost Offset

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	$0	$0	-$3.48m	-$3.48m
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$0	$0	$0	$0
Are all new costs offset? **☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required**				
Total (Change in costs – Cost offset) ($ million) = -$3.48m				

The regulatory costs identified in the above table reflect the average cost on consumers per year, averaged over a ten year period. This option will remove the need

for one instance of re-registration over the ten-year assessment period compared with the status quo. Therefore, savings have been calculated on this basis.

Option 4: Remove the need to register (opt-in scheme)

Impact on businesses

Industry has strong views about the impact that Option 4 would have on the fax and telephone marketing channels, including the effect on competition. The fax and telephone have continued to be popular channels for firms, despite the rise and viability of other channels (such as social media). Indeed, as noted on page 4, demand for washing services has continued despite the emergence of new marketing channels since 2006.

Small business and new entrants may be disproportionally impacted by this option. Small firms and new entrants are unlikely to have large customer bases, and may need to pursue consent more aggressively. Increasing contractual complexity to establish a broad consent base for future activities has previously been a concern of telecommunications-end-users[29] and could result in consumer harm.

Furthermore, reducing the availability of the fax and telephone marketing channels could incentivise firms to use alternative marketing channels. In some case, this could result in firms using channels that are less effective and more disruptive (for example, some consumers may see alternatives such as door to door sales as more intrusive than telemarketing).

Those businesses, which rely wholly on cold-calling numbers, would be adversely affected by this change and would need to consider alternative contact channels or changing their business model. Some businesses may be wound-up if they cannot transition effectively. As at 1 February 2014, the ACMA has advised there were 1,215 active users of the TAP. Approximately 35 per cent of active TAP users (425 businesses) undertake fax or telephone marketing as their primary activity. A further seven per cent of active TAP users (85 businesses) on-sell or provide contact lists to other businesses. It is possible that these businesses (510 in total) would cease to operate as a result of the changes or would need to substantially alter their business models.

In relation to the size of businesses affected, ACMA research[30] indicates that about two-thirds of the organisations seeking access to the Register have less than 21 employees and 12 per cent employ more than 200 people.

[29] ALRC 2008 Review of Australian Privacy Law: For Your Information Report, pp2424 – 2425, Paras 72.49 – 72.55.

[30] ACMA research from 2012 survey. The survey elicited 183 responses, representing a response rate of approximately 15% of active TAP accounts at the time.

Number of employees	***Percentage***
Less than 5	*30%*
6 to 20	*37%*
21 to 200	*21%*
More than 200	*12%*

The potential impact on the industry is not consistent with the Government's policy objectives to minimise the impact on businesses engaging in fax and telephone marketing activities and gives these firms little opportunity to adjust in line with consumer preferences.

Impact on individuals

Many consumers were supportive of an opt-in regime under which individuals could receive fax and telephone marketing from individual companies where there was consent. It was also supported by consumer and privacy groups which noted the impact of unsolicited fax and telephone marketing on consumers, particularly disadvantaged Australians.

However, in responding to this option through the Department's 2013 discussion paper process, many consumers felt that the privacy of individuals and their ability to choose to not receive unsolicited fax and telephone marketing should be paramount. Importantly, implementing this option removes a key principle behind the establishment of the Register, which is to provide consumers with the ability to make an overarching choice about whether they would like to receive unsolicited fax and telephone marketing.

Furthermore, as demonstrated at page 6 and 7, there may be a difference between reported preferences and actual behaviour. Demand for washing services has been steadily increasing, and consumers that purchase products and services through unsolicited fax and telephone marketing would no longer be serviced through these channels.

Altering the default choice faced by consumers may impact on the choice that they ultimately make. For example, by framing unsolicited fax or telephone marketing as effectively prohibited, it may be that consumers will decide to not accept fax or telephone marketing as socially acceptable behaviour (whether solicited or not), which in turn may further reduce the effectiveness of these channels. If fax and telephone marketing did not, overall, generate social welfare (for example, if consumers did not behave rationally when faced with a telemarketing call) then it may be appropriate to

'nudge' consumer behaviour to preference opting out of these channels. However, on the available evidence it appears that fax and telephone marketing is not necessarily any different or more detrimental compared to other direct marketing practices[31]. Moreover, there are strong consumer laws in place (such as the Australian Consumer Law) to address issues as they arise.

Impact on Government

Nil.

Costs

The costs identified under Option 4 are the compliance and administration costs associated with businesses understanding their obligations and altering their processes to comply with the new arrangements. This includes costs associated with re-training staff, altering internal processes and seeking legal advice on their obligations. All costs are considered start-up costs. Ongoing activities associated with training, improvements to business processes or record-keeping are considered business-as-usual costs consistent with best practice and are not included for the purposes of this RIS.

Excluding the 510 businesses that undertake fax or telephone marketing as their primary activity, 705 active TAP users would incur costs associated with this option. Based on ACMA data, 37 per cent of active TAP users, or 260 businesses, are in the call centre industry. A further 445 businesses are in other industries. For businesses in the call centre industry, it is assumed that a team leader (based on an award rate under the *Contract Call Centres Award 2010*) would undertake four hours of training for staff, which would include research, preparation of training materials and delivery of training. For the remaining 445 businesses, an average of four hours has been assumed at the default manager's rate.

For changes to processes, it is assumed that two staff members would undertake an average of six hours work to alter internal systems and contact lists. Staffing costs as above have been applied.

In addition, some businesses may incur purchasing costs to seek legal advice on their new obligations. This is considered to apply to larger businesses, as small businesses are unlikely to be able to afford specialised advice and may be more likely to do research themselves or rely on government information. Based on data provided by the ACMA, 145 active TAP users are businesses that employ 200 or more staff. A once-off annual cost of $2000 is assumed for this legal advice.

Over the projected ten-year period, there would be cost savings for business in not needing to purchase a subscription to access the Register and not undertaking the process of washing contact lists. Businesses would need to maintain records of

[31] Spam email is one example of a direct marketing channel that can be more detrimental to consumers – in many cases the communications is not just unwanted commercial electronic mail, but also a delivery mechanism for malicious computer viruses etc.

consumers who have given consent, which is a requirement of the current scheme. For 2012-13 the total cost of the Register through industry washing fees was $3.6 million.[32]

Conclusion

Option 4 presents substantial indirect costs associated with the negative impact it has on businesses undertaking fax and telephone marketing activities.

The Government considers consumers should also still have a choice as to whether they wish to receive unsolicited fax and telephone marketing. As there are still more consumers not on the Register than there are on the Register, maintaining the Register and the ability for consumers to exercise choice is vital. Furthermore, the additional benefit to consumers of not needing to register a number does not outweigh the impact on businesses in substantially decreasing the marketing channels available to them, particularly new entrants. This option is not considered to strike an appropriate balance between stakeholder interests and does not meet the Government's objectives. For these reasons, this option is not recommended.

Option 4: Regulatory Burden and Cost Offset

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	$0.75m	$0	$0	$0.75m
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	-$3.6m	$0	$0	-$3.6m
Are all new costs offset? **☐ Yes, costs are offset ☐ No, costs are not offset ☑ Deregulatory—no offsets required**				
Total (Change in costs – Cost offset) ($ million) = -$2.85m				

The regulatory costs identified in the above table reflect the average cost on consumers per year, averaged over a ten year period.

Consultation

[32] ACMA, Annual Report 2012-13, p. 63.

On 6 December 2013 the Department of Communications released a public discussion paper seeking community views on the optimal period of registration on the Register. Submissions closed on 31 January 2014. The discussion paper proposed the four options outlined in this RIS for consideration.

The Department received 1,320 submissions in response to the discussion paper from a range of stakeholders, including those engaged in fax or telephone marketing activities, industry groups, privacy groups, consumer groups and registrants.

The number of responses was indicative that the Register is very popular among consumers and that there are strong views about the inconvenience of having to re-register a number. Specifically, of the 1,320 total submissions received, the overwhelming majority (1,246) supported a move to an indefinite registration period. Furthermore, consumers or consumer advocate groups submitted 1,291 submissions, further demonstrating community attitudes and concerns towards fax or telephone marketing. Many consumers indicated their preference was unlikely to change over time. Consumer and privacy groups also raised concerns that the requirement to re-register could have a particularly detrimental impact on vulnerable users.

In developing the options, the Department also undertook consultation with the ACMA, as the regulator for the *Do Not Call Register Act 2006* and the Office of the Australian Information Commissioner, as the privacy regulator.

In addition to this consultation process, the issue of the registration period on the Register has previously been considered as follows:

- The Senate Standing Committee on Environment, Communications and the Arts inquiry on the Do Not Call Register Legislation Amendment Bill 2009 considered the issue amongst other things. The inquiry considered proposed amendments to extend the Register to include other classes of numbers, such as business numbers, and whether to regulate fax marketing. While the registration period was not included in the terms of reference for the inquiry, the Committee recommended that the Department consider extending the period of registration in its statutory review of the Act, provided the practical difficulties of keeping the Register accurate could be overcome.

- A statutory review of the *Do Not Call Register Act 2006*, undertaken in 2009 and 2010, which considered the broad operation of the Act and Register. The majority of views supported a longer period of registration than three years. The review report proposed that research be undertaken into ways to reduce the inaccuracy of the Register.

- Through targeted consultation with key stakeholders.

Conclusion

The preferred option is an indefinite period of registration, Option 3, which is also the lowest cost option. This means that once an account-holder registers their number it will remain on the Register until removed either by the account-holder requesting its removal or through a cleansing mechanism, if one is introduced.

Consultation concluded there was substantial support from registrants for the removal of the need to re-register. Consumers consider that the need to re-register in the event that a registration period is in place to be an inconvenience and provides no tangible benefit to individuals as community attitudes towards unsolicited marketing have deteriorated. In this regard, the decision individuals initially make when registering on the Register to protect their privacy and avoid unsolicited fax and telephone marketing should be valued.

Many respondents sought to go one step further and remove the need to register and move to an 'opt-in' scheme. However, the move to an opt-in regime (Option 4) would have a detrimental impact on the fax and telephone marketing industry and would not necessarily result in improved consumer welfare. The nature of such an arrangement would favour incumbent businesses over new entrants by preventing new entrants from contacting people to market goods and services by fax or telephone. The existing opt-out model for the Register provides an appropriate balance between allowing these activities to continue, while ensuring individuals can make an explicit choice about whether they wish to receive unsolicited fax and telephone marketing.

Overall, moving to an indefinite registration period maximises the effectiveness of the Register and achieves the highest net benefit for all stakeholders. It maximises consumers' choice and provides an effective mechanism to address concerns about the intrusiveness and inconvenience of fax and telephone marketing. It also provides the industry with time to adjust business practices and diversify marketing activities in line with emerging international trends and consumer expectations.

Implementation and evaluation

The preferred option will require an amendment to the *Do Not Call Register Act 2006*. Section 17 of the Act sets out the period of registration for numbers on the Register and will need to be amended. Once the amended legislation comes into effect, the *Do Not Call Register (Duration of Registration) Specification No 1 2010* would no longer be required and would be repealed.

Given the deregulatory nature of the preferred option, the Department is seeking passage of the amendments through the *Telecommunications Deregulation Bill No.1 2014,* which is currently aiming to be introduced during the 2014 Spring sittings. In the event that legislation to amend the Act may not be passed prior to May 2015, when the first registrations will begin to expire, it is proposed that the *Do Not Call Register (Duration of Registration) Specification No 1 2010* is amended to extend the registration period for a further two years. This would avoid the possibility of numbers being removed from the Register. The Department does not consider that extending the registration period from eight to 10 years will result in additional regulatory

impacts. Given that businesses and individuals would have no additional obligations as a result of this change, there would be no compliance costs.

The Department is responsible for preparing and monitoring the passage of legislation to extend the registration period. The ACMA, which has responsibility for managing the Register, will implement the proposed changes. This includes communicating to registrants that their registration will be indefinite and how they can remove their number from the Register if desired.

Following implementation of the preferred option, the Department will continue to work closely with the ACMA and liaise with industry stakeholders to measure the ongoing effectiveness of the Register.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ACMA Act	*Australian Communications and Media Authority Act 2005*
Bill	Telecommunications Legislation Amendment (Deregulation) Bill 2014
Competition and Consumer Act	*Competition and Consumer Act 2010*
Consumer Protection Act	*Telecommunications (Consumer Protection and Service Standards) Act 1999*
Department	Department of Communications
DNCR Act	*Do Not Call Register Act 2006*
Levy Act	*Telecommunications (Industry Levy) Act 2012*
Levy Amendment Bill	Telecommunications (Industry Levy) Amendment Bill 2014
Minister	Minister for Communications
NBN	National Broadband Network
NRS	National Relay Service
Special Account	Public Interest Telecommunications Services Special Account
Telecommunications Act	*Telecommunications Act 1997*
Telstra	Telstra Corporation Limited
TIO	Telecommunications Industry Ombudsman
TUSMA	Telecommunications Universal Service Management Agency
TUSMA Act	*Telecommunications Universal Service Management Agency Act 2012*
TUSMA Regulation	*Telecommunications Universal Service Management Agency Regulation 2012*
USO	universal service obligation

NOTES ON CLAUSES

TELECOMMUNICATIONS LEGISLATION AMENDMENT (DEREGULATION) BILL 2014

Clause 1 – Short title

Clause 1 provides that the Bill, when enacted, may be cited as the *Telecommunications Legislation Amendment (Deregulation) Act 2014*.

Clause 2 – Commencement

Clause 2 provides for the commencement of the Bill.

Clauses 1 to 3 of the Bill, and anything else not covered in the table, will commence on the day the Bill receives Royal Assent. These provisions are introductory provisions.

Part 1 of Schedule 1 to the Bill, Schedule 2 to the Bill and Schedules 4 to 8 to the Bill commence on the day after the Bill receives Royal Assent.

Parts 2, 3 and 4 of Schedule 1 to the Bill commence:

- immediately after the commencement of Part 8 of Schedule 2 to the *Omnibus Repeal Day (Autumn 2014) Act 2014*; or
- at the start of 1 July 2015;

whichever is later.

Parts 2, 3 and 4 of Schedule 1 are required to commence after Part 8 of Schedule 2 to the *Omnibus Repeal Day (Autumn 2014) Act 2014* commences due to amendments made in that Act to the universal service regime in the Consumer Protection Act (repealing the standard contestability arrangements and removing the requirement for the primary universal service provider to have an approved policy statement and standard marketing plan).

Schedule 3 to the Bill commences 14 days after the Bill receives Royal Assent. This Schedule makes amendments to the DNCR Act to enable an indefinite period of registration for numbers on the Do Not Call Register. The delayed commencement of Schedule 3 is intended to allow a number of administrative tasks associated with implementing an indefinite registration period to be undertaken by the ACMA before the amendments in the schedule commence.

Clause 3 – Schedules

Clause 3 provides that legislation that is specified in a Schedule to the Bill is amended or repealed as set out in the applicable items in that Schedule, and any other item in a Schedule has effect according to its terms. There are eight Schedules to this Bill.

Schedule 1—Public interest telecommunications services

Part 1—Amendments commencing on the day after Royal Assent

Telecommunications Universal Service Management Agency Act 2012

Item 1 – Section 89

Item 1 repeals section 89 of the TUSMA Act. Section 89 requires the Minister to prepare a written estimate of the overall levy target amount for each eligible levy period before the start of that period. Section 90 requires the Minister to prepare a statement setting out the actual overall levy target amount within 3 months after the eligible levy period. The estimate required by section 89 is considered no longer necessary since it effectively duplicates information that is available at a similar time in the Budget Statements.

Part 2—Repeals

Telecommunications (Universal Service Levy) Act 1997

Item 2 – The whole of the Act

Item 2 repeals the *Telecommunications (Universal Service Levy) Act 1997*. This Act imposes a levy on certain persons to fund the universal service regime under the Consumer Protection Act. The universal service levy imposed by this Act was phased out and replaced with an industry levy as part of the package of legislative reforms in 2012 designed to achieve continuity of key telecommunication safeguards in the transition to the NBN. The universal service levy is redundant and the *Telecommunications (Universal Service Levy) Act 1997* can therefore be repealed.

Telecommunications Universal Service Management Agency Act 2012

Item 3 – The whole of the Act

Item 3 repeals the TUSMA Act. The TUSMA Act established TUSMA as a statutory agency responsible for achieving public interest telecommunications services policy objectives, and provided for the assessment, collection and recovery of the industry levy. TUSMA will cease to exist following the commencement of this Part of the Bill, with obligations for administering contracts for public interest telecommunications services to be transferred to the Secretary of the Department. Part 4 of Schedule 1 to this Bill deals with the application and transitional matters that arise with the abolition of TUSMA.

Part 3—General amendments

Part 3 of Schedule 1 to this Bill makes a series of amendments required to the specified Acts consequential to the proposed abolition of TUSMA, including replacing references to the TUSMA Act and TUSMA.

Australian Communications and Media Authority Act 2005

Item 4 – Section 3 (subparagraph (b)(vi) of the definition of *authorised disclosure information*)
Item 5 – Subparagraph 8(1)(j)(va)
Item 6 – Paragraph 59D(1)(na)

These items are consequential amendments to the ACMA Act resulting from the repeal of the TUSMA Act. Item 4 repeals the reference to Part 6 of the TUSMA Act, at the end of subparagraph 3(b)(vi) of the definition of 'authorised disclosure information'. Similarly, item 5 repeals subparagraph 8(1)(j)(va) of the ACMA Act to remove reference to Part 6 of the TUSMA Act. Item 6 amends subsection 59D(1) by replacing the reference to TUSMA with a reference to the Secretary of the Department, or relevant Departmental officer, in paragraph 59D(1)(na) as amongst the list of entities to whom an ACMA official may disclose authorised disclosure information. The proposed amendment would assist the Secretary of the Department in the administration of public interest telecommunications service contracts and grants, following the abolition of TUSMA.

Competition and Consumer Act 2010

Item 7 – Paragraph 151CM(1)(b)
Item 8 – Paragraph 151CM(1)(c)
Item 9 – Subsection 151CM(5) (definition of *universal service provider*)

Section 151CM of the Competition and Consumer Act requires the ACCC to monitor and report on certain telecommunication charges paid by consumers, the adequacy of Telstra's compliance with Part 9 of the Consumer Protection Act, and the adequacy of each universal service provider's compliance with Division 11 of Part 2 of the Consumer Protection Act, which relates to price control arrangements for universal service charges. This Bill proposes to repeal Division 11 of Part 2 of the Consumer Protection Act (see item 123 below). Items 7 to 9 are consequential amendments to the Competition and Consumer Act resulting from the repeal of Division 11 of Part 2 of the Consumer Protection Act.

Item 97 (below) repeals Division 4 of Part 2 of the Consumer Protection Act. This will remove potential scope for multiple universal service areas and different regulated universal service providers. Given the concept of multiple regulated universal service providers is being removed from the Consumer Protection Act, it is not necessary to have provisions for the ACCC to monitor and report on charges of different universal service providers.

Item 10 – Paragraph 155AAA(12)(ka)

Section 155AAA of the Competition and Consumer Act prohibits ACCC members or staff from disclosing protected information unless one of the exceptions set out in the section applies. An exception exists if the Chairperson of the ACCC is satisfied that particular protected information will enable or assist one of the bodies listed in subsection 155AAA(12) to perform or exercise any of its functions or powers, in which case the information may be disclosed to that body.

Item 10 repeals the reference to TUSMA in the list of bodies to which the Chairperson may authorise the disclosure of protected information.

Criminal Code Act 1995

Item 11 – Section 473.1 of the Criminal Code (definition of *National Relay Service*)
Item 12 – Section 473.1 of the Criminal Code (subparagraphs (a)(i) and (b)(i) of the definition of *NRS provider*)

Items 11 and 12 are consequential amendments to section 473.1 of the *Criminal Code Act 1995* as a result of the proposed repeal of the TUSMA Act, and reflect that the definition of the National Relay Service (NRS) and provisions regarding the administration of the NRS contracts are to be transferred by this Bill to the Consumer Protection Act. These consequential amendments to the Criminal Code would preserve the existing defence for an employee of an NRS provider from being held criminally liable for engaging in conduct in good faith in the course of the person's duties as an NRS employee under section 475.1A of the *Criminal Code Act 1995*.

Sea Installations Act 1987

Item 13 – Schedule

Item 13 is a consequential amendment that repeals a reference to the TUSMA Act in the Schedule to the *Sea Installations Act 1987*.

Telecommunications Act 1997

Item 14 – Section 7 (paragraph (baa) of the definition of *ACMA's telecommunications powers*)

Item 14 repeals paragraph (baa) of the definition of 'ACMA's telecommunications powers' in section 7 of the Telecommunications Act. This paragraph refers to Part 6 of the TUSMA Act, and this amendment is consequential to the repeal of the TUSMA Act.

The provisions contained in Part 6 of the TUSMA Act (which relate to the assessment, collection and recovery of the industry levy) will in substance be transferred to new Division 6 of Part 2 of the Consumer Protection Act (see item 123, below).

Item 15 – Section 7 (definition of *TUSMA*)

Item 15 repeals the definition of 'TUSMA' in section 7 of the Telecommunications Act. This amendment is consequential to the proposed abolition of TUSMA by the Bill.

Item 16 – Section 7 (definition of *universal service levy*)

Item 16 repeals the definition of 'universal service levy'. This term, which is defined as meaning the levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*, is redundant now that the universal service levy has been phased out and replaced with an industry levy. This amendment is consequential to the repeal of *Telecommunications (Universal Service Levy) Act 1997* proposed by item 2 of Schedule 1 to the Bill.

Item 17 – Section 7 (definition of *universal service provider*)

Item 17 repeals the definition of 'universal service provider'. As a result of the amendments made by this Bill, this term is no longer used in the Telecommunications Act.

Item 18 – Subsection 57(2) (definition of *this Act*)

Item 18 substitutes a new definition of 'this Act' for the purposes of section 57 of the Telecommunications Act. The amended definition omits the reference to the TUSMA Act, consequential to the repeal of that Act. This amendment is not intended to alter the meaning of the term 'this Act' that applies in this section. This is because relevant provisions of the TUSMA Act are to be re-enacted by this Bill as part of the Consumer Protection Act, and the definition of 'this Act' will continue to include a reference to the Consumer Protection Act.

Item 19 – Paragraphs 58(2)(a) and (b)

Item 19 amends paragraphs 58(2)(a) and (b) of the Telecommunications Act and is consequential to the proposed repeal of subsection 72(2) (see item 23, below).

Item 20 – Subsection 58(4)

Subsection 58(1) of the Telecommunications Act enables the ACMA to refuse to grant a carrier licence to an applicant if, immediately before making its decision, the applicant is disqualified. Section 58 then sets out the circumstances in which an applicant is disqualified for the purposes of that section. Subsection 58(4) provides for disqualification on the ground of a failure to pay the universal service levy. This provision is redundant now that the universal service levy has been phased out and replaced with the industry levy.

As a consequence of this, item 20 repeals subsection 58(4).

Item 21 – Paragraph 58(5)(a)

Item 21 amends paragraph 58(5)(a) of the Telecommunications Act and is consequential to the proposed repeal of subsection 72(2) (see item 23, below).

Item 22 – Subsection 67(3) (definition of *this Act*)

Item 22 substitutes a new definition of 'this Act' for the purposes of section 67. The amended definition omits the reference to the TUSMA Act, consequential to the repeal of that Act. The intended operation of the amendment made by this item is similar to the intended operation of the amendment made by item 18, above.

Item 23 – Subsection 72(2)

Subsection 72(2) of the Telecommunications Act enables the ACMA to cancel a carrier licence held by a carrier if the carrier fails to pay in full any universal service levy on or before the date the levy becomes due and payable. This provision is redundant now that the universal service levy has been phased out and replaced with the industry levy. Subsection 72(2A) enables the ACMA to cancel a carrier licence if the carrier fails to pay in full any industry levy on or before the date the levy becomes due and payable.

As a consequence of this, item 23 repeals subsection 72(2).

Item 24 – Subsection 78(2) (definition of *this Act*)
Item 25 – Subsection 81(5) (definition of *this Act*)
Item 26 – Subsection 81A(3) (definition of *this Act*)
Item 27 – Subsection 83(8) (definition of *this Act*)

Items 24 to 27 are consequential amendments arising from the proposed repeal of the TUSMA Act. Each of these items substitutes a new definition of 'this Act' for the respective purposes of sections 78, 81, 81A and 83 to remove references to the TUSMA Act. The intended operation of the amendments made by these items is similar to the intended operation of the amendment made by item 18, above.

Item 28 – Paragraphs 105(3)(eb) and (ec)

Subsection 105(1) of the Telecommunications Act requires the ACMA to monitor and report to the Minister each financial year on all significant matters relating to the performance of carriers and carriage service providers. Subsection 105(3) sets out the matters that must be set out in a report under subsection (1). Paragraphs 105(3)(eb) and (ec) require the report to set out details of the adequacy of compliance with obligations under Part 6 of the TUSMA Act and the operation of that Part.

Item 28 repeals paragraphs 105(3)(eb) and (ec) of the Telecommunications Act, consequential to the repeal of the TUSMA Act.

Item 29 – Section 284 (heading)
Item 30 – Subsection 284(4)

Items 29 and 30 amend section 284 of the Telecommunications Act by replacing the heading and repealing subsection 284(4).

Sections 276 and 277 of the Telecommunications Act are secrecy provisions which prohibit disclosure or use of certain information covered by those provisions. Section 284 is an exception to these provisions, relating to the disclosure of certain information or a document where the disclosure is made to the ACMA, the ACCC, the TIO or TUSMA (subsection 284(4)). The amendments made by these items remove references to TUSMA and are consequential to the abolition of TUSMA.

Item 31 – Section 299 (heading)
Item 32 – Subsection 299(4)
Item 33 – Section 299 (note)

Items 31, 32 and 33 amend section 299 of the Telecommunications Act by replacing the heading and note, and repealing subsection 299(4).

Subsection 299(4) provides that where information or a document is disclosed to TUSMA, as permitted under subsection 284(4), TUSMA must not disclose that information or document except for the purpose of, or in connection with, the carrying out of TUSMA's functions and powers.

The repeal of subsection 299(4) is consequential to the abolition of TUSMA and the repeal of subsection 284(4) (see item 30, above).

Item 34 – Subsection 492(5) (paragraph (aa) of the definition of *this Act*)
Item 35 – Subsection 502(5) (paragraph (aa) of the definition of *this Act*)

Items 34 and 35 are consequential amendments arising from the proposed repeal of the TUSMA Act. Each of these items amends the definition of 'this Act' for the respective purposes of subsections 492(5) and 502(5). The amended definitions omit the reference to the TUSMA Act, consequential to the repeal of that Act. The intended operation of the amendment made by this item is similar to the intended operation of the amendment made by item 18, above.

Item 36 – Paragraph 508(aaa)
Item 37 – Paragraph 510(1)(aaa)

Part 26 of the Telecommunications Act provides the ACMA with the power to investigate certain matters relating to telecommunications. Item 36 repeals paragraph 508(aaa) so that Part 26 no longer applies to a contravention of Part 6 of the TUSMA Act. Similarly, item 37 repeals paragraph 510(1)(aaa) so that the ACMA may no longer investigate contraventions of Part 6 of the TUSMA Act. Items 36 and 37 are amendments consequential to the proposed repeal of the TUSMA Act.

These amendments are not intended to alter the scope of the ACMA's investigatory powers. The ACMA's investigatory powers under Part 26 of the Telecommunications Act already extend to contraventions of the Consumer Protection Act and regulations

made under that Act, and the provisions contained in Part 6 of the TUSMA Act (which relate to the assessment, collection and recovery of the industry levy) will, as part of this Bill, in substance be transferred to new Division 6 of Part 2 of the Consumer Protection Act.

Item 38 – Subsection 512(7)
Item 39 – Subsection 513(3)

Item 38 repeals subsection 512(7) of the Telecommunications Act, which requires the ACMA, before investigating a contravention of Part 6 of the TUSMA Act, to inform TUSMA that the matter is to be investigated. Item 39 repeals subsection 513(3) of the Telecommunications Act, which requires the ACMA, if it decides not to investigate a complaint in relation to a possible contravention of Part 6 of the TUSMA Act, to inform TUSMA of the decision as soon as practicable. These amendments are consequential to items 36 and 37 above and the proposed repeal of the TUSMA Act.

Item 40 – Subsection 551(3) (definition of *this Act*)
Item 41 – Section 563
Item 42 – Subsection 564(4) (definition of *this Act*)
Item 43 – Subsection 570(7) (definition of *this Act*)
Item 44 – Subsection 572B(6) (paragraph (aa) of the definition of *this Act*)
Item 45 – Subsection 572E(9) (paragraph (aa) of the definition of *this Act*)
Item 46 – Section 574A (paragraph (aa) of the definition of *this Act*)

Items 40 to 46 either amend definitions of, or substitute new definitions for, the term 'this Act' for the purposes of the provisions of the Telecommunications Act that they amend. The amended definitions omit the reference to the TUSMA Act, consequential to the repeal of that Act. The intended operation of the amendments made by these items is similar to the intended operation of the amendment made by item 18, above.

Item 47 – Section 582
Item 48 – Section 582
Item 49 – Section 582

Section 582 provides a simplified outline for Part 35 of the Telecommunications Act, which deals with miscellaneous matters. Items 47 to 49 remove from the simplified outline reference to the TUSMA Act. These amendments are consequential to the proposed repeal of the TUSMA Act.

Item 50 – Subsection 583(3) (definition of *this Act*)
Item 51 – Subsection 585(2) (paragraph (aa) of the definition of *this Act*)
Item 52 – Subsection 586(2) (paragraph (aa) of the definition of *this Act*)
Item 53 – Subsection 587(4) (paragraph (aa) of the definition of *this Act*)
Item 54 – Subsection 588(4) (definition of *this Act*)
Item 55 – Subsection 589(6) (paragraph (aa) of the definition of *this Act*)
Item 56 – Subsection 592(2) (paragraph (aa) of the definition of *this Act*)
Item 57 – Subclause 1(2) of Schedule 1 (definition of *this Act*)
Item 58 – Subclause 1(2) of Schedule 2 (definition of *this Act*)

Items 50 to 58 either amend definitions of, or substitute new definitions for, the term 'this Act' for the purposes of the provisions of the Telecommunications Act that they amend. The amended definitions omit the reference to the TUSMA Act, consequential to the repeal of that Act. The intended operation of the amendments made by these items is similar to the intended operation of the amendment made by item 18, above.

Item 59 – Subparagraphs 27(5)(e)(ii) and (iii) of Schedule 3

Item 59 repeals subparagraphs 27(5)(e)(ii) and (iii) and substitutes replacement subparagraphs. These substituted subparagraphs replace references to provisions of the TUSMA Act with references to corresponding provisions of the Consumer Protection Act. These amendments are consequential to the repeal of the TUSMA Act and the transition of the management of public interest telecommunication services contracts and grants to the Consumer Protection Act.

Item 60 – Paragraph 1(ja) of Schedule 4
Item 61 – Paragraph 1(jc) of Schedule 4

Items 60 and 61 repeal paragraphs 1(ja) and 1(jc) of Schedule 4 to the Telecommunications Act, which are both redundant in light of the repeal of the TUSMA Act.

Item 60 also substitutes a new paragraph 1(ja) of Schedule 4 to the Telecommunications Act. This provision provides that a decision of the ACMA under new subsection 70(3) of the Consumer Protection Act (which deals with remission of the penalty for late payment of the levy imposed by the Levy Act) is reviewable by the ACMA. This amendment is consequential to the amendments made by item 123 of Schedule 1 to the Bill, and is intended to achieve the same result as paragraph 1(ja) as currently in force.

Telecommunications (Consumer Protection and Service Standards) Act 1999

The amendments to the Consumer Protection Act in Schedule 1 are consequential to the proposed abolition of TUSMA and repeal of the TUSMA Act. These amendments also provide for the new arrangements for the delivery of public interest telecommunications services, with the Secretary of the Department taking over responsibility from TUSMA for the management of contracts and grants entered into for the delivery of such services.

Part 6 of the TUSMA Act currently deals with the assessment, collection and recovery of the industry levy (which is used to pay contractors and grant recipients). This Part is effectively transitioned into new Division 6 of Part 2 of the Consumer Protection Act. The ACMA remains responsible for the assessment and collection of the industry levy. The amendments also remove redundant provisions from the Consumer Protection Act and streamline parts of the universal service regime.

Item 62 – Section 4

Item 62 amends the simplified outline in section 4 of the Consumer Protection Act to reflect the new structure of that Act, as amended by the Bill.

Item 63 – Subsection 5(2) (definition of *alternative telecommunications services)*

Item 63 repeals the definition of 'alternative telecommunications services'. This amendment is consequential to the proposed repeal of section 8E of the Consumer Protection Act (see item 90, below).

Item 64 – Subsection 5(2)

Item 64 inserts a definition of 'Appropriation Act' into subsection 5(2) of the Consumer Protection Act. This definition replicates the definition currently found in section 4 of the TUSMA Act. The term is used in notes at the end of section 21A and new section 38 of the Consumer Protection Act.

Item 65 – Subsection 5(2) (definition of *claim period)*

Item 65 repeals the definition of 'claim period' from subsection 5(2) of the Consumer Protection Act. This term is now redundant; it was used in relation to the universal service levy which has been subsequently phased out and replaced with the industry levy.

Item 66 – Subsection 5(2)

Item 66 inserts two new definitions into subsection 5(2) of the Consumer Protection Act. The term 'contractor' is given the meaning provided for in new section 14 (see item 123, below). The term 'data call' has the meaning generally accepted within the telecommunications industry. This term is used in describing one of the policy objectives for new Division 3 of Part 2 of the Consumer Protection Act, namely that all persons in Australia outside a standard zone are to have access to untimed data calls on a basis comparable to access provided to persons in standard zones for data calls made to an internet service provider using a data network access number.

Item 67 – Subsection 5(2)

Item 67 repeals two definitions from subsection 5(2) of the Consumer Protection Act. 'Default arrangements' is a redundant term due to the streamlining of the universal service regime. This amendment is also consequential to the proposed repeal of section 12 of the Consumer Protection Act (see item 99, below). The repeal of the term 'designated STS area' is consequential to the proposed repeal of section 8H of the Consumer Protection Act (see item 90, below).

Item 68 – Subsection 5(2)

Item 68 inserts two new definitions into subsection 5(2) of the Consumer Protection Act.

New section 39 of the Consumer Protection Act (see item 123, below) enables funds from the Public Interest Telecommunications Services Special Account to be used to pay the 'eligible administrative costs' of the Commonwealth. By item 68, the term 'eligible administrative costs' will be defined to include:

(a) remuneration, and other employment-related costs and expenses, in respect of APS employees whose duties relate to the performance of the Secretary's functions, or the exercise of the Secretary's powers, under proposed Division 3 of Part 2 (effectively regarding the administration of public interest telecommunications services contracts and grants); or

(b) any other costs, expenses and other obligations incurred by the Commonwealth in connection with the performance of the Secretary's functions, or the exercise of the Secretary's powers, under proposed Division 3 of Part 2;

but not amounts incurred under contracts or by way of grants made under section 14. (Amounts incurred under contracts and grants made under section 14 are provided for separately in new section 39.)

Item 68 also inserts a definition of the term 'eligible levy period'. The first eligible levy period under the amendments to the Consumer Protection Act will be the financial year 2014-15.

Item 69 – Subsection 5(2) (definition of *eligible revenue*)
Item 70 – Subsection 5(2) (definition of *eligible revenue period*)

Items 69 and 70 repeal the existing definitions of 'eligible revenue' and 'eligible revenue period' in the Consumer Protection Act and substitute new definitions. 'Eligible revenue' has the meaning given by new section 45 (see item 123, below). The first 'eligible revenue period' under the amendments to the Consumer Protection Act will be the financial year 2013-14.

Item 71 – Subsection 5(2)
Item 72 – Subsection 5(2) (definition of *levy*)
Item 73 – Subsection 5(2)
Item 74 – Subsection 5(2) (definition of *levy contribution factor*)

Items 71, 72, 73 and 74 insert new definitions into the Consumer Protection Act for 'eligible revenue return', 'engage in conduct', 'grant recipient', 'levy', 'levy amount' and 'levy contribution factor'. These definitions effectively replicate the equivalent definitions in the TUSMA Act.

Item 75 – Subsection 5(2)

Item 75 repeals the definitions of 'levy credit' and 'levy debit' from the Consumer Protection Act. These terms are now redundant; they were formerly used in relation to

the universal service levy which has been subsequently phased out and replaced with the industry levy.

Item 76 – Subsection 5(2)
Item 77 – Subsection 5(2) (definition of *participating person*)

Items 76 and 77 insert new definitions into the Consumer Protection Act for 'national broadband network', 'National Relay Service', 'overall levy target amount' and 'participating person'. These definitions effectively replicate the equivalent definitions in the TUSMA Act.

Item 78 – Subsection 5(2)

Item 78 inserts definitions of 'Public Interest Telecommunications Service Special Account' and 'Secretary' into subsection 5(2) of the Consumer Protection Act. The 'Public Interest Telecommunications Services Special Account' is established by new section 37 of the Consumer Protection Act (see item 123, below). It effectively replaces the Telecommunications Universal Service Special Account which had been established by the TUSMA Act. The 'Secretary' is the Secretary of the Department. Subsection 19A(3) of the *Acts Interpretation Act 1901* provides for the interpretation of 'Department' in this context.

Item 79 – Subsection 5(2) (definition of *service area*)

Item 79 repeals the definition of 'service area'. This amendment is consequential to the proposed repeal of section 8C of the Consumer Protection Act (see item 90, below).

Item 80 – Subsection 5(2)

Item 80 inserts a definition of 'SMS relay service' into subsection 5(2) of the Consumer Protection Act. This expression means a service that allows users of the National Relay Service to communicate using SMS (which is short for short message service). It is one of the policy objectives for New Division 3 of Part 2 that an SMS relay service is reasonably accessible to all persons in Australia who are deaf or have a hearing and/or speech impairment.

Item 81 – Subsection 5(2)

Item 81 repeals the definitions of 'universal service area' and 'universal service charge'. These amendments are consequential to the proposed repeal of section 9G of the Consumer Protection Act (see item 96, below) and section 18 of the Consumer Protection Act (see item 123, below), respectively. Item 81 also repeals the definitions of 'universal service contractor' and 'universal service grant recipient'. These amendments are consequential to the proposed repeal of the TUSMA Act and the new arrangements for the public interest telecommunications services in the Consumer Protection Act which do not use these terms.

Item 82 – Subsection 5(2) (definition of *universal service provider*)

This item repeals the existing definition of the term 'universal service provider' and substitutes a new definition for that term. Under the new definition, the expression 'universal service provider' will mean a 'primary universal service provider'. This amendment is consequential to the proposed repeal of Division 4 of Part 2 of the Consumer Protection Act (see item 97, below).

Item 83 – Subsection 5(2) (definition of *universal service subsidy*)

Item 83 repeals the definition of 'universal service subsidy'. This term is now redundant; it was used in relation to the universal service levy which has been subsequently phased out and replaced with the industry levy. This amendment is also consequential to the proposed repeal of Division 9 of Part 2 of the Consumer Protection Act (see item 123, below).

Item 84 – Subsection 5(2)

Item 84 inserts a definition of 'video relay service' into subsection 5(2) of the Consumer Protection Act. This expression is defined as meaning a service that allows persons who are deaf or have a hearing and/or speech impairment to communicate with other persons using video as well as voice. It is one of the policy objectives for new Division 3 of Part 2 that a video relay service be reasonably accessible to all persons in Australia who communicate in Auslan.

Item 85 – Paragraph 6(4)(a)

This item omits the terms 'universal service contractors' and 'universal service grant recipients' and instead substitutes the terms 'contractors' and 'grant recipients'. This amendment is consequential to items 66, 71 and 81, above.

Item 86 – Subsection 6(6) (definition of *this Act*)

Item 86 substitutes a new definition of 'this Act' for the purposes of section 6 of the Consumer Protection Act. The amended definition omits the reference to the TUSMA Act, consequential to the repeal of that Act. The intended operation of the amendment made by this item is similar to the intended operation of the amendment made by item 18, above.

Item 87 – Section 6A

Item 87 repeals section 6A of the Consumer Protection Act. Section 6A was introduced into the Consumer Protection Act as part of a series of reforms to the universal service regime in 2010. It was intended to enable a primary universal service provider to clearly delineate between those services it provides in fulfilment of the universal service obligation and its other standard telephone service offerings. The provision is considered not to be sufficiently technology neutral. If specifications are required in relation to the standard telephone service and its application, it is considered that such specifications are better addressed through legislative instrument.

Item 88 – Part 2 (heading)

Item 88 repeals the heading to Part 2 of the Consumer Protection Act ('Universal Service Regime') and substitutes a new heading ('Public interest telecommunications services').

It is the payment for these services that industry contributes to by way of the industry levy. The universal service obligation is one of the public interest telecommunication services and continues to be provided for in Division 2 of Part 2 of the Consumer Protection Act.

Item 89 – Section 8

Item 89 amends the simplified outline of Part 2 of the Consumer Protection Act. It reflects that Part 2 is no longer solely about the universal service regime and the now redundant universal service levy. With the proposed repeal of the TUSMA Act, the policy objectives in respect to the public interest telecommunications services are proposed to be moved into Part 2 of the Consumer Protection Act. It will become the responsibility of the Secretary of the Department to enter into contracts and make grants to support the provision of these services. The regime for the assessment and collection of the industry levy will also move from the TUSMA Act into Part 2 of the Consumer Protection Act. Part 2 will continue to enable the universal service regime to be phased out and replaced by alternative contractual arrangements.

Item 90 – Sections 8A, 8B, 8C, 8D, 8E, 8F, 8G and 8H

At the same time that TUSMA was established, the *Telecommunications Legislation Amendment (Universal Service Reform) Act 2012* introduced a framework into the Consumer Protection Act which enables the Minister to permit universal service regulatory obligations to be progressively lifted from the current universal service provider, subject to a number of preconditions being met in relation to the universal service provider's contractual and regulatory compliance and performance. The Bill makes a number of changes to the Consumer Protection Act, which are intended to streamline the universal service regime provisions, remove redundant or outdated provisions, and reflect the potential move to a contracting model.

Item 90 repeals sections 8A, 8B, 8C, 8D, 8E, 8F, 8G and 8H of the Consumer Protection Act.

Section 8A sets out the objects of Part 2 of the Consumer Protection Act. The provision is no longer necessary now that the policy objectives for public interest telecommunications service contracts and grants will be included in new section 13.

Section 8B sets out a special meaning for 'Australia' as that term appears in Part 2. In view of the amendments made by this Bill, this section is no longer required. As a result, the term 'Australia' will have the same meaning in the Consumer Protection Act as it has in the Telecommunications Act (as a result of subsection 5(1) of the Consumer Protection Act).

Section 8C defines 'service area'. The repeal of this section is consequential to the repeal of section 8H and sections 9G to 9J of the Consumer Protection Act. The Bill

proposes no longer to differentiate between universal service areas, and instead makes it the responsibility of the primary universal service provider to fulfil the service obligations to all people in Australia.

Section 8D defines 'claim period'. This term is redundant since it was relevant to the universal service levy which has been phased out and replaced by the current industry levy.

Section 8E defines 'alternative telecommunication services'. The repeal of this section is consequential to the proposed repeal of sections 14 and 14A of the Consumer Protection Act (see item 123, below). Those sections enable the Minister to determine alternative arrangements for fulfilling the universal service obligation. No such determination has been made to date and this mechanism is considered unnecessary in the streamlined universal service regime.

Section 8F defines 'approved auditor'. Section 94 of the TUSMA Act currently requires an eligible revenue return to be accompanied by an audit report from an approved auditor (this forms part of the overall levy assessment processes). This requirement is considered unnecessary, having regard to other reporting requirements of 'participating persons' that exist under the Consumer Protection Act. As part of the deregulation agenda, it is not proposed to replicate section 94 of the TUSMA Act in the Consumer Protection Act, which means section 8F is no longer required.

Section 8G defines 'disability'. With the proposed repeal of sections 12K and 13J (see items 77 and 78 of Schedule 2 to the Omnibus Repeal Day (Autumn 2014) Bill 2014), this definition is only relevant for section 9E of the Consumer Protection Act. Item 95 (see below) inserts the definition of 'disability' at the end of section 9E.

Section 8H was introduced as part of the package of legislative measures in 2011 to enable the Minister to progressively lift the regulatory universal service obligations and transition to a more flexible model based on contracts/grants with service providers. If the Minister declares that there are satisfactory alternative contractual arrangements relating to standard telephone services under section 8J, the Minister is able to commence the progressive removal of the regulation through the declaration of 'designated STS areas' in accordance with section 8H. The universal service obligation for standard telephone services would cease to apply in the designated STS areas.

From the time of a declaration of satisfactory contractual arrangements under section 8J, the current arrangements in section 8H would involve the Minister needing to make and publish a series of written declarations no less than every six months relating to either fibre or non-fibre designated STS areas. Accordingly, it is appropriate section 8H is repealed and replaced with a simpler and less administratively complex mechanism.

The repeal of section 8H means that, like the current process with payphones, there will be no gradual removal of the regulatory universal service obligation for standard telephone services; rather, the obligation will cease immediately once a declaration under section 8K has been made and not disallowed (see item 91, below).

Item 91 – Sections 8J and 8K

Item 91 repeals existing sections 8J and 8K of the Consumer Protection Act and substitutes new provisions.

Sections 8J and 8K as currently in force set out the processes by which the Minister is required to make declarations as to whether there are satisfactory alternative contractual arrangements relating to standard telephone services and payphones, respectively. These sections oblige the Minister to determine whether or not Telstra has fulfilled specified pre-conditions, the effect of which is to remove the universal service obligation relating to standard telephone services and/or payphones under the Consumer Protection Act.

While new provisions are proposed to be substituted for sections 8J and 8K, in substance, the processes set out in those provisions remain the same. The amendments to sections 8J and 8K are summarised as follows.

First, in contrast to the current arrangements under sections 8J and 8K (which provide for the Minister to make an initial declaration and up to two subsequent declarations), the proposed the amendments remove the need for a 'second declaration deferral period'. However, despite the amendments, the Minister will still have had the opportunity to make three declarations in total. This is partially due to the fact that the Minister has already made a declaration under each of paragraphs 8J(1)(d) and 8K(1)(d) to declare a 'first declaration deferral period' (the *Telecommunications Universal Service Obligation (First Declaration Deferral Period) Declaration 2014*). The practical effect of that declaration is that it defers for a period of time the decision whether or not to lift the regulatory universal service obligations.

Second, the amendments vary the time by when the Minister must make a declaration. Sections 8J and 8K currently require a declaration to be made within a period (in the case of the first declaration) beginning 18 months and ending 23 months after the commencement of the respective provisions. The proposed amendments will enable the Minister to make the relevant declarations anytime within the period of two years after commencement of the amendments to the sections. Similar to the current process, if the Minister declares a 'declaration deferral period' (or if no declaration is made such a declaration is deemed to have been made), the Minister will have a further two year period in which to declare that there are, or there are not, satisfactory alternative contractual arrangements relating to standard telephone services or payphones.

The substantive criteria for the Minister to have regard to in determining if there are satisfactory alternative contractual arrangements remain in effect unchanged. The only difference is replacing reference to a contract entered into under the TUSMA Act with the proposed parallel provision in the Consumer Protection Act.

The criteria the Minister is required to have regard to under subsections 8J(4) and 8K(4) are not intended to limit the matters to which the Minister may have regard in making a declaration (see proposed subsections 8J(6) and 8K(6)). The Minister must also obtain advice from the ACMA (regarding regulatory compliance) and the Secretary of the Department (regarding contractual compliance) before making the

declaration (paragraphs 8J(4)(f) and 8K(4)(f)). Given the abolition of TUSMA and the transfer of its functions to the Department, the Minister will need to seek advice regarding contractual compliance from the Secretary of the Department (as opposed to the current arrangement of seeking such advice from TUSMA) before making the declaration.

Declarations by the Minister under proposed sections 8J and 8K are legislative instruments and will be subject to disallowance, but they cannot otherwise be varied or revoked. Since these declarations are a trigger for the removal or not of the regulatory universal service obligations, it is important that there be certainty regarding the validity of the declarations.

Item 92 – Paragraph 9(1)(a)
Item 93 – Subsection 9(2)

Items 92 and 93 omit references to '(other than people in designated STS areas)' in subsections 9(1) and 9(2) of the Consumer Protection Act. These amendments are consequential to the proposed repeal of section 8H of the Consumer Protection Act (see item 90, above).

Item 94 – After subsection 9(2A)

Item 94 inserts new subsection 9(2AAA) into the Consumer Protection Act. This provision is equivalent to existing subsection 9(2AA) of the Consumer Protection Act, except that it will apply to standard telephone services rather than payphones. This item is related to the proposed repeal of section 8H (see item 90, above). The effect of proposed subsection 9(2AAA) is that the regulated obligation to supply and ensure that standard telephone services are reasonably accessible will cease to apply to all people in Australia the day after a declaration under proposed section 8J that there are satisfactory alternative contractual arrangements relating to standard telephone services comes into force (see item 91, above).

Item 95 – At the end of section 9E

Item 95 inserts new subsections 9E(3) and (4) into the Consumer Protection Act.

Section 9E is an interpretive provision that sets out what is included in a reference to the 'supply' of a standard telephone service for the purposes of the USO. Consistent with the standard telephone service USO, proposed subsection 9E(3) clarifies that 'supply', in relation to customer equipment or other goods, includes supply by way of hire (see subsection 9(6) of the Consumer Protection Act). Proposed subsection 9E(4) in effect replaces section 8G of the Consumer Protection Act (see item 90, above) and provides that, for the purposes of the section, 'disability' has the same meaning as in the *Disability Discrimination Act 1992*.

Item 96 – Subdivision B of Division 2 of Part 2

Item 96 repeals Subdivision B of Division 2 of Part 2 of the Consumer Protection Act, which provides for the Minister to determine universal service areas in respect of the USO. As part of streamlining the universal service regime, it is proposed no longer to

provide for different universal service areas. In accordance with current arrangements, it will be the responsibility of the primary universal service provider to fulfil the service obligations in respect of all people in Australia.

Item 97 – Division 4 of Part 2

Item 97 repeals Division 4 of Part 2 of the Consumer Protection Act, which provides for certain arrangements for fulfilling the USO when there are multiple universal service areas and universal service providers. As part of streamlining the universal service regime, it is proposed to no longer provide for these regulated contestability arrangements. In accordance with current arrangements, it will be the responsibility of the primary universal service provider to fulfil the service obligations in respect of all people in Australia.

Item 98 – Division 5 of Part 2 (heading)

Item 98 repeals the heading for Division 5 of Part 2 of the Consumer Protection Act, as a consequence of streamlining the universal service regime.

Item 99 – Subdivision A of Division 5 of Part 2

Item 99 repeals Subdivision A of Division 5 of Part 2 of the Consumer Protection Act, which provides for default arrangements for fulfilling the USO. As part of streamlining the universal service regime, such default arrangements will no longer be necessary.

Item 100 – Subdivision B of Division 5 of Part 2 (heading)
Item 101 – Before section 12A

Item 100 repeals the heading of Subdivision B of Division 5 of Part 2 of the Consumer Protection Act. Item 101 inserts a new heading before section 12A of the Consumer Protection Act in respect of new Subdivision B of Division 2 of Part 2.

Item 102 – Subsection 12A(1)
Item 103 – Paragraph 12A(2)(a)
Item 104 – Paragraph 12A(2)(b)
Item 105 – Subsection 12A(3)

Items 102, 103, 104 and 105 omit various references to ‘universal service area’ from section 12A of the Consumer Protection Act as a consequence of the proposed repeal of that concept (see item 96, above).

Item 106 – Section 12A (note)
Item 107 – Section 12A (note)

Items 106 and 107 remove references to section 12E and subsection 12E(6), respectively, from the note to section 12A of the Consumer Protection Act, as a consequence of the proposed repeal of section 12E (see item 114, below).

Item 108 – Subsection 12B(1)
Item 109 – Subsection 12B(3)
Item 110 – Subsection 12B(5)

Items 108, 109 and 110 amend section 12B of the Consumer Protection Act to remove the requirement for a determination made under section 12A to be published in the *Gazette*, and make consequential amendments. As a determination made under section 12A is a legislative instrument, any such determination would be registered and available on the Federal Register of Legislative Instruments. This amendment is to modernise publishing requirements.

Item 111 – Section 12C
Item 112 – Section 12C

These items omit various references to the concept of 'universal service area' from section 12C of the Consumer Protection Act as a consequence of the proposed repeal of that concept (see item 96, above).

Item 113 – Section 12D

Item 113 substitutes a new section 12D into the Consumer Protection Act. Under section 12D, the Minister is taken to have made a declaration under section 12A that Telstra is the primary universal service provider for relevant universal service areas, subject to the provisions of that section. The new section 12D streamlines the existing provision, and also reflects the removal of the concept of 'universal service area' (see item 96, above).

Item 114 – Sections 12E and 12EA

Item 114 repeals sections 12E and 12EA and substitutes a new section 12E into the Consumer Protection Act. Current sections 12E and 12EA are redundant as a consequence of the proposed repeal of the concept of 'universal service area' (see item 96, above).

New section 12E largely replicates current section 11B of the Consumer Protection Act (to be repealed by item 97, above), but in a more streamlined form, and removes the concept of 'universal service area'. This section sets out the circumstances in which a former universal service provider ('former provider') may be required to provide information to a current universal service provider ('current provider').

Item 115 – Subdivision BA of Division 5 of Part 2 (heading)
Item 116 – Before section 12EB

Item 115 repeals the heading of Subdivision BA of Division 5 of Part 2 of the Consumer Protection Act. Item 116 inserts a new heading before section 12EB of the Consumer Protection Act in respect of New Subdivision C of Division 2 of Part 2.

Item 117 – Section 12EB (heading)

This item substitutes a new heading for section 12EB of the Consumer Protection Act.

Item 118 – Subsection 12EB(6) (note)

Item 118 repeals the note to subsection 12EB(6) as a consequence of the repeal of section 6A of the Consumer Protection Act (see item 87, above).

Item 119 – Section 12EC (heading)
Item 120 – Subdivision BB of Division 5 of Part 2 (heading)
Item 121 – Section 12ED (heading)
Item 122 – Section 12EE (heading)

Items 119 to 122 repeal the headings for section 12EC, Subdivision BB of Division 5 of Part 2, section 12ED and section 12EE of the Consumer Protection Act, respectively. In addition, items 119, 121 and 122 substitute new headings for sections 12EC, 12ED and 12EE, respectively, as a consequence of the USO performance standards and benchmarks for both standard telephone services and payphones being co-located in new Subdivision C of Division 2 of Part 2 of the Consumer Protection Act.

Item 123 – Divisions 7 to 16 of Part 2

Item 123 repeals Divisions 7, 9, 11, 13, 14, 15 and 16 of Part 2 of the Consumer Protection Act (Divisions 8, 10 and 12 were previously repealed) and substitutes new Divisions 3 to 7 of Part 2 of the Consumer Protection Act. These new Divisions of Part 2 of the Consumer Protection Act are largely based on provisions of the TUSMA Act, which are being transferred (with appropriate amendments) to the Consumer Protection Act as a consequence of the abolition of TUSMA and the repeal of the TUSMA Act.

New Division 3—Public interest telecommunications service contracts and grants

New Division 3 provides the new arrangements for the delivery of public interest telecommunications services, with the Secretary of the Department taking over responsibility from TUSMA for the management of contracts and grants entered into for the delivery of such services.

New Subdivision A—Policy objectives

New section 13 – Policy objectives

New section 13 sets out the policy objectives of new Division 3 of Part 2 of the Consumer Protection Act. Under new section 14, the Secretary may enter into a contract, or make a grant of financial assistance, if that contract or grant is for a purpose relating to the achievement of one or more of the policy objectives set out in paragraphs (a) to (k) of new subsection 13(1).

Standard telephone services and payphones

The policy objectives in new paragraphs 13(1)(a) and (b) set out the fundamental principles that standard telephone services and payphones be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on

business, that standard telephone services be supplied to people in Australia on request, and that payphones be supplied, installed and maintained in Australia. Definitions of the terms 'standard telephone service' and 'payphones' are contained in, respectively, sections 6 and 9C of the Consumer Protection Act. These two objectives are the same as the broad objectives of the USO established in section 9 of the Consumer Protection Act. Following the Minister declaring that there are satisfactory alternative contractual arrangements relating to standard telephone services or payphones under proposed sections 8J or 8K, respectively (see item 91, above), it is intended that the policy objectives in paragraphs (a) and (b) of this section ensure that the contracts and grants under new section 14 do not alter in substance the scope of the USO currently imposed on the universal service provider. The removal of legislated obligations with respect to the provision of standard telephone services and payphones (e.g. the shift from obligations being directly imposed on a service provider to a model whereby service providers provide services under contracts or grants) is not intended to diminish the safeguard that the USO has so far provided with respect to these important telecommunications services.

New subparagraph 13(1)(a)(ii) requires that the supply of a standard telephone service be 'on request', as it is not considered appropriate for a contractor to supply standard telephone services to a customer that does not want those services. This policy objective reflects the obligations in subsections 9(1), (2) and (2A) of the Consumer Protection Act.

Emergency call service

It is a policy objective under new paragraph 13(1)(c) that end-users of standard telephone services in Australia are to have access, free of charge, to an emergency call service. The wording of this policy objective is essentially the same as the emergency call service objective that the ACMA must have regard to under subsection 147(2) of the Consumer Protection Act, as it is intended that there will be no change to the nature of the emergency call service obligation.

Telstra is currently the regulated Emergency Call Person (ECP) as set out in the *Telecommunications (Emergency Call Persons) Determination 1999*. The service is further regulated by provisions in the Telecommunications Act, the Consumer Protection Act and the *Telecommunications (Emergency Call Service) Determination 2009* (the ECS Determination). Under the ECS Determination, carriers and carriage service providers are required to give end-users access to the emergency call service operated by the ECP and provide this service free of charge. Telstra as the ECP must not charge an emergency service organisation, directly or indirectly, for receiving and handling calls to an emergency service number, transferring such calls to an emergency service organisation, or giving information in relation to an emergency service organisation. Given this regulated framework, contracts or grants entered into by the Secretary under new section 14 are expected to relate primarily to supporting activities required to be undertaken by the ECP.

Pursuant to the Government's agreement with Telstra announced on 23 June 2011 (which under new section 22 will be taken to have been entered into by the Secretary under new section 14), it is intended that Telstra will continue to be the ECP. Consequently, Telstra will be funded to continue to operate and maintain the

technology platforms and systems required to receive calls to the emergency call numbers 000 and 112, and to transfer calls to the relevant State or Territory emergency service organisation. Under the agreement with Telstra, however, the provision of emergency call handling services will be put to tender in 2016. In the event that no tenders are acceptable, Telstra will remain the ECP.

Any emergency call service provider that is a contractor or grant recipient under the Consumer Protection Act, as amended by the Bill, whether that provider is Telstra or not, will continue to be subject to the emergency call regulatory obligations set out in Part 8 of the Consumer Protection Act.

National Relay Service

It is a policy objective under new paragraph 13(1)(d) that the NRS be reasonably accessible to all persons in Australia who are deaf, or who have a hearing and/or speech impairment, wherever they reside or carry on business. This policy objective replicates the objective currently contained in paragraph 11(d) of the TUSMA Act.

In mid-2013, TUSMA, on behalf of the Commonwealth, entered into new contracts for provision of the NRS. The current relay service contract is managed by Australian Communication Exchange Limited, with WestWood Spice managing the outreach services for the NRS. These existing NRS contracts entered into under the TUSMA Act will be taken to have been entered into by the Secretary pursuant to new section 22.

Despite the transfer of management of NRS contracts from TUSMA to the Secretary, there is no change to the nature of the obligation to provide an NRS.

Programs and measures to facilitate the transition to the national broadband network

It is a policy objective under new paragraph 13(1)(e) that various measures, set out in that paragraph, be in place to support the continuity of supply of carriage services during the transition to the NBN. The relevant measures are customer information programs, customer cabling installation programs, carriage service development programs, and such other measures as are specified in regulations made under the Consumer Protection Act.

In order to achieve this policy objective, the Secretary may enter into contracts or make grants under new section 14 to put such measures in place. This policy objective replicates the objective currently contained in paragraph 11(e) of the TUSMA Act.

The intention underlying this policy objective is to ensure that the Secretary will be able to provide assistance related to the migration of public interest services currently reliant on the existing copper-based network to the NBN, thereby providing a safety net for the continued operation of these services. Such support could include arrangements to meet cabling installation costs that will enable customers to be connected to the NBN, or the provision of information to customers regarding their service options and the processes involved in migrating to the NBN. This policy objective is also intended to ensure that contracts and grants can be made that relate to

research into technological solutions to facilitate the carriage of services to support, for example, traffic lights and public alarms over alternative networks.

To ensure that there is flexibility in allowing for the continued operation of other carriage services, the regulations may specify other measures to support the continuity of supply of carriage services during the transition to the NBN.

TUSMA, on behalf of the Commonwealth, has entered into contracts for the provision of customer information services and internal cabling for eligible voice-only customers to assist customers with their migration from the copper network to the NBN fibre-to-the-premises network. These existing contracts entered into under the TUSMA Act will be taken to have been entered into by the Secretary pursuant to new section 22.

Telecommunications services outside standard zones

It is a policy objective under new paragraphs 13(1)(f) and (g) that all persons in Australia outside a standard zone have access to untimed calls on a basis that is comparable to the access provided to persons in standard zones for:

- voice calls made using a standard telephone service or using a payphone; and
- data calls made to an internet service provider using a data network access number.

A 'standard zone' has the same meaning as given in section 108 of the Consumer Protection Act.

A data network access number is a number used for accessing what is commonly known as a dial-up internet service.

These policy objectives replicate the objective currently contained in subsection 4(1) of the TUSMA Regulation.

Since 2001, the Commonwealth has contracted with Telstra for the provision of untimed local calls to customers outside of the standard zones (commonly referred to as the 'extended zones'). TUSMA took over management of this contract as of the 2012-13 financial year. This existing contract will be taken to have been entered into by the Secretary pursuant to new section 22.

SMS relay service

It is a policy objective under new paragraph 13(1)(h) that an SMS relay service be reasonably accessible to all persons in Australia who are deaf, or have a hearing and/or speech impairment.

This policy objective replicates the objective currently contained in subsection 4(2) of the TUSMA Regulation and complements the NRS policy objective in new paragraph 13(1)(d). Figure 1 illustrates the basic operation of an SMS relay service.

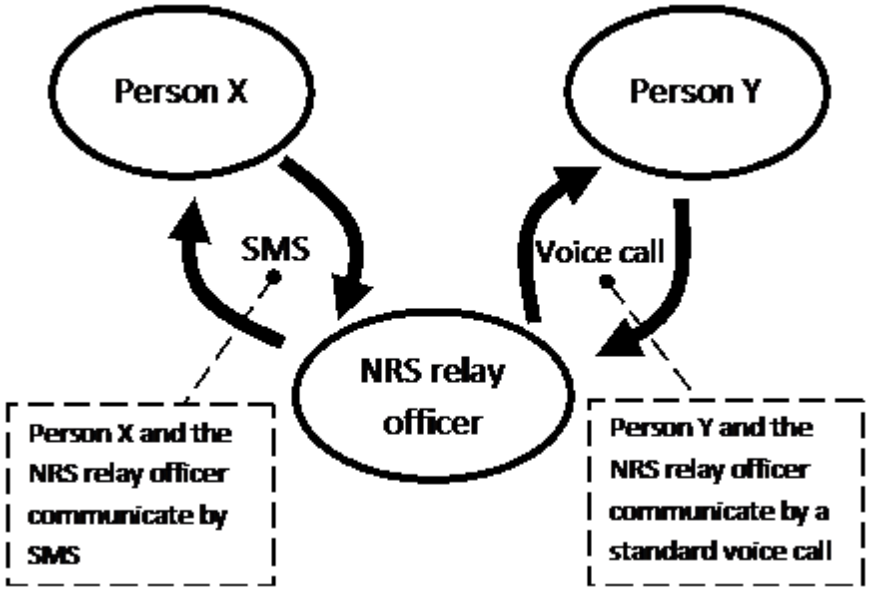


Figure 1: *A conversation between Person X (a person who is deaf, or has a hearing and/or speech impairment) and Person Y using the SMS relay service. A call made using the SMS relay service can be initiated by either Person X or Person Y.*

This service is currently delivered under the existing relay services contract for the NRS, which will be taken to have been entered into by the Secretary pursuant to new section 22.

Video relay service

It is a policy objective under new paragraph 13(1)(i) that a video relay service be reasonably accessible to all persons in Australia who communicate in Auslan.

This service is intended to be specifically available to people who are deaf, or have a hearing and/or speech impairment, and communicate in Auslan (see the definition of 'video relay service' at item 84, above).

This policy objective replicates the objective currently contained in subsection 4(3) of the TUSMA Regulation and complements the NRS policy objective in new paragraph 13(1)(d). Figure 2 illustrates the basic operation of a video relay service.

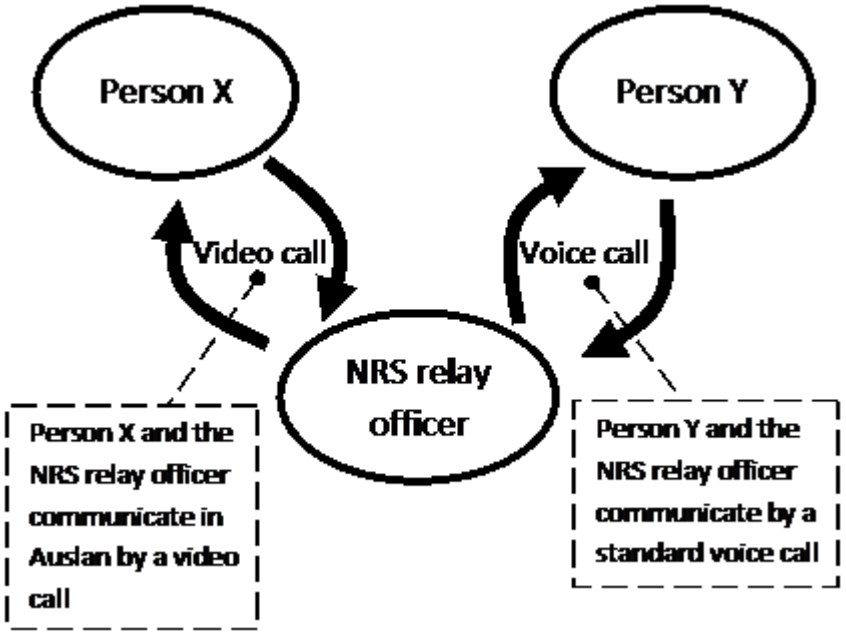


Figure 2: *A conversation between Person X (a person who is deaf, or has a hearing and/or speech impairment, and communicates in Auslan) and Person Y using the video relay service. A call made using the video relay service can be initiated by either Person X or Person Y.*

This service is currently delivered under the existing relay services contract for the NRS, which will be taken to have been entered into by the Secretary pursuant to new section 22.

Software application for NRS users to access emergency call services

It is a policy objective under new paragraph 13(1)(j) that a software application be reasonably available to assist all users of the NRS in communication with emergency call services.

This policy objective replicates the objective currently contained in subsection 4(4) of the TUSMA Regulation and complements the NRS policy objective in new paragraph 13(1)(d).

This service is currently delivered under the existing relay services contract for the NRS, which will be taken to have been entered into by the Secretary pursuant to new section 22.

Other measures

New paragraph 13(1)(k) allows for the regulations to specify other policy objectives in addition to those provided for in paragraphs (a) to (j), providing that those objectives relate to the supply of carriage services. The rollout of the NBN will be a dynamic process that may require the Secretary to enter into contracts or to grant financial assistance in a way that is not otherwise dealt with in new section 13. For example, a contract might relate to providing information to carriage service customers about any changes to the operation of their carriage service, or to preserving the public's reasonable access to public interest telecommunications services.

The Government is mindful that any increase in policy objectives may result in an increase to a participating person's levy contributions. Consequently, any additional policy objectives will be restricted to those 'relating to the supply of carriage services', thereby limiting the scope of new policy objectives. Furthermore, requiring any additional policy objectives to be prescribed in regulations will ensure that such objectives will be subject to consultation, parliamentary scrutiny and possible disallowance in accordance with standard requirements under the *Legislative Instruments Act 2003*.

New Subdivision B—Contracts and grants

New section 14 – Contracts and grants

New section 14 of the Consumer Protection Act enables the Secretary to enter into a contract or make a grant of financial assistance for a purpose relating to the achievement or one or more of the policy objectives set out in, or prescribed under, new section 13. Under new section 22, existing contracts with Telstra and other providers for the provision of such services will be taken to have been entered into under new section 14.

Subsection 14(2) provides that if the Secretary enters into a contract with a person under subsection 14(1), the person is a 'contractor' for the purposes of the Consumer Protection Act, as amended by the Bill. Subsection (3) provides that, where a grant of financial assistance is made to a person under subsection (1), that person will be a 'grant recipient'.

The terms 'contract' and 'grant recipient' for the purposes of new section 14 have their ordinary meaning.

New section 15 – Terms and conditions of grants

New subsections 15(1) and (2) of the Consumer Protection Act require that terms and conditions on which financial assistance is granted by the Secretary under new section 14 to be set out in a written agreement between the Commonwealth and the grant recipient. Any such agreement would be entered into by the Secretary on behalf of the Commonwealth (new subsection 15(3)).

New subsection 15(4) provides that the requirement to set out the terms and conditions of grants of financial assistance as written agreements does not apply with respect to the condition under section 16.

New section 16 – Condition about compliance with Ministerial determination

New subsection 16(1) provides a condition of a contract entered into, or a grant made, under section 14. That condition is that the contractor or grant recipient must comply with a determination under new subsection 16(2). This condition only applies in so far as the determination applies to the contract or grant.

New subsection 16(2) of the Consumer Protection Act provides the Minister with the power to make, by legislative instrument, determinations that set out standards, rules

and minimum benchmarks to apply in relation to contracts entered into or grants made under new section 14 of the Consumer Protection Act. The power set out in new section 16 is framed broadly to require contractors and grant recipients to comply with standards, rules or benchmarks set out in an instrument made under this provision. For example, requirements that are set out in legislative instruments made under the Consumer Protection Act relating to payphones and the requirements and circumstances under which the USO does not apply, would be reproduced as standards, rules or benchmarks in determinations made under new section 16. In the absence of such a power, for example, following the removal of the payphones USO obligation from Telstra (after the making of a declaration under new section 8K of the Consumer Protection Act (see item 91, above)), Telstra would not be required to meet standards and benchmarks, in relation to its payphones USO, if they have not been detailed in a section 14 contract.

Consistent with the current arrangements under the TUSMA Act, in addition to public law remedies, Ministerial determinations will be enforceable through contract law, and variations to contractors' service responsibilities may give rise to changes in the payment made by the Secretary.

Under new subsection 16(3), a Ministerial determination may apply generally or be of limited application as provided for in the determination. However, that does not limit the effect of subsection 33(3A) of the *Acts Interpretation Act 1901*, which provides that where a power to make an instrument is, like a determination under subsection 16(2), conferred with respect to specified matters, that power includes the power with respect to only some of the matters set out in relation to that power. Consequently, a Ministerial determination does not need to set out all the standards, rules and benchmarks potentially applying to contractors or grant recipients, and may deal specifically with, for example, the matter of payphones performance standards only.

Despite this, new section 17 provides that some contracts are exempt from a determination made under subsection 16(2) (see below).

Examples of the type of determinations that may be made under new subsection 16(2) are set out below. These examples are intended to be illustrative only, and should not be taken to be an exhaustive list of the type of determinations that may be made, or to otherwise limit subsection 16(2).

For example, Ministerial determinations that may be made under subsection 16(2) include:

- performance standards or minimum performance benchmarks in relation to:
  - the supply of standard telephone services, payphones, the emergency call service, the NRS or services complementary to NRS (other than for designated transitional contracts (see new section 17)); or
  - the characteristics of such services; or
- rules concerning the requirements for customer equipment used for supplying a standard telephone service; or

- rules about the location or removal of payphones, including rules concerning public consultation and complaint resolution processes; or
- rules in relation to the standard telephone service concerning interim and alternative services and priority services; or
- rules in relation to the provision of information or documents to the Secretary of the Department, including the making of copies of documents, where the information or documents are relevant to a contract or grant under new section 14; or
- rules in relation to the keeping and retention of records relevant to a contract or grant under new section 14.

The requirement to comply with Ministerial determinations made under new subsection 16(2) will not limit the terms and conditions of a contract entered into under new section 14, or the terms and conditions that may be included in an agreement to provide a grant of financial assistance under new section 15.

Exceptions to compliance with Ministerial determinations

Where there is an inconsistency between a Ministerial determination and an existing term or condition in a contract or grant agreement, the existing term or condition will have no effect to the extent of that inconsistency (new subsection 16(6)). New subsections 16(7) to 16(10) set out exceptions to this rule.

First, a determination will have no effect to the extent that it overrides a term or condition of a contract entered into under new section 14 or set out in an agreement under new section 15 that gives the contractor or grant recipient the right to adjust the amount payable under that agreement as a result of a change in the services, facilities or customer equipment to be supplied pursuant to the contract or grant. This exception is intended to clarify that the power to make standards, rules or minimum benchmarks does not include the power to take away any negotiated right for payment in relation to a change in the scope of the contract or grant; this will include where the same services are required to be supplied at a different standard, as well as where new services are required. If such a clause is included in a contract or agreement, it is a contractual matter between the parties whether or not the Commonwealth may have to pay for any increase in respect of a change to the scope of the services to be provided under the contract or agreement (new subsections 16(7) and 16(9)).

Second, a determination will have no effect to the extent that it specifies the price of any services, facilities or customer equipment to be supplied under a contract entered into or grant made under new section 14, or the method of ascertaining such a price. This exception clarifies that the power to make a Ministerial determination under new subsection 16(2) is not intended to be exercised as a power to set price controls with respect to contracts or agreements for public interest telecommunications services, or to override existing negotiated service prices previously agreed to by the Commonwealth with respect to contracts entered into or grants made under new section 14. It is a matter between the Secretary, on behalf of the Commonwealth, and each prospective contractor or grant recipient to agree on the price for services, facilities or customer equipment.

See also item 162 (compensation for acquisition of property), below.

New section 17 – Exemption of designated transitional contracts from Ministerial determination

New section 17 of the Consumer Protection Act exempts certain contracts from any determination made by the Minister under new subsection 16(2) and transfers an existing provision from the TUSMA Act.

A contract is exempted under this section if it:

- is in force as at the commencement of new section 17;
- was entered into before 1 July 2012; and
- was a 'designated transitional contract' within the meaning of the TUSMA Act.

In effect, new section 17 applies in respect of those parts only of the agreement between the Commonwealth and Telstra, announced on 23 June 2011 (Telstra Agreement), that relate to achievement of the policy objectives in:

- new paragraph 13(1)(c) regarding the emergency call service; and
- new paragraph 13(1)(e) regarding specified programs necessary to support the continuity of the supply of carriage services during the transition to the NBN.

New section 18 – Secretary has powers etc. of the Commonwealth

New section 18 of the Consumer Protection Act provides that the Secretary, on behalf of the Commonwealth, has all the rights, responsibilities, duties and power of the Commonwealth relating to the Commonwealth's capacity as a party to a contract or the grantor of a grant under new section 14.

An amount payable by the Commonwealth under a section 14 contract or grant is to be paid by the Secretary on behalf of the Commonwealth. An amount payable to the Commonwealth under a section 14 contract, or by way of a repayment of the whole or part of a section 14 grant, is to be paid to the Secretary on behalf of the Commonwealth. New paragraph 18(2)(e) makes clear that the Secretary may commence any action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a section 14 contract or grant, for example, an action to seek repayment of money paid to a grant recipient.

New section 19 – Conferral of powers on the Secretary

New section 19 of the Consumer Protection Act provides that the Secretary, on behalf of the Commonwealth, may exercise any power conferred on the Secretary by a contract entered into, or a grant, under new section 14.

New section 20 – Monitoring of performance

For transparency and accountability purposes, and in recognition of the public interest nature of the services provided under section 14 contracts and grants, new subsection

20(1) requires that the Secretary monitor and report on all significant matters relating to the performance of contractors and grant recipients each financial year. The report prepared by the Secretary under new section 20 must be included in the annual report prepared by the Secretary and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013*.

New subsection 20(2) requires that the report set out details of the following matters:

- the adequacy of each contractor's or grant recipient's compliance with the terms and conditions of a section 14 contract or grant (as the case may be);
- any notice of breach by a contractor or grant recipient with the terms and conditions of a section 14 contract or grant (as the case may be);
- any remedial action taken by the Secretary during that year in response to such a breach; and
- the result of any such remedial action.

Subsection (3) ensures that the requirement to include the above matters in the report does not prevent the Secretary from including other matters relating to the performance of contractors and grant recipients in the report.

New section 21 – Executive power of the Commonwealth

New section 21 of the Consumer Protection Act clarifies that new Division 3 of Part 2 of the Consumer Protection Act does not, by implication, limit the executive power of the Commonwealth.

New section 22 – Transitional—pre-commencement contracts

New section 22 of the Consumer Protection Act sets out the transitional arrangements applying to contracts that have been entered into by the Commonwealth with Telstra and other organisations prior to the commencement of this section. This section applies to a contract if:

- the contract is in force as at the commencement of new section 22; and
- the contract either was, or had effect as if it was, entered into under section 13 of the TUSMA Act, for the purpose of achieving a particular policy objective under that Act.

Under new section 22, the Consumer Protection Act, and any other law of the Commonwealth, will have effect as if the contract had been entered into under new section 14, for a purpose relating to the achievement of the corresponding policy objective under the Consumer Protection Act.

It is intended that these transitional provisions will apply in particular:

- to an agreement between the Commonwealth and Telstra for the provision of standard telephone services, payphones, an emergency call service, voice-only customer migration to support the transition of fixed-line voice telephone services to the NBN network, and untimed local calls in extended zones;

- in relation to the provision of the NRS, and services complementary to the NRS:
  - a relay service contract with Australian Communication Exchange Limited; and
  - an outreach service contract with WestWood Spice; and
- to any contracts entered into with any persons before commencement new section 22 relating to the achievement of the policy objective that there are to be such customer information, customer cabling installation and carriage service development programs that are necessary to support the continuity of the supply of carriage services during the transition to the NBN.

The purposes of this transitional provision are threefold. First, it enables the Secretary to manage the contracts and exercise any of the Secretary's functions and powers in relation to the contracts. Second, since the transitional contracts will be deemed to be section 14 contracts, this will mean that it will be a condition of these contracts that the contractor must comply with any relevant Ministerial determinations made under new section 16. Third, since each of these contracts are substantive agreements relating to the delivery of public interest telecommunication services, the provisions ensure that the transparency and accountability requirements introduced by the Bill, for example, the requirement for the Secretary to monitor and report to the Minister on the performance of contractors, will apply to these pre-commencement contracts.

Contracts that fall within the exemption for designated transitional contracts under new section 17 will be exempt from a Ministerial determination made under new section 16. However, such a contract will only have this status so far as it relates to an emergency call service and/or specific programs necessary to support the continuity of supply of carriage services during the transition to the NBN. The agreement with Telstra described above, for instance, will not fall within the new section 17 exemption so far as the contract relates to the supply of standard telephone services or to the supply, installation and maintenance of payphones.

New Division 4—Disclosure of information

New Subdivision A—Access to information or documents held by a carriage service provider

New Subdivision A of Division 4 of Part 2 of the Consumer Protection Act enables the Secretary to require a carriage service provider to give, or produce, to the Secretary information and documents relevant to the achievement of the policy objective set out in new paragraph 13(1)(e) – that is, specific programs (and any other measures specified in regulations) as are necessary to support the continuity of supply of carriage services during the transition to the NBN.

The scope of the provisions in this subdivision is intended to be broader than the equivalent provisions in Division 4A of the TUSMA Act, which only relate to a subset of the policy objective in paragraph 11(e) of the TUSMA Act termed the 'voice customer migration policy objective'. The provisions in new Subdivision A of Division 4 of the Consumer Protection Act are intended to apply more generally to the

transition to the NBN and so enable information or documents to be obtained in relation to broadband services and not just in relation to voice migration.

New section 23 – Access to information of documents held by a carriage service provider

New section 23 of the Consumer Protection Act applies to a carriage service provider if the Secretary believes on reasonable grounds that the carriage service provider has information or documents relevant to the achievement of the policy objective set out in new paragraph 13(1)(e).

New subsection 23(2) enables the Secretary to give written notice to a carriage service provider to which new section 23 applies, requiring it to give the Secretary any such information or documents within the period and in the manner and form specified in that notice. New paragraph 23(2)(c) provides that the Secretary is able, through such a notice, to require the carriage service provider to make copies of any such documents and to produce those copies to the Secretary. New subsection 23(3) provides that for the purposes of the section, the period specified in the notice must not be less than 14 days after the notice is given.

A carriage service provider must comply with a requirement to provide information or documents to the extent that it is capable of doing so (new subsection 23(4)). A carriage service provider will commit an offence if the Secretary has given a notice to the carriage service provider under new subsection 23(2) and it subsequently engages in conduct which contravenes a requirement of that notice. The penalty for a contravention of section 23 is 50 penalty units. (A penalty unit is currently $170 – section 4AA of the *Crimes Act 1914*.)

New section 24 – Copying documents—compensation

New section 24 of the Consumer Protection Act provides that a carriage service provider is entitled to be paid reasonable compensation by the Commonwealth for complying with a requirement covered by new paragraph 23(2)(c) to make copies of documents and produce them to the Secretary.

New section 25 – Copies of documents

New section 25 of the Consumer Protection Act enables the Secretary to inspect a document (or copy of a document) provided under new subsection 23(2), to make and retain copies of, or take and retain extracts from, those documents, and to retain possession of a copy of a document produced in accordance with a requirement covered by new paragraph 23(2)(c).

New section 26 – Secretary may retain documents

New section 26 of the Consumer Protection Act allows the Secretary to take, and retain for as long as is necessary, possession of a document provided under new subsection 23(2). However, new subsection 26(2) provides that the carriage service provider that is otherwise entitled to possession of the document is entitled to be supplied a certified true copy of the document by the Secretary as soon as is

practicable. New subsection 26(3) provides that the certified copy must be received in all courts and tribunals as evidence as if it were the original.

New subsection 26(4) places an obligation onto the Secretary that applies until a certified copy is supplied. Under that provision, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the carriage service provider that is otherwise entitled to possession of the document (or a person authorised by that provider) to inspect, make copies, or take extracts from, the document.

New section 27 – Law relating to legal professional privilege not affected

New section 27 of the Consumer Protection Act provides that none of the provisions in new Subdivision A of Division 4 of Part 2 of the Consumer Protection Act will affect the law relating to legal professional privilege.

New section 28 – Disclosure of information

New section 28 of the Consumer Protection Act allows the Secretary to disclose to a carriage service provider information obtained under new section 23, or contained in a document or a copy of a document produced to the Secretary under that section. New subsection 28(2) makes clear that the disclosure must be for a purpose relating to the achievement of the policy objective set out in new paragraph 13(1)(e).

This provision would enable the Secretary to provide information to carriage service providers for the purpose of allowing the provider to contact and assist customers in the transition to the NBN. Such information might include, for example, details on which customers of the provider will require information as to their voice service or broadband options prior to any potential disconnection from the existing copper network.

New section 29 – Consent to customer contact

New section 29 of the Consumer Protection Act applies to a carriage service provider if the Secretary believes on reasonable grounds that, should the provider consent to another person (the third person) contacting the provider's customers (or a class of customers) for a purpose relating to the achievement of the policy objective set out in new paragraph 13(1)(e), that consent would facilitate the achievement of that policy objective. This provision only applies to a carriage service provider if the provider is not a contractor or grant recipient in relation to a new section 14 contract or grant entered into or made for a purpose relating to the achievement of the policy objective set out in new paragraph 13(1)(e). If the provider has entered into such a contract or received such a grant, then the matter of the need for consent would be addressed contractually or through the agreement relating to the grant.

New subsection 29(2) provides that in these circumstances the Secretary may, by written notice, require the carriage service provider to consent, within a specified period, to the third person contacting the provider's customers or to customers within a specified class of customers for the purposes of the policy objective set out in new paragraph 13(1)(e). Under new subsection 29(3), the specified period in the notice must not be less than 14 days after the notice is given to the provider.

New subsection 29(4) provides that a carriage service provider must comply with a requirement to consent to customer contact. The provider will commit an offence if, after being given a notice under new subsection 29(2), it engages in conduct contravening that notice. The penalty for a contravention of section 29 is 50 penalty units. (A penalty unit is currently $170 – section 4AA of the *Crimes Act 1914*.)

By enabling the authorising of contact with carriage service provider's customers for the purposes of the policy objective set out in new paragraph 13(1)(e), new section 29 allows for those customers to receive advice and assistance relating to the transition to the NBN. If such customers were unable to receive such advice or assistance due to restrictions on contact with other providers' customers, they could potentially lose access to their voice-only or broadband services following the disconnection of their premises from the existing copper network.

Where the carriage service provider's consent has been required under new section 29, any use or disclosure of personal information relating to the provider's customers will continue to be subject to the requirements of the *Privacy Act 1988*, including the Australian Privacy Principles (APPs) in that Act. The APPs set out the base line privacy standards for the collection, use and disclosure, and secure management of personal information by Australian government agencies and private sector organisations.

New Subdivision B—Access to information or documents held by an NBN corporation

New section 30 – Access to information or documents held by an NBN corporation

New section 30 of the Consumer Protection Act applies to an NBN corporation if the Minister believes on reasonable grounds that the NBN corporation has information or documents relevant to the exercise of any of the Secretary's powers under new Division 3 of Part 2 of the Consumer Protection Act.

New subsection 30(2) enables the Minister to give written notice to the NBN corporation requiring it to give the Secretary any such information or documents, within the period and in the manner and form specified in that notice. New paragraph 30(2)(c) provides that the Secretary is able, through such a notice, to require the NBN corporation to make copies of any such documents and to produce those copies to the Secretary. New subsection 30(3) provides that for the purposes of new subsection 30(2) the period specified in such a written notice must not be less than 14 days after the notice is given.

New subsection 30(4) requires an NBN corporation to comply with such a requirement to the extent that it is capable of doing so.

New subsection 30(5) provides that an NBN corporation commits an offence if the Minister has given a notice to it under new subsection 30(2) and the NBN corporation engages in conduct which contravenes a requirement in the notice. The penalty for contravention of new subsection 30(5) is 50 penalty units. (A penalty unit is currently $170 – section 4AA of the *Crimes Act 1914*.)

The term 'NBN corporation' has the same meaning as in the *National Broadband Network Companies Act 2011*, that is, the Minister may require information or documents under this section from NBN Co, NBN Tasmania and any other company over which NBN Co is in a position to exercise control. (Subsection 5(1) of the Consumer Protection Act provides that expressions used in the Consumer Protection Act and the Telecommunications Act have the same meaning in the Consumer Protection Act as they have in the Telecommunications Act, unless a contrary intention appears.)

New section 31 – Copying documents—compensation

New section 31 of the Consumer Protection Act provides for an NBN corporation to be paid reasonable compensation by the Commonwealth for complying with a requirement covered by new paragraph 30(2)(c).

New section 32 – Copies of documents

New section 32 of the Consumer Protection Act enables the Secretary to inspect a document or copy produced under new subsection 30(2), to make and retain copies of, or take and retain extracts from, those documents, and to retain possession of a copy of a document produced in accordance with a requirement covered by new paragraph 30(2)(c).

New section 33 – Secretary may retain documents

New section 33 of the Consumer Protection Act allows the Secretary to take, and retain for as long as is necessary, possession of a document produced under new subsection 30(2). However, new subsection 33(2) provides that the NBN corporation otherwise entitled to possession of the document is entitled to be supplied a certified true copy of the document by the Secretary as soon as is practicable. New subsection 33(3) provides that the certified copy must be received in all courts and tribunals as evidence as if it were the original.

New subsection 33(4) places an obligation onto the Secretary that applies until a certified copy is supplied. Under that provision, the Secretary must, at such times and places as the Secretary determines appropriate, permit the NBN corporation that is otherwise entitled to possession of the document, or a person authorised by that NBN corporation, to inspect, make copies, or take extracts from the document.

New section 34 – Law relating to legal professional privilege not affected

New section 34 of the Consumer Protection Act provides that none of the provisions in new Subdivision B of Division 4 of Part 2 of the Consumer Protection Act will affect the law relating to legal professional privilege.

New section 35 – Severability

New section 35 of the Consumer Protection Act is a 'severability' provision that ensures the constitutional validity of new Subdivision B of Division 4 of Part 2 of the Consumer Protection Act.

New Subdivision C—Disclosure of information to certain bodies or persons

New section 36 – Disclosure of information to certain bodies or persons

New subsection 36(1) of the Consumer Protection Act enables the Secretary to disclose information to the ACMA, the ACCC, the TIO or the Regional Telecommunications Independent Review Committee if:

- the information was obtained under or for the purposes of new Division 4 of Part 2 of the Consumer Protection Act; and
- the Secretary is satisfied that the information will assist the relevant body or person to perform or exercise any of its functions or powers.

If any of the information covered by this provision is or contains 'personal information' as defined by section 6 of the *Privacy Act 1988*, it will have to be dealt with in accordance with that Act.

New subsection 36(2) enables the Secretary to impose, by writing, conditions which must be complied with regarding information disclosed under new subsection 36(1).

New subsections 36(3) and (4) provide that an instrument referred to in new subsection 36(2):

- if it relates to one particular disclosure – is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*; and
- otherwise – is a legislative instrument.

In both cases, this is declaratory of the law and is provided to assist the reader.

New Division 5—Public Interest Telecommunications Services Special Account

New section 37 – Public Interest Telecommunications Services Special Account

New section 37 of the Consumer Protection Act establishes the Public Interest Telecommunications Services Special Account, to be administered by the Secretary as a 'special account' for the purposes of the *Public Governance, Performance and Accountability Act 2013*. The Public Interest Telecommunications Services Special Account replaces the Telecommunications Universal Service Special Account that was established under the TUSMA Act.

New section 38 – Credits to the Account

New section 38 of the Consumer Protection Act sets out the amounts that must be credited to the Special Account as follows:

(a) amounts equal to those paid to the Commonwealth by way of the levy payable by participating persons under new section 56 of the Consumer Protection Act. The amounts that participating persons will be required to contribute will be assessed by the ACMA, on behalf of the Commonwealth, under new section 51 of the Consumer Protection Act. Although the levy will be collected by the ACMA, the amount of that levy will be paid into the Special Account as administered by the Secretary; and

(b) amounts equal to those paid to Commonwealth, either pursuant to a contract under new section 14 (including payments of damages or compensation for a breach of contract), or by way of the repayment of funds provided through a grant under new section 14. These payments would be paid to the Secretary, on behalf of the Commonwealth.

New section 39 – Purposes of the Account

New section 39 of the Consumer Protection Act sets out the purposes for which money in the Special Account may be expended, which are as follows:

- to make payments payable by the Commonwealth under a contract entered into under new section 14 (including contracts taken to have been entered into under new section 22);
- to make grants of financial assistance under new section 14;
- to pay the Commonwealth's 'eligible administrative costs' (see item 68, above);
- to redistribute the remaining balance of the Special Account in accordance with new section 40; and
- to refund levy overpayments under new section 62.

The note to new section 39 draws the reader's attention to section 80 of the *Public Governance, Performance and Accountability Act 2013*, which deals generally with special accounts.

New section 40 – Distribution of remaining balance of the Account

New section 40 of the Consumer Protection Act provides that once all amounts payable by the Commonwealth in relation to an eligible levy period have been paid, the Secretary (on behalf of the Commonwealth) may distribute the remaining balance of the Special Account to persons who are or were participating persons (as defined in new section 44 of the Consumer Protection Act). Under new subsection 40(2), the Minister may, by legislative instrument, determine the rules for making distributions and the Secretary must comply with those rules.

This power gives the Secretary the flexibility of being able to distribute the balance of the Special Account to participating persons once all payments from the Special Account are made for the eligible levy period, rather than, for example, requiring either the ACMA to recalculate levy payments for current or past participating persons, or for the amounts to be carried over and included in the overall levy target amount for a new levy period.

New Division 6—Assessment, collection and recovery of levy

New Division 6 of Part 2 of the Consumer Protection Act sets out the provisions for the assessment, collection and recovery of the industry levy imposed under the Levy Act (as amended when the Levy Amendment Bill comes into force) and largely replicates the current arrangements in Part 6 of the TUSMA Act.

Similarly to the current arrangements, the proceeds of the levy will be used to pay contractors and grant recipients under new section 14 of the Consumer Protection Act and to meet the Commonwealth's eligible administrative costs. The ACMA will remain responsible for the assessment and collection of the industry levy. Eligible revenue returns will continue to be lodged by participating persons with the ACMA. The ACMA will assess each person's eligible revenue and collect levy payments based on that assessment.

The assessment of levy payable under new Division 6 will be made with respect to each successive 'eligible levy period', commencing with the financial year 2014–15. The assessment is based on the eligible revenue of participating persons for the preceding financial year, the 'eligible revenue period'. The eligible revenue is used to determine each participating person's portion of industry revenue for that year ('levy contribution factor'). This factor is multiplied by the overall levy target amount to calculate each person's levy amount.

Assessment of levy for the first eligible levy period

For the first eligible levy period under new Division 6 (that is, the 2014–15 financial year), the levy assessment will need to rely on the eligible revenue assessed by the ACMA in accordance with the TUSMA Act (see new subsection 45(7)). This is necessary because an eligible revenue period is the year prior to an eligible levy period and, given the commencement of the new arrangements under the Consumer Protection Act will commence during the 2014–15 financial year, there will have been no assessment of eligible revenue under new Division 6 for financial year 2013–14. While the first eligible revenue period under new Division 6 will be deemed to be 2013–14, the calculations of eligible revenue for this period will be made under the TUSMA Act.

This approach will minimise the impacts on carriers in transitioning to the new arrangements under new Division 6 since they will be required to undertake the same actions in lodging an eligible revenue return and later paying the levy as they are currently required to do under the TUSMA Act.

New Subdivision A—Overall levy target amount

New section 41 – Overall levy target amount

New section 41 of the Consumer Protection Act defines the 'overall levy target amount'. Under new section 42, a statement of the amount is required to be prepared and published after the end of an eligible levy period.

The overall levy target amount for an eligible levy period is the sum of:

- all payments made by the Secretary pursuant to new section 14 contracts;
- all payments made by the Secretary by way of grants of financial assistance made under new section 14; and
- the total amount of the Commonwealth's eligible administrative costs incurred during that period;

reduced by the total amount of money appropriated by any Appropriation Acts during that period for the purposes of meeting the Commonwealth's eligible administrative costs, or making payments under new section 14 contracts or grants. The appropriated amounts would include the Government's dedicated Budget funding as set out in the new section 14 contracts or grants of $100 million per annum for public interest telecommunications services.

A definition of the 'eligible administrative costs' of the Commonwealth is to be inserted in subsection 5(2) of the Consumer Protection Act (see item 68, above).

The overall levy target amount is multiplied by each participating person's levy contribution factor (as set out in new section 49) to determine the person's levy amount.

First eligible levy period (2014–15)

As part of the transitional arrangements for the first eligible levy period under new Division 6, the overall levy target amount for that period will be the amount that would have been the overall levy target amount within the meaning of section 88 of the TUSMA Act for the eligible levy period (within the meaning of section 88 of the TUSMA Act) that began on 1 July 2014, by treating the 2014-15 financial year as an eligible levy period for the purposes of section 88 of the TUSMA Act.

New section 42 – Statement of overall levy target amount

New section 42 of the Consumer Protection Act requires the Secretary to prepare a statement setting out the overall levy target amount for an eligible levy period.

The statement is to include a breakdown of the different components that make up the overall levy target amount, namely:

- the total amount paid under contracts made under new section 14;
- the total amount paid under grants made under new section 14; and
- the total amount of eligible administrative costs incurred by the Commonwealth together with a breakdown of the amount into categories (if any) specified in the regulations.

However, new subsections 42(5) to (7) provide alternative requirements for the statement in respect of the first eligible levy period – that statement of overall levy target is to include:

- the total amount paid by TUSMA under contracts made under section 13 of the TUSMA Act;

- the total amount paid by TUSMA under grants made under section 13 of the TUSMA Act; and
- the total amount of administrative costs incurred by TUSMA (within the meaning of the TUSMA Act) together with a breakdown of the amount into categories (if any) specified in the regulations.

The Secretary is required to take all reasonable steps to ensure that the statement is prepared within 4 months (instead of the current 3 months under the TUSMA Act) after the end of the relevant eligible levy period (new subsection 42(8)). This timeframe aligns with the Department's annual reporting requirements under the *Public Governance, Performance and Accountability Act 2013*.

The statement of the overall levy target amount is required to be published on the ACMA's website (new subsection 42(10)).

Unlike the current arrangements under section 89 the TUSMA Act, new Division 6 does not require a separate statement of estimate of the overall levy target amount to be made. Instead, this information will be available in the Department's portfolio budget statement. Participating persons will be able to use this information to estimate in advance their levy amounts for the period. In addition, the reporting obligation is proposed to be transferred from the Minister to the Secretary. The reason for this change is that the Secretary will have oversight of, and be responsible for, managing the contracts and grants made under new section 14. As a result, the Secretary will be best placed to prepare a statement setting out the overall levy target amount, noting this is an administrative function.

New subsection 42(11) confirms that a statement of the overall target levy amount is not legislative instrument. This provision is included to assist readers, as the statement is not legislative in character, and therefore does not fall within the meaning of section 5 of the *Legislative Instruments Act 2003*.

New Subdivision B—Eligible revenue of participating persons

New section 43 – Participating person must lodge return of eligible revenue

New section 43 of the Consumer Protection Act requires each participating person for an eligible revenue period (other than the first eligible revenue period) to provide the ACMA with a written return of their eligible revenue for that period in a form approved in writing by the ACMA, and within a time period specified in writing by the ACMA (any specification of this time period by the ACMA will be a legislative instrument). Under new section 69, the failure of a person to submit an eligible return is an offence of strict liability.

Each participating person's return must set out their eligible revenue amount, details on how that amount of revenue was worked out, and any other information required by the approved ACMA form, including, if required, a verification of the eligible amount by statutory declaration. The information submitted to the ACMA under this section will, once provided, be used by the ACMA in its assessments under new

sections 47 (each participating person's eligible revenue) and 49 (each participating person's levy contribution factor).

What constitutes a 'participating person' and 'eligible revenue' for the purposes of the Consumer Protection Act is covered in new sections 44 and 45, respectively.

First eligible revenue period

For the first eligible revenue period (financial year 2013–14), a participating person's obligation to lodge an eligible revenue return arises under the TUSMA Act. Under the TUSMA Act, the ACMA has specified four months after the end of the eligible revenue period as being the time by which the returns must be lodged (see the *Telecommunications Universal Service Management Agency (Eligible Revenue) Determination 2013*).

New section 44 – Participating person

New section 44 of the Consumer Protection Act defines a 'participating person' for an eligible revenue period as being any:

- carrier (i.e. the holder of a carrier licence under the Telecommunications Act) for that eligible revenue period; or
- carriage service provider, if the Minister determines by legislative instrument that carriage service providers are participating persons for the eligible revenue period.

However, under new subsection 44(2), the Minister may determine by legislative instrument that a kind of person is exempt from new section 44. Such a determination could be done by reference to a class of persons, for example, an exemption from being a participating person that applies to all carriers or carriage service providers with eligible revenues below a specified revenue amount. If such a determination has been made, a person who is of a kind that has been so determined will not be a 'participating person'.

The provision for determining a participating person under new Division 6 is effectively the same as that provided for in section 92 of the TUSMA Act. Under the TUSMA Act, the Minister has made a determination covering persons with either an eligible revenue, initial sales revenue or gross telecommunications sales revenue below the threshold amount of $25 million (see the *Telecommunications (Participating Persons) Determination 2013 (No.2)*).

A participating person for an eligible revenue period is liable to pay the levy for the subsequent financial year, i.e. the eligible levy period.

New section 45 – Eligible revenue

New subsection 45(1) of the Consumer Protection Act defines 'eligible revenue' of a person for an eligible revenue period (other than the first eligible revenue period) as the amount ascertained in accordance with a written determination made by the ACMA. This determination will be a legislative instrument.

New subsection 45(4) clarifies that the ACMA determination under subsection (1) may in providing how to work out that revenue, refer to revenue of other persons; that is, the determination of eligible revenue may count the revenue of another person as if it were the revenue of a participating person. This may be necessary to allow for particular industry groupings to be adequately covered, or to deal with any levy avoidance strategies.

New subsection 45(5) clarifies that a determination made under subsection (1) must not include in a participating person's eligible revenue any amount payable under a contract entered into (or taken to have been entered into), or any grant moneys received, pursuant to new section 14.

New subsection 45(3) permits the Minister to determine in writing a 'threshold amount' for the purposes of that subsection. Such a determination is a legislative instrument – new subsection (6).

If a participating person's eligible revenue falls below a threshold amount (if any) determined by the Minister, the person is taken to have eligible revenue of zero dollars. If the participating person's revenue is at or above a determined threshold amount, the person's eligible revenue will be reduced by the threshold amount. The purpose of allowing the Minister to set a threshold under new subsection 45(3) is to provide the Minister with the ability to minimise the impact on those participating persons that may be just above any threshold amount determined by the Minister. By ensuring there is minimal impact for being above the revenue threshold, the incentive for carriers or carriage service providers to structure their revenues to stay below that amount is reduced.

First eligible revenue period

The definition of 'eligible revenue' in new subsection 45(1) does not apply to the 'first eligible revenue period' (the 2013–14 financial year). Instead, new subsection 45(7) provides that for this period, the 'eligible revenue' of a person will be determined under the TUSMA Act. In accordance with subsection 93(1) of the TUSMA Act, the ACMA has made an eligible revenue determination being the *Telecommunications Universal Service Management Agency (Eligible Revenue) Determination 2013*, and so, for the first eligible revenue period, eligible revenue will be calculated in accordance with that determination.

New section 46 – ACMA may inquire into correctness of return

New section 46 of the Consumer Protection Act enables the ACMA to make whatever inquiries it thinks necessary or desirable to assess whether a participating person's eligible revenue return has correctly stated that person's eligible revenue for an eligible revenue period. Information and documents obtained as a result of such inquiries may be used by the ACMA in making its assessment of eligible revenue under new section 47 of the Consumer Protection Act.

The ACMA also has the power to require information from service providers who are not participating persons in accordance with section 521 of the Telecommunications Act.

New section 47 – ACMA to assess eligible revenue

New subsection 47(1) of the Consumer Protection Act requires the ACMA to make a written assessment of each participating person's eligible revenue for an eligible revenue period (other than for the first eligible revenue period). The ACMA must provide a participating person with a copy of ACMA's assessment of their eligible revenue (new subsection 47(4)). A note provided to assist the reader clarifies that multiple assessments of eligible revenue under this section may under new section 55 be included in the same document.

Under new subsection 47(2), the ACMA's assessment must be based on:

- the eligible revenue return lodged by the participating person under new section 43;
- any information or document obtained by the ACMA through its inquiries into the correctness of that return under new section 46; and
- any other information or documents the ACMA has that it thinks is relevant to making the assessment.

The ACMA is not required to rely solely on the information provided to it in claims and returns to make its assessment. New subsection 47(2) gives the ACMA the discretion to take into account the findings of its inquiries and other relevant matters in making its assessment.

To assist readers, new subsection 47(5) provides that the ACMA's assessment of eligible revenue is not a legislative instrument. Such an assessment is administrative in character, and therefore does not fall within the meaning of 'legislative instrument' set out in section 5 of the *Legislative Instruments Act 2003*.

First eligible revenue period

In accordance with the transitional arrangements, the ACMA's assessment of each participating person's eligible revenue with respect to the first eligible revenue period, that is the 2013-14 financial year, will be carried out under section 96 of the TUSMA Act.

New section 48 – Assessment based on estimate of eligible revenue

New section 48 of the Consumer Protection Act sets out how a participating person's eligible revenue (other than for the first eligible revenue period) may be assessed under new section 47 if the person fails to lodge an eligible revenue return with the ACMA. This section enables the ACMA to estimate a person's eligible revenue for the eligible revenue period, and make a written assessment of the person's eligible revenue based on that estimate. If the ACMA did not have the power to make this estimate it could not determine the total eligible revenue for all participating persons, nor calculate each person's levy contribution factor. The failure to lodge an eligible revenue return is a strict liability offence under new section 69 of the Consumer Protection Act.

Under new subsection 48(2), the ACMA must give at least 14 days written notice to a person who has not lodged a return of both the amount of the eligible revenue proposed to be assessed and the ACMA's proposal to make the assessment based on that estimate.

However, new subsection 48(3) provides that that the ACMA is not required to:

- give a person a notice under new subsection 48(2); or
- make a written assessment under new section 47of the person's eligible revenue for the relevant period based on the estimate;

if the estimate for that person is nil.

If the ACMA receives an eligible return from a person that previously failed to provide a return within the required period, it will no longer be able to make an estimate under this section (new subsection 48(4)). However, if the ACMA has already made an assessment of such a person's eligible revenue, it will not be required to change it if that person subsequently gives the ACMA its own eligible revenue return (new subsection 48(5)).

First eligible revenue period

In accordance with the transitional arrangements, if a participating person fails to lodge an eligible revenue return with respect to the first eligible revenue period, the assessment of that person's eligible revenue under section 96 of the TUSMA Act will be made in accordance with the provisions of section 97 of the TUSMA Act.

This proposal will offer a small administrative saving. Requiring the ACMA to make a written notification and provide it in the case of a nil assessment would be unnecessary as it would be purely for information purposes.

New section 49 – Levy contribution factor

Once the ACMA has assessed the eligible revenue of participating persons under new section 47, new subsection 49(2) requires the ACMA to work out the 'levy contribution factor' for those participating persons for the 'eligible levy period' starting immediately after the eligible revenue period.

As provided in a note under that subsection, this levy contribution factor is then used by the ACMA to work out the levy amount of a participating person under new section 50.

New subsection 49(3) provides that the formula for the calculation of a person's levy contribution factor for an eligible revenue period will be the person's 'individual eligible revenue' divided by the 'total eligible revenue'.

In this context, 'individual eligible revenue' refers to the eligible revenue of the participating person for the eligible revenue period as assessed by the ACMA under new section 47. The 'total eligible revenue' is the total assessed amount of eligible revenue of all participating persons in relation to the eligible revenue period. The levy

contribution factor for each participating person will therefore represent the participating person's proportion of the total eligible revenue amount.

New Subdivision C—Levy amount

New section 50 – Levy amount of a participating person

New section 50 of the Consumer Protection Act sets out the mechanism by which the ACMA is to assess the levy amount of a participating person.

New subsection 50(1) provides that the levy amount will be calculated for each participating person for an eligible levy period by multiplying each person's 'levy contribution factor' by the 'overall levy target amount'.

The 'levy contribution factor' refers to the contribution factor for the eligible levy period worked out under new section 49. The 'overall levy target amount' is the amount of money to be paid, or incurred as eligible administrative costs of the Commonwealth, by the Secretary with respect to the same eligible levy period as provided for in new section 41. As the note under new subsection 50(1) indicates, the resulting 'levy amount' worked out under this section will be the levy imposed on participating persons under the Levy Act (as amended by the Levy Amendment Bill when it enters into force).

Modification of the levy amount

Under new subsection 50(2), the Minister may, by legislative instrument, modify the formula for the levy amount under new subsection 50(1). This ability to vary the formula of a levy amount would allow the Minister to modify the means by which the overall levy amount is calculated to account for any irregularities that might otherwise adversely affect the accurate assessment of a levy amount under this section. For example, this power could be used to adjust the calculations of a levy amount in the event of a participating person going into receivership, liquidation or general administration or otherwise ceasing to exist. Through an instrument made under this subsection, the ACMA could exclude that person from the assessment and recalculate the levy amounts owed by other participating persons in accordance with new section 53.

An instrument made under new subsection 50(2) is a legislative instrument, and so any modification to the formula will be subject to Parliamentary scrutiny and possible disallowance.

New section 51 – ACMA to make written assessment

New section 51 of the Consumer Protection Act requires the ACMA to, for each participating person and for each eligible levy period, make a written assessment setting out their levy amount (as worked out under new section 50) and the levy that is payable by them on that amount. The ACMA must act expeditiously in preparing this assessment, however, failure to do so will not affect the validity of the assessment (new subsection 51(3)).

To assist readers, new subsection 51(4) confirms that an assessment of the levy amount under this section will not be a legislative instrument under the *Legislative Instruments Act 2003*. Assessments of tax are not legislative instruments under Schedule 1 to the *Legislative Instruments Regulations 2004*.

The ACMA may rely on new section 55 to set out multiple assessments made under new section 51 in one document.

New section 52 – Publication of assessment

New section 52 of the Consumer Protection Act requires the ACMA to publish a copy of each assessment under new section 51 on its website as soon as practicable after it is made, and provide the participating person to whom the assessment relates with a copy of the assessment. If an assessment is amended under new section 53, then that amended assessment will also need to be published and given to the relevant participating person (new subsection 53(2)).

New Subdivision D—Assessments

New section 53 – Variation of assessments

New section 53 of the Consumer Protection Act enables the ACMA to make any alterations or additions to an assessment made under new section 47 (assessment of eligible revenue) or new section 51 (assessment of levy amount) as it deems necessary, even if the assessed levy amount has already been paid by the relevant participating person.

Unless the contrary intention appears, an assessment amended under this section will be taken to be an assessment made under new section 47 or 51 (as the case may be).

New section 54 – ACMA may accept statements

New section 54 of the Consumer Protection Act permits the ACMA to partially or completely accept a statement in an eligible revenue return for the purposes of making an assessment under new Division 6 of Part 2 of the Consumer Protection Act.

New section 55 – Multiple assessments in the same document

New section 55 of the Consumer Protection Act provides that the ACMA may include more than one assessment made under new Division 6 of Part 2 in the same document. This section allows for the ACMA to make combined assessments, if it is more administratively efficient to do so.

New Subdivision E—Collection and recovery of levy

New section 56 – When levy payable

New section 56 of the Consumer Protection Act provides that the levy assessed under new section 51 is due and payable by a participating person 28 days after the ACMA has given the person a copy of an assessment under new section 51. Under new

paragraph 56(1)(b), the ACMA may extend this to a later date as determined in writing. The ACMA must publish a copy of a determination made under paragraph (1)(b) on the its website. To assist readers, new subsection 56(3) provides that such a determination is not a legislative instrument; it would be administrative in character and therefore not fall within the meaning of 'legislative instrument' as defined in section 5 of the *Legislative Instruments Act 2003*.

New section 57 – Recovery of levy

New section 57 of the Consumer Protection Act provides that the levy is a debt due to the ACMA on behalf of the Commonwealth, and may be recovered by the ACMA, on behalf of the Commonwealth, in a court of competent jurisdiction.

New section 58 – Validity of assessment

New section 58 of the Consumer Protection Act provides that the validity of an assessment under new Division 6 of Part 2 is not affected by a contravention of new Division 6. New section 58 will apply whether the contravention is by the ACMA or a participating person. This section is intended to prevent the validity of an assessment being challenged on a minor technical matter or failure of procedure.

New section 59 – Evidence of assessment

If a document that purports to be a copy of an assessment under new section 51 is produced in a proceeding, new section 59 provides that, unless the contrary is established, it must be presumed that the document is a copy of the assessment, that the ACMA has duly made the assessment and that the amounts and other particulars set out in the assessment are correct.

New section 60 – Onus of establishing incorrectness of assessment

New section 60 of the Consumer Protection Act provides that, in any proceeding, the onus of establishing that an assessment under new section 51 is incorrect is on the party that makes that assertion. New section 51 provides for the ACMA to make a written assessment of a participating person's levy amount and levy liability.

New section 61 – Set-off

New section 61 of the Consumer Protection Act enables the ACMA to set off the whole or part of an amount of levy payable by a person against the whole or part of an amount payable by the Commonwealth to the person under a contract or grant under new section 14. This amendment implements a more streamlined process, as the ACMA is responsible for collecting the levy and assessing the levy liability of participating persons. The requirements in paragraph 110(1)(a) of the TUSMA Act will not be transitioned, which means the ACMA will be able to make set-off arrangements for any relevant eligible revenue period.

New subsection 61(2) provides that, before doing so, the ACMA must consult the Secretary of the Department.

New subsections 61(3) to (5) are interpretive provisions.

As a result of this section, some amounts payable under a contract or grant might be set-off against money owing to the Commonwealth, and not actually paid under the contract or grant. Despite this, new subsections 61(3) and (4) provide that, for the purposes of new sections 41 and 42, the amounts set-off are nevertheless taken to have been paid to the person under the contract or grant. As a result, those amounts that were set-off will be taken into account when calculating, for the purposes of new sections 41 and 42, the total amount paid by the Secretary on behalf of the Commonwealth under contracts or grants made under new section 14.

New subsection 61(5) provides that, for the purposes of section 61, if a person is eligible to receive a section 14 grant, the amount of the grant is taken to be an amount payable by the Commonwealth to the person.

The scope of this proposed section is narrower than the comparable section 110 of the TUSMA Act in terms of what amounts could be used to set off the levy. Under the TUSMA Act, the Minister could use any funding owed to the person by the Commonwealth to set-off the whole or part of a levy amount. This new section limits the funding that the Commonwealth may use to set-off the whole or part of an amount of levy to contracts or grants entered into under new section 14 of the Consumer Protection Act.

The policy intention is that new section 61 will reduce transactions associated with the levy. At present, Telstra is expected to continue having a significant levy liability for future financial years based on its share of eligible revenue. Telstra will also receive payments under section 14 contracts with the Commonwealth. Without a set-off arrangement, Telstra would make substantial levy payments each year, only to effectively receive its levy payment back a few weeks or months later through contract payments. Set-off arrangements will deliver a small but significant saving to Telstra through reduced transaction costs and will provide for more effective cash flow. The set-off mechanism would be equally relevant were the Commonwealth to enter into a future section 14 contract or grant with another entity subject to the levy.

New section 62 – Refund of overpayment of levy

New section 62 of the Consumer Protection Act provides that, if there is an overpayment of levy, the overpayment is to be refunded by the Secretary on behalf of the Commonwealth.

The note to new section 62 draws the reader's attention to section 77 of the *Public Governance, Performance and Accountability Act 2013*, which appropriates the Consolidated Revenue Fund for the purpose of the refund.

New section 63 – Cancellation of certain exemptions from levy

New section 63 of the Consumer Protection Act cancels the effect of a provision of any other Act that would have the effect of exempting a person from liability to pay levy. However, the cancellation does not apply if the provision of the other Act is

enacted after the commencement of this section and refers specifically to levy imposed by the Levy Act (as amended by the Levy Amendment Bill once enacted).

The purpose of this provision is to prevent the unintentional exemption of persons being liable to the taxation by virtue of another Act, by ensuring that the exemption will only apply if legislation specifically refers to the Levy Act.

New section 64 – Commonwealth not liable to levy

New section 64 of the Consumer Protection Act provides that the Commonwealth is not liable to pay levy. New subsection 64(2) provides that a reference in this section to the 'Commonwealth' includes a reference to an authority of the Commonwealth that cannot, by law of the Commonwealth, be made liable to taxation by the Commonwealth.

New section 65 – Performance bonds and guarantees

New section 65 of the Consumer Protection Act enables the Minister, by written determination, to require a person who has a liability (or anticipated liability) to pay levy, to obtain performance bonds or guarantees in respect of the person's liability (or anticipated liability). The term 'performance bond' has the meaning given in the determination. A determination under this section is a legislative instrument.

This section mirrors section 114 of the TUSMA Act and section 20ZH of the Consumer Protection Act, as in force prior to their repeal by this Bill.

New Subdivision F—Disclosure of information

The purpose of this subdivision is to enable the process regarding the ACMA's assessment of the levy to be open to public and industry scrutiny. The provisions in this subdivision provide a balance between making information available to the public and ensuring persons do not incur substantial damage to their commercial or other interests as a result of the disclosure of information.

New section 66 – Public may request information

New section 66 of the Consumer Protection Act enables a member of the public to request the ACMA to make available to the person information or documents about the basis on which the ACMA may make or has made its assessment under new section 51 and information about how the ACMA may work out, or has worked out that assessment. This is to enhance industry and public scrutiny in relation to the preparation of the assessments. However, the ACMA is not able to make available information that was obtained from, or relates to, a participating person the disclosure of which could reasonably be expected to cause substantial damage to the participating person's commercial or other interests (which would include any disclosure of personal information in breach of the *Privacy Act 1988*). New subsection 66(3) further provides that the ACMA is not able to disclose information if it is prescribed for the purposes of paragraph (b) of that subsection.

New section 67 – Request for information that is unavailable under section 66

New section 67 of the Consumer Protection Act enables a participating person for an eligible revenue period to request the ACMA to make available specified information, being information the ACMA cannot provide under new section 66. This section also sets out rules in relation to the ACMA's compliance with the request. These provisions are designed to provide for the greatest degree of transparency while still protecting the interests of other parties who might otherwise be impacted by release of the information.

New section 68 – How the ACMA is to comply with a request

New section 68 of the Consumer Protection Act sets out how the ACMA is to comply with a request for information under new sections 66 or 67. Essentially, this involves the ACMA communicating or otherwise providing the information to a party requesting that information in accordance with that provision.

New Subdivision G—Other matters

New section 69 – Offence of failing to lodge eligible revenue return

New subsection 69(1) of the Consumer Protection Act provides that a person commits an offence if the person is subject to a requirement under new section 43 (under which a participating person is required to lodge a return of eligible revenue), the person omits to do an act, and that omission breaches the requirement. For example, an offence may be committed if the person fails to give the ACMA a written return within the timeframe specified (new subsection 43(1)) or fails to provide the information required by the approved form (new subsection 43(4)).

New subsection 69(2) provides that an offence against subsection (1) is an offence of strict liability. If the offence is proven, the participating person will be liable to pay a fine of 50 penalty units. (A penalty unit is currently $170 – section 4AA of the *Crimes Act 1914*.)

New subsection 69(3) provides that a person who contravenes new subsection 69(1) commits a separate offence for each day during which the contravention continues. This includes the day of conviction for the offence or any later day.

In framing this offence provision, consideration was given to *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, and this provision is consistent with the principles set out in this guide. Provision of eligible revenue returns is fundamental to the regulatory regime which is implemented by the Bill, and use of strict liability for this offence is appropriate in securing compliance with obligations under new section 43. Further, strict liability is consistent with the principles outlined in this guide as there is no penalty of imprisonment, and the maximum penalty does not exceed 60 penalty units for an individual.

New section 70 – Late payment penalty

New subsection 70(1) of the Consumer Protection Act provides that if a levy remains unpaid after the day on which it becomes due and payable under new section 56, the

person is liable to pay a late payment penalty on the unpaid amount. This penalty continues for each day until the entire levy has been paid.

The late payment penalty rate is 20 per cent per year, unless the ACMA determines in writing that the penalty is a lower rate. This determination is a legislative instrument (new subsection 70(4)).

New subsection 70(5) provides that the late payment penalty is a debt due to the ACMA on behalf of the Commonwealth and may be recovered by the ACMA on behalf of the Commonwealth in a court of competent jurisdiction.

New Division 7—Other matters

New section 71 – Register of Public Interest Telecommunications Contracts

New section 71 of the Consumer Protection Act requires the Secretary to maintain a Register of Public Interest Telecommunications Contracts (the Contracts Register) that identifies, describes and summarises each contract entered into under new section 14 that is in force. The Contracts Register is intended to ensure transparency and accountability by providing the public with information on the key aspects of new section 14 contracts entered into by the Secretary.

The Contracts Register must be made available for inspection on the Department's website. Under new subsection 71(1), the Contracts Register must identify each contractor, specify the duration of the contract, describe the services, facilities or customer equipment to be supplied under the contract and summarise any actions to be undertaken by the contractor. The total amount to be paid to the contractor or an estimate of that amount or the method of calculating the amount to be paid must also be included on the Contracts Register.

To assist readers, new subsection 71(4) confirms that the Contracts Register is not a legislative instrument, as it is administrative in character, and therefore does not fall within the meaning of 'legislative instrument' as defined in section 5 of the *Legislative Instruments Act 2003*.

New section 72 – Register of Public Interest Telecommunications Grants

New section 72 of the Consumer Protection Act requires the Secretary to maintain a Register of Public Interest Telecommunications Grants (the Grants Register). Like the Contracts Register under new section 71, the Grants Register must be made available for inspection on the Department's website. The Grants Register must identify each grant recipient, summarise the terms and conditions of the grant that require action to be undertaken by the grant recipient, describe the services, facilities or customer equipment to be provided pursuant to the grant, and either specify the amount to be paid to the grant recipient or the method for working out such an amount.

To assist readers, new subsection 72(4) confirms that the Grants Register, like the Contracts Register, is not a legislative instrument, as it is administrative in character, and therefore does not fall within the meaning 'legislative instrument' as defined in section 5 of the *Legislative Instruments Act 2003*.

New section 73 – Delegation by the Minister

New section 73 of the Consumer Protection Act enables the Minister to delegate, in writing, any or all of his or her functions or powers under Part 2 of the Consumer Protection Act (as amended by the Bill) to a member of the staff of the ACMA. The delegate must be either an SES employee or acting SES employee of the ACMA, and he or she must comply with any written direction made by the Minister.

The note under new subsection 73(1) refers the reader to the definitions of the terms 'SES employee' and 'acting SES employee' in the *Acts Interpretation Act 1901*.

New section 74 – Delegation by the Secretary

New section 74 of the Consumer Protection Act enables the Secretary to delegate, in writing, any or all of his or her functions or powers under Part 2 of the Consumer Protection Act (as amended by the Bill) to either an SES employee or acting SES employee in the Department, and the employee must comply with any directions of the Secretary.

The note under new subsection 74(1) refers the reader to the definitions of the terms 'SES employee' and 'acting SES employee' in the *Acts Interpretation Act 1901*.

Item 124 – Paragraphs 106(3A)(b) and (c)

Item 124 substitutes reference in paragraphs 106(3A)(b) and (c) to contracts entered into, and grants made, under section 13 of the TUSMA Act with the equivalent proposed provisions under the Consumer Protection Act, namely reference to contracts entered into, and grants made, under new section 14 of the Consumer Protection Act. These amendments are consequential to the repeal of the TUSMA Act and the transition of the management of public interest telecommunication services contracts and grants to the Consumer Protection Act.

Item 125 – Subsections 107(6) and (6A)

Part 4 of the Consumer Protection Act provides for local calls to be charged for on an untimed basis. Section 107 of that Act relates to customers of a carriage service provider that are not in a standard zone (as defined by section 108) and provides for a comparable untimed local call option to be given to those customers, as is given to eligible customers under section 104. The Minister is required to take all reasonable steps to ensure such a scheme to provide a comparable untimed local call option is in place (subsections 107(6) and (6A)).

Item 125 repeals subsections 107(6) and (6A) of the Consumer Protection Act to remove this obligation on the Minister. However, the Commonwealth may still enter into contractual arrangements to provide an untimed local call option for customers not in a standard zone under new section 14 of the Consumer Protection Act (see the policy objectives in new paragraphs 13(1)(f) and (g) in item 123, above). The intent of this amendment is to remove the obligation on the Minister to ensure a comparable untimed local call option is in place, as the Commonwealth can deal with this issue through contractual arrangements. However, if this approach is not appropriate, the Minister still has the ability to make regulations, if required, under section 107. In

addition, given the new section 13 policy objectives, it would be redundant to retain subsections 107(6) and (6A) to achieve the same outcome in the same Act.

Item 126 – Subparagraphs 109(1)(a)(i), (b)(i), (c)(i) and (d)(i)

Item 126 substitutes reference to 'universal service contractor or universal service grant recipient' in subparagraphs 109(1)(a)(i), (b)(i), (c)(i) and (d)(i) of the Consumer Protection Act with 'contractor or grant recipient'. These amendments are consequential to the substitution of those terms (see items 81 and 85, above) on account of the proposed repeal of the TUSMA Act and the new arrangements for the public interest telecommunications services in the Consumer Protection Act.

Item 127 – Paragraph 109(3)(b)

This item omits a reference to the concept of 'universal service area' from paragraph 109(3)(b) of the Consumer Protection Act as a consequence of the proposed repeal of that concept (see item 96, above).

Item 128 – Paragraph 109(4)(b)

Item 128 substitutes repeals paragraph 109(4)(b) of the Consumer Protection Act and replaces it with a new paragraph. The new paragraph replaces references to a universal service contractor in relation to a contract entered into under section 13 of the TUSMA Act with a reference to the equivalent proposed provision under the Consumer Protection Act, namely to a contractor in relation to a contract entered into under new section 14 of the Consumer Protection Act. This amendment is consequential to the repeal of the TUSMA Act and the transition of the management of public interest telecommunication services contracts and grants to the Consumer Protection Act.

Item 129 – Paragraph 109(4)(c)

This item omits reference to 'universal service' in respect of a contractor in paragraph 109(4)(c) of the Consumer Protection Act. This amendment is consequential to the change in terminology (see items 66 and 81, above) on account of the proposed repeal of the TUSMA Act and the new arrangements for the public interest telecommunications services in the Consumer Protection Act.

Item 130 – Paragraph 109(4)(c)

This item omits a reference to 'in the area' from paragraph 109(4)(c) of the Consumer Protection Act as a consequence of the amendment made by item 96 above.

Item 131 – Subsection 109(4)

This item omits the last occurring reference to 'universal service' in respect of a contractor in subsection 109(4) of the Consumer Protection Act. This amendment is consequential to the change in terminology (see items 66 and 81, above) on account of the proposed repeal of the TUSMA Act and the new arrangements for the public interest telecommunications services in the Consumer Protection Act.

Item 132 – Paragraph 109(5)(b)

Item 132 repeals paragraph 109(5)(b) of the Consumer Protection Act and replaces it with a new paragraph. The new paragraph replaces references to a universal service grant recipient in relation to a grant made under section 13 of the TUSMA Act with a reference to the equivalent proposed provision under the Consumer Protection Act, namely reference to a grant recipient in relation to a grant made under new section 14 of the Consumer Protection Act. This amendment is consequential to the repeal of the TUSMA Act and the transition of the management of public interest telecommunication services contracts and grants to the Consumer Protection Act.

Item 133 – Paragraph 109(5)(c)

This item omits reference to 'universal service' in respect of a grant recipient in paragraph 109(5)(c) of the Consumer Protection Act. This amendment is consequential to the change in terminology (see items 71 and 81, above) on account of the proposed repeal of the TUSMA Act and the new arrangements for the public interest telecommunications services in the Consumer Protection Act.

Item 134 – Paragraph 109(5)(c)

This item omits a reference to 'in the area' from paragraph 109(5)(c) of the Consumer Protection Act as a consequence of the proposed repeal of the 'universal service area' concept (see item 96, above).

Item 135 – Subsection 109(5)

This item omits the last occurring reference to 'universal service' in respect of a grant recipient in subsection 109(5) of the Consumer Protection Act. This amendment is consequential to the change in terminology (see items 71 and 81, above) on account of the proposed repeal of the TUSMA Act and the new arrangements for the public interest telecommunications services in the Consumer Protection Act.

Item 136 – Paragraphs 120(7)(b) and (c)

Item 136 repeals paragraphs 120(7)(b) and (c) and substitutes them with replacement paragraphs. These replacement paragraphs replace references to contracts entered into, and grants made, under section 13 of the TUSMA Act with references to the equivalent proposed provisions under the Consumer Protection Act, namely to contracts entered into, and grants made, under new section 14 of the Consumer Protection Act. These amendments are consequential to the repeal of the TUSMA Act and the transition of the management of public interest telecommunication services contracts and grants to the Consumer Protection Act.

Item 137 – Subsection 147(9A)

Section 147 of the Consumer Protection Act requires the ACMA to make a determination that imposes requirements on carriers, carriage service providers and emergency call persons in relation to emergency call services. Subsection 147(9A) requires the ACMA, before making a determination under section 147, to consult TUSMA.

Item 137 omits the reference to 'TUSMA' and replaces it with a reference to 'the Secretary', with the effect that the Secretary will have to be consulted before a determination under section 147 is made. This amendment is consequential to the abolition of TUSMA and the repeal of the TUSMA Act.

Part 4—Application and transitional provisions

Part 4 of Schedule 1 to the Bill includes application and transitional provisions necessary to give effect to the amendments made by Parts 2 and 3 of Schedule 1.

Division 1—Preliminary

Item 138 – Definitions

Item 138 provides definitions for certain terms used in Part 4 of Schedule 1 to the Bill. Notably, 'contractor' and 'grant recipient' have the same meanings as they have in the TUSMA Act, and 'transition time' is defined to mean the commencement of Part 4.

Division 2—Abolition of TUSMA

Item 139 – Transfer of records to the Department

Item 139 provides for the transfer to the Department of any records or documents that were in the possession of TUSMA immediately before the commencement of Part 4 of Schedule 1 to the Bill. The note to this item explains that any such records or documents are Commonwealth records for the purposes of the *Archives Act 1983*.

Item 140 – Transfer of Ombudsman investigations

Item 140 operates to deem an action taken by TUSMA that is the subject of a complaint made to, or an investigation begun by, the Ombudsman and not finally disposed of in accordance with the *Ombudsman Act 1976* before the commencement of Part 4 to be, for the purposes of that Act, an action taken by the Department.

Item 141 – Reporting obligations

Item 141 set outs transitional reporting arrangements in respect of the 2014-15 financial year, which require:

- the Secretary to prepare TUSMA's annual report in accordance with the *Public Governance, Performance and Accountability Act 2013* and including:
  - the matters mentioned in section 75 of the TUSMA Act (as relevant for the year); and
  - a report on all significant matters relating to the performance of contractors and grant recipients during the financial year, including the matters set out in subsection 29(2) of the TUSMA Act; and
- the ACMA, under section 105 of the Telecommunications Act, to report on the performance of carriers and carriage service providers in respect of compliance with, and the operation of, Part 6 of the TUSMA Act during that year.

The Secretary will be responsible for reporting on TUSMA's activities for the final financial year of its operation, as he is in the best position to oversee and ensure compliance with the Commonwealth reporting requirements for the 2014–15 financial year as part of the winding up of TUSMA.

Item 142 – Final financial statements and final annual performance statements

Item 142 sets out transitional arrangements for preparing financial and performance statements for TUSMA in respect of the 2014-15 financial year. The obligations under sections 42 and 39 of the *Public Governance, Performance and Accountability Act 2013* are imposed on the Secretary instead of the accountable authority of TUSMA.

Item 143 – *Safety, Rehabilitation and Compensation Act 1988*—rehabilitation provisions

Item 143 operates so that if, before the commencement of Part 4 of Schedule 1 to the Bill, an employee of TUSMA suffered an injury resulting in an incapacity for work or an impairment, sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988* will apply, in relation to the injury, as if the employee were employed by the Commonwealth in the Department (and the principal officer of the Department were the rehabilitation authority). After commencement of Part 4, the Commonwealth is taken to be the relevant employer of the employee for the purposes of section 40 of the *Safety, Rehabilitation and Compensation Act 1988*. This provision ensures that a former employee of TUSMA will continue to have access to compensation if injured while working at TUSMA.

Division 3—Investigations and enforcement

Item 144 – Investigations

Item 144 clarifies that, despite the amendments of sections 508 and 510 of the Telecommunications Act made by Schedule 1 to the Bill (see items 36 and 37, above), those sections will continue to apply in relation to a contravention that occurred before the commencement of Part 4 of Schedule 1 as if the amendments to those sections had not been made.

Item 145 – Forfeiture

Item 145 clarifies that, despite the amendment of section 551 of the Telecommunications Act made by Schedule 1 to the Bill (see item 40, above), that section will continue to apply in relation to an offence committed before the commencement of Part 4 of Schedule 1 as if that amendment had not been made.

Item 146 – Civil penalties

Item 146 clarifies that, despite the amendment of section 570 of the Telecommunications Act made by Schedule 1 to the Bill (see item 43, above), that section will continue to apply in relation to a contravention that occurred before the commencement of Part 4 of Schedule 1 as if that amendment had not been made.

Item 147 – Infringement notices

Item 147 clarifies that, despite the amendment of section 572E of the Telecommunications Act made by Schedule 1 to the Bill (see item 45, above), that section will continue to apply in relation to a contravention that occurred before the commencement of Part 4 of Schedule 1 as if that amendment had not been made.

Item 148 – Vicarious liability

Item 148 clarifies that, despite the amendment of section 574A of the Telecommunications Act made by Schedule 1 to the Bill (see item 46, above), that section will continue to apply in relation to conduct that was engaged in before the commencement of Part 4 of Schedule 1 as if that amendment had not been made.

Item 149 – Penalties for continuing offences

Item 149 clarifies that, despite the amendment of section 583 of the Telecommunications Act made by Schedule 1 to the Bill (see item 50, above), that section will continue to apply in relation to an offence committed before the commencement of Part 4 of Schedule 1 as if that amendment had not been made.

Item 150 – Partnerships

Item 150 clarifies that, despite the amendment of section 585 of the Telecommunications Act made by Schedule 1 to the Bill (see item 51, above), that section will continue to apply in relation to a matter that arose before the commencement of Part 4 of Schedule 1 as if that amendment had not been made.

Division 4—Industry levy

Item 151 – Industry levy

Item 151 sets out transitional arrangements to ensure that, despite the repeal of the TUSMA Act by Schedule 1 to the Bill:

- levy liabilities for the 2012-13 and 2013-14 financial years can be administered, collected and recovered after the commencement of Part 4 of Schedule 1 to the Bill; and
- assessments of eligible revenue for the 2013-14 financial year continue to have effect after the commencement of Part 4 of Schedule 1 to the Bill.

The note to subitem 151(1) draws the reader's attention to new subsection 45(7) of the Consumer Protection Act (see item 123, above), which provides that a participating person's eligible revenue for the first eligible revenue period under the amended Consumer Protection Act (that is, the 2013-14 financial year) will be determined under the TUSMA Act.

To achieve the objects of this item, subitem 151(2) provides for certain provisions of the TUSMA Act to continue in force as if that Act had not been repealed, subject to the operation of Part 4 of Schedule 1 and the modifications to the TUSMA Act set out in the table. The effect of the modifications in the table is to remove most provisions

of the TUSMA Act except those provisions related to the operation of Part 6 of that Act, which provides for the assessment, collection and recovery of the industry levy.

Subitem 151(2) modifies the definitions of 'eligible levy period', 'eligible revenue period' and 'levy' in section 4 of the TUSMA Act so that:

- 'eligible levy period' means the 2012-13 or 2013-14 financial year;
- 'eligible revenue period' means the 2011-12, 2012-13 or 2013-14 financial year; and
- 'levy' means the levy imposed by section 6 of the Levy Act. Despite being repealed by the Levy Amendment Bill, section 6 of the Levy Act continues in force in relation to a levy amount for the 2012-13 or 2013-14 eligible levy period as if it had not been repealed (see transitional provision item 5 of the Levy Amendment Bill).

Section 111 of the TUSMA Act is also modified by subitem 151(2) so that the Secretary, rather than TUSMA, is responsible for refunding any overpayment of levy, on behalf of the Commonwealth.

Item 152 – Public Interest Telecommunications Services Special Account

Item 152 provides transitional arrangements in relation to the establishment of the new Public Interest Telecommunications Services Special Account (see new section 37 of the Consumer Protection Act in item 123, above) and the repeal of the Telecommunications Universal Service Special Account established under the TUSMA Act. This item requires the following amounts to be credited to the Public Interest Telecommunications Services Special Account:

- an amount equal to the balance (if any) of the Telecommunications Universal Service Special Account immediately before the commencement of Part 4 of Schedule 1 to the Bill; and
- an amount equal to the amount paid to the Commonwealth after the commencement of Part 4 of Schedule 1 to the Bill by way of levy imposed by section 6 of the Levy Act.

Division 5—Information management

Item 153 – Authorised disclosure information

This item clarifies that, despite the amendment of the definition of 'authorised disclosure information' in section 3 of the ACMA Act made by Schedule 1 to the Bill (see item 4, above), that definition will continue to apply in relation to information that was obtained by the ACMA before the commencement of Part 4 of Schedule 1 as if the amendment had not been made.

Item 154 – Access to information or documents held by a carriage service provider

Item 154 provides transitional arrangements in respect to any notice that was given to a carriage service provider under section 29A of the TUSMA Act but not complied with by the provider before the commencement of Part 4 of Schedule 1 to the Bill.

Despite the repeal of the TUSMA Act by Schedule 1 to the Bill, Subdivision A of Division 4A of Part 2 of the TUSMA Act will continue to apply in relation to such a notice as if the repeal had not happened and:

- a requirement in the notice to give information, or produce documents or copies, to TUSMA were a requirement to give the information, or produce the documents or copies, to the Secretary;
- a reference in section 29B of the TUSMA Act to TUSMA were a reference to the Commonwealth; and
- a reference in section 29C or 29D of the TUSMA Act to TUSMA were a reference to the Secretary.

Item 155 – Access to information or documents held by an NBN corporation

Item 155 provides transitional arrangements in respect to any notice that was given to an NBN corporation under section 78 of the TUSMA Act but not complied with by the corporation before the commencement of Part 4 of Schedule 1 to the Bill.

Despite the repeal of the TUSMA Act by Schedule 1 to the Bill, Part 4 of the TUSMA Act will continue to apply in relation to such a notice as if the repeal had not happened and:

- a requirement in the notice to give information, or produce documents or copies, to TUSMA were a requirement to give the information, or produce the documents or copies, to the Secretary;
- a reference in section 79 of the TUSMA Act to TUSMA were a reference to the Commonwealth; and
- a reference in section 80 or 81 of the TUSMA Act to TUSMA were a reference to the Secretary.

Item 156 – Disclosure of information obtained by TUSMA under section 29A of the repealed *Telecommunications Universal Service Management Agency Act 2012*

Item 156 applies to information that was obtained by TUSMA, or is contained in a document or copy of document that was produced to TUSMA, under section 29A of the TUSMA Act before the commencement of Part 4 of Schedule 1 to the Bill. The item enables the Secretary to disclose information to a carriage service provider if the disclosure is for a purpose relating to the achievement of the policy objective set out in new paragraph 13(1)(e) of the Consumer Protection Act.

Item 157 – Disclosure of information to certain bodies or persons

Item 157 enables the Secretary to disclose information obtained by TUSMA to the ACMA, the ACCC, the TIO or the Regional Telecommunications Independent Review Committee if the Secretary is satisfied that the information will enable or assist the body or person to perform or exercise any of the body's or person's functions or powers. The Secretary may, in writing, impose conditions in relation to any such information disclosed (subitem 157(2)). An instrument made under subitem 157(2) is not a legislative instrument when it imposes conditions relating only to one particular disclosure, as it is administrative in character and therefore does not fall within the meaning of 'legislative instrument' as defined in section 5 of the *Legislative Instruments Act 2003*. However, in any other case, an instrument made under this section is a legislative instrument.

Item 158 – Protection of information

Item 158 provides that, if information was disclosed to a person under subsection 122(1) of the TUSMA Act and a person was subject to a condition under subsection 122(2) of the TUSMA Act in relation to the information disclosed immediately before the commencement of Part 4 of Schedule 1 to the Bill, the person will continue to be subject to the condition after the commencement of Part 4 of Schedule 1 to the Bill.

Item 159 – Consent to customer contact

Item 159 provides that, despite the repeal of the TUSMA Act by Schedule 1 to the Bill, section 29G of the TUSMA Act will continue to apply as if the repeal had not happened in relation to a notice given to a carriage service provider under subsection 29G(2) of the TUSMA Act that was in force immediately before the commencement of Part 4 of Schedule 1 to the Bill. The Secretary may revoke or vary such a notice by giving the carriage service provider a written notice (subitem 159(3)).

Division 6—ACCC's reporting obligations

Item 160 – Report by the ACCC under section 151CM of the *Competition and Consumer Act 2010*

Item 160 clarifies that, despite the amendments of section 151CM of the Competition and Consumer Act made by Schedule 1 to the Bill (see items 7, 8 and 9, above), that section will continue to apply in relation to a report for the 2014-15 financial year as if those amendments had not been made.

Division 7—Miscellaneous

Item 161 – Delegation by Secretary

Item 161 enables the Secretary to delegate, in writing, any or all of his or her functions or powers under Part 4 of Schedule 1 to the Bill to either an SES employee or acting SES employee in the Department. The employee is required by this item to comply with any directions of the Secretary.

The note under subitem 161(1) refers the reader to the definitions of the terms 'SES employee' and 'acting SES employee' in the *Acts Interpretation Act 1901*.

Item 162 – Compensation for acquisition of property

Item 162 provides that, if the operation of Schedule 1 to the Bill would result in an acquisition of property from a person otherwise than on just terms (within the meaning of section 51(xxxi) of the Constitution), the Commonwealth will be liable to pay a reasonable amount of compensation to the person. If the amount of compensation cannot be agreed between the parties, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines (subitem 162(2)).

Item 163 – Transitional rules

This item enables the Minister to make rules, by legislative instrument, in relation to transitional matters arising out of the amendments and repeals made by Schedule 1 to the Bill.

Schedule 2—Telephone sex services

Schedule 2 to the Bill contains amendments related to the repeal of Part 9A of the Consumer Protection Act.

Part 9A of the Consumer Protection Act regulates the supply of telephone sex services via a standard telephone service. It was introduced as a regulatory solution to address community concern at the time that telephone sex services were too easily accessed by children of standard telephone service customers.

There has been a noticeable decline in complaints recently and, due to technological advances, most of these services are now accessed online and via mobile applications, which are regulated through other legislation. Accordingly, Part 9A is now considered redundant and is proposed to be repealed.

Australian Communications and Media Authority Act 2005

Item 1 – Subparagraph 8(1)(j)(iv)
Item 2 – Subparagraph 10(1)(o)(vi)

Items 1 and 2 repeals references to subsection 158F(1) of the Consumer Protection Act in subparagraphs 8(1)(j)(iv) and 10(1)(o)(vi) of the ACMA Act, respectively, as a consequence of the repeal of Part 9A of the Consumer Protection Act (see item 8, below).

Export Market Development Grants Act 1997

Item 3 – Section 57B
Item 4 – Section 57B (note)
Item 5 – At the end of section 57B

Section 57B of the *Export Market Development Grants Act 1997* (Export Grants Act) provides that expenses of an applicant are excluded expenses for the purposes of a grant under that Act if they are incurred in respect of an eligible promotional activity carried out for an approved promotional purpose relating to a telephone sex service.

Currently, the Export Grants Act relies on the definition of 'telephone sex service' given by section 158J of the Consumer Protection Act (see subsection 107(1) of the Export Grants Act). As a consequence of the repeal of section 158J of the Consumer Protection Act (see item 8, below), items 3 to 5 amend section 57B of the Export Grants Act to include a definition of 'telephone sex service' for the purposes of that Act. The definition is the same as that contained in section 158J, and the intention is that these amendments not alter the meaning of that expression for the purpose of the Export Grants Act.

Item 6 – Subsection 107(1) (definition of *telephone sex service*)

Item 6 is a consequential amendment to the definition of 'telephone sex service' in subsection 107(1) of the Export Grants Act. The amended definition will refer to the definition inserted by item 5.

Telecommunications (Consumer Protection and Service Standards) Act 1999

Item 7 – Section 4

Item 7 omits the reference to telephone sex services in the simplified outline set out in section 4 of the Consumer Protection Act, as a consequence of the repeal of Part 9A of that Act (see item 8, below).

Item 8 – Part 9A

Item 8 repeals Part 9A of the Consumer Protection Act.

Schedule 3—Do Not Call Register

Do Not Call Register Act 2006

Subsection 17(1) of the DNCR Act sets out the duration for which an Australian number remains registered on the Do Not Call Register (the Register). Under the current arrangements, the registration of Australian numbers that are entered on the Register remains in force registered for 3 years, or a longer period if the Minister makes an instrument specifying a longer period under subsection 17(1A).

In 2010, the Minister made the *Do Not Call Register (Duration of Registration) Specification (No. 1) 2010* (the Specification) under subsection 17(1A) of the DNCR Act, which specified 5 years as the period of time for which the registration of a number on the Register remains in force. The Specification was most recently amended in April 2013 to specify 8 years as the period of time for which the registration of a number on the Register remains in force. In accordance with an eight year registration period, registrations will cease to be in force from 31 May 2015 if they are not re-registered.

Feedback received by the Department following a public discussion paper process undertaken in 2013 indicated that most stakeholders would prefer the registration of numbers on the Register to remain in force for an indefinite period, rather than requiring periodic re-registration.

Schedule 3 to the Bill makes amendments to section 17 of the DNCR Act to provide an indefinite period of registration for numbers on the Register.

Item 1 – Paragraph 17(1)(b)

Item 1 substitutes new paragraph 17(1)(b) into the DNCR Act to provide an indefinite period of registration for numbers on the Register, unless sooner removed in accordance with a determination under subsection 18(1).

Item 2 – Subsections 17(1A) and (2)

Item 2 repeals subsections 17(1A) and (2) of the DNCR Act as a consequence of the introduction of an indefinite period of registration for numbers on the Register (see item 1, above).

Schedule 4—E-marketing

Telecommunications Act 1997

In part, Part 6 of the Telecommunications Act enables bodies or associations representing sections of industry to develop industry codes and register them with the ACMA.

In 2005, the *Australian eMarketing Code of Practice* was registered by the ACMA in accordance with Part 6 of the Telecommunications Act. Following a public consultation process, the ACMA deregistered that code in June 2014.

It is unlikely that any future industry codes would be developed under Part 6 of the Telecommunications Act in respect of e-marketing, given there is broad stakeholder consensus that the *Spam Act 2003* adequately addresses the range of problems associated with unsolicited commercial electronic messages and is sufficiently flexible to enable the ACMA to address a broad range of issues. Since the introduction of the e-marketing provisions into the Telecommunications Act in 2003, it is also now considered that there is no longer a discrete e-marketing industry or any need to specifically provide for regulation of an e-marketing industry. Accordingly, the provisions relating to the development of codes for the e-marketing industry under Part 6 of the Telecommunications Act are considered redundant and are proposed to be repealed by Schedule 4 to the Bill.

Item 1 – Section 5

Item 1 omits references to the e-marketing industry from the simplified outline set out in section 5 of the Telecommunications Act.

Item 2 – Section 7 (definition of *e-marketing industry*)

Item 3 repeals the definition of e-marketing industry in section 7 of the Telecommunications Act.

Item 3 – Section 106

Item 3 omits references to the e-marketing industry from section 106 of the Telecommunications Act (the simplified outline of Part 6).

Item 4 – 109A, 110A and 111A

Item 4 repeals sections 109A, 110A and 111A of the Telecommunications Act. Section 109A defines an ‘e-marketing activity’, section 110A defines ‘sections of the e-marketing industry’ and section 111A defines ‘participants in a section of the e-marketing industry’.

Item 5 – Subsection 112(1A)
Item 6 – Subsection 112(2)
Item 7 – Subsection 112(3B)

Items 5 to 7 amend section 112 of the Telecommunications Act to remove references to the e-marketing industry from the statement of regulatory policy contained in Part 6 of the Telecommunications Act – item 5 repeals subsection 112(1A), item 6 omits the reference to the e-marketing industry from subsection 112(2) and item 7 repeals subsection 112(3B).

Item 8 – Subsection 113(2)
Item 9 – Paragraph 117(1)(a)
Item 10 – Paragraph 117(1)(b)
Item 11 – Subparagraph 117(1)(k)(iii)
Item 12 – Subsection 118(1)
Item 13 – Paragraph 118(1)(a)
Item 14 – Subsection 118(3)
Item 15 – Paragraph 118(4A)(c)

Items 8 to 15 omit references to 'the e-marketing industry' or 'e-marketing activities' occurring in sections 113, 117 and 118 of the Telecommunications Act.

Item 16 – Section 119 (heading)

Item 16 repeals the heading of section 119 of the Telecommunications Act and substitutes a new heading that does not include a reference to the e-marketing industry.

Item 17 – Subsection 119(1)
Item 18 – Paragraph 119(1)(b)
Item 19 – Subparagraph 119A(1)(b)(i)
Item 20 – Subparagraph 119A(1)(b)(ii)
Item 21 – Subparagraph 119A(1)(k)(iii)
Item 22 – Paragraph 121(1)(a)
Item 23 – 122(1)
Item 24 – Subparagraph 123(1)(a)(i)
Item 25 – Subparagraph 123(1)(a)(ii)
Item 26 – Paragraph 124(1)(a)
Item 27 – Subparagraph 124(1)(c)(ii)
Item 28 – Subparagraph 125(1)(a)(i)
Item 29 – Subparagraph 125(1)(a)(ii)
Item 30 – Subsection 125(7)
Item 31 – Subsection 125(7)
Item 32 – Subsections 128(1) and 129(1)
Item 33 – Section 130
Item 34 – Paragraphs 130(a) and (b)

Items 17 to 34 omit references to 'the e-marketing industry' or 'e-marketing activities' occurring in sections 119, 119A, 121, 122, 123, 124, 125, 128, 129 and 130 of the Telecommunications Act.

Schedule 5—Record-keeping requirements

Schedule 5 to the Bill contains amendments related to the repeal of some record-keeping and reporting requirements in Part 13 of the Telecommunications Act. Part 13 provides for the protection of communications and creates offences for the unauthorised use or disclosure of certain information by carriers, carriage service providers, number-database operators, emergency call persons and their respective employees and contractors.

Division 2 of Part 13 of the Telecommunications Act sets out the primary disclosure/use offences. Division 3 sets out exceptions to these offences. For example, section 280 has the effect of permitting disclosure or use of information or a document if the disclosure or use is required or authorised by or under law (noting paragraph 280(1)(b) in particular).

Division 5 of Part 13 of the Telecommunications Act sets out associated record-keeping requirements.

Section 306 of the Telecommunications Act sets out the general record-keeping requirement, which applies to carriers, carriage service providers, number-database operators and their respective associates. Section 306 requires the making and keeping of records of disclosures, where those disclosures were authorised by certain provisions of Division 3 of Part 13 of the Telecommunications Act (these provision are set out in subparagraph 306(1)(b)(i), or by certain provisions of the *Telecommunications (Interception and Access) Act 1979*) (these provisions are set out in subparagraph 306(1)(b)(ii)).

Section 306A of the Telecommunications Act sets similar requirements, which apply in relation to disclosures that were authorised under certain provisions of the *Telecommunications (Interception and Access) Act 1979*.

Section 308 of the Telecommunications Act requires that, if any record of a disclosure is made or copy of a record of a disclosure is given under section 306 or 306A, carriers, carriage service providers and number-database operators must report on the disclosure to the ACMA.

The record-keeping obligations contained in section 306 for disclosures authorised by certain provisions of Division 3 (see subparagraph 306(1)(b)(i)), and the reporting obligations imposed by section 308, impose compliance costs on industry without providing an effective consumer protection measure. Accordingly, these obligations are proposed for repeal. However, following consultation with law enforcement agencies, some of the record-keeping obligations in subparagraph 306(1)(b)(i) will be retained for use by law enforcement agencies for evidentiary and authentication purposes.

Australian Communications and Media Authority Act 2005

Item 1 – Paragraph 57(e)
Item 2 – Paragraph 57(f)

Section 57 of the ACMA Act sets out certain information that must be included in the ACMA's annual report. Paragraph 57(f) requires the report to include statistical information about disclosures made under Division 3 of Part 13 of the Telecommunications Act and reported to the ACMA under section 308 of the Telecommunications Act. Items 1 and 2 amend section 57 of the ACMA Act as a consequence of the repeal of section 308 of the Telecommunications Act (see item 4, below).

Telecommunications Act 1997

Item 3 – Subparagraph 306(1)(b)(i)

Item 3 substitutes a new subparagraph 306(1)(b)(i) into the Telecommunications Act. The effect of new subparagraph 306(1)(b)(i) will be to reduce the number of provisions in Division 3 of Part 13 in relation to which the record-keeping obligations contained in section 306 apply.

Item 4 – Section 308

Item 4 repeals section 308 of the Telecommunications Act. This removes the requirement for carriers, carriage service providers and number-database operators to report to the ACMA on the disclosure of information or a document in relation to which a record was made under section 306 or 306A of the Telecommunications Act.

Some carriers and carriage service providers have a practice of voluntarily publishing statistical information about disclosures made by them under Division 3 of Part 13 of the Telecommunications Act. The amendments and repeals made by this Schedule are not intended to impact on this existing practice, should carriers and carriage service providers choose to continue it.

Schedule 6—Pre-selection

Telecommunications Act 1997

Part 17 of the Telecommunications Act deals with pre-selection in favour of carriage service providers. The proposed amendments will limit the application of pre-selection in light of its reduced use and in order to contain industry costs.

Part 17 provides a framework by which pre-selection can be activated. Subject to determination by the ACMA, the provisions allow a consumer with a standard telephone service or a specified declared carriage service to choose a carrier or carriage service provider (other than the service provider that supplies the telephone line and local calls) to supply other services such as national long-distance calls, international calls and calls to mobile phones as set out in the ACMA's determination. An end-user may pre-select (or choose) an alternative fixed-line service provider either by ongoing election or through the use of dialling codes in each call instance (for example, the customer could dial the digit '1' to pre-select Optus for long distance calls).

At present, the general rule is that pre-selection functionality can be required to be supplied with all standard telephone services, regardless of where the premises is located and, except for public mobile networks, regardless of which technology platform is used to supply the standard telephone service. This obligation is activated by ACMA determinations. Certain limits are, however, set out in the *Telecommunications (Consumer Protection and Service Standards) (Characteristics for Standard Telephone Service) Regulation 2012* (the STS Characteristics Regulation) to deal with recent technological changes. The STS Characteristics Regulation operates by modifying the definition of 'standard telephone service' for the purposes of subsection 349(1).

Pre-selection was introduced in the early 1990s to foster the development of telecommunications competition in the move from the former Government-owned monopoly. Generally, it was applied in relation to telephone services provided using the Public Switched Telephone Network (PSTN), the traditional voice-centred telephony network. Pre-selection has also been provided with standard telephone services supplied using the Integrated Services Digital Network (ISDN), which is capable of carrying data as well as voice services, whether ISDN has been supplied using copper access lines or a combination of optic fibre and copper access lines.

Pre-selection was once a relatively popular option for consumers; however, its use has declined considerably as the ability to bundle line access, local call and other services has developed. Consumers nowadays more commonly choose bundled plans and are able to switch providers more easily than in the past. Furthermore, pre-selection functionality is not readily available on fixed-wireless networks, particularly those based on mobile technology. As such, a key objective of the amendments set out in Schedule 6 to the Bill is to significantly relax the application of pre-selection to services provided over radiocommunications, as illustrated in the diagrams provided below. The utility of pre-selection is limited on new platforms (such as the NBN)

because retail service providers can readily bundle access and call services, and customers can readily change providers. Providing pre-selection also imposes costs on industry, for example, in developing and deploying appropriate software to enable pre-selection to operate.

Given the costs of providing pre-selection functionality on particular networks and its limited (and declining) use and utility, there are general concerns about requiring pre-selection where it has not already been provided. The amendments contained in this Schedule are proposed as a deregulatory measure to relax the requirements to provide for pre-selection. A requirement to provide pre-selection could impose unnecessary costs on industry and might deter service providers from including voice services in their offerings (as voice services generally attract pre-selection). This could reduce service choices for consumers.

Conversely the amendments also seek to maintain existing pre-selection functionality in respect of standard telephone services supplied using the PSTN or ISDN for the benefit of end-users who make use of pre-selection, while relaxing it in other areas. The availability of pre-selection in these legacy situations can also be useful in providing business services in terms of migrating business customers with large numbers of lines. Regardless of the relaxation of the pre-selection obligation, it will still be open to providers to offer pre-selection at their discretion.

The requirement to provide for pre-selection arises from section 349 of the Telecommunications Act, and instruments made under that section.

- Subsection 349(1) applies in relation to carriers and carriage service providers that supply a standard telephone service. This provision obliges the ACMA to make a determination that requires those carriers and carriage service providers to provide pre-selection in favour of a specified carriage service provider, in relation to calls made using a standard telephone service.

- Subsection 349(2) applies in relation to carriers and carriage service providers that supply a specified declared carriage service. This provision obliges the ACMA to make a determination that requires those carriers and carriage service providers to provide pre-selection in favour of a specified carriage service provider, in relation to calls made using the carriage service.

Schedule 6 to the Bill amends subsection 349(1) to provide that the ACMA will be permitted, but not obliged, to make a determination under subsection 349(1). Notwithstanding this, the ACMA will be obliged to take all reasonable steps to ensure that a declaration is in force at all times before the start of the ‘designated day’ referred to in subsection 577A(10) of the Telecommunications Act. The ‘designated day’ is the day on which the structural separation of Telstra Corporation Limited becomes effective, and is 1 July 2018 or such other day that is specified by the Minister under paragraph 577A(10)(b) of the Telecommunications Act. This is to ensure the continuity of these arrangements for the life of the legacy networks. The Bill will also require the ACMA to have completed a review of whether a determination in force under subsection 349(1) needs to be varied or revoked prior to the ‘designated day’ in order to ensure the need for the arrangements to continue has been assessed.

Further, the amendments will narrow the scope of any pre-selection requirements that are made under section 349 of the Telecommunications Act. This narrowing will apply to both existing obligations under the ACMA's determinations and into the future. In light of these changes, it is envisaged that the STS Characteristics Regulation will be repealed.

In essence, the amendments are aimed at continuing to require pre-selection where it is offered on the PSTN or ISDN (and any extensions of these networks), but to prevent it being extended to new networks unless this is specifically provided for in an instrument made by the Minister.

Item 1 – Section 5

Item 1 amends the outline at section 5 of the Telecommunications Act. The amendment reflects the changes that are made to section 349 of the Telecommunications Act.

Section 5 currently provides relevantly that the ACMA must require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers.

After amendment, section 5 will provide that the ACMA:

- may require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a standard telephone service; and

- must require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a declared carriage service.

The impact of the underlying changes to the Telecommunications Act is explained in more detail in relation to item 4, below.

Item 2 – Subsections 22(1) and (4)

Subsection 22(1) provides that, for the purposes of various provisions of the Telecommunications Act, the boundary of a telecommunications network is to be ascertained in accordance with regulations made under the Telecommunications Act. Subsection 22(4) provides for how the boundary is to be ascertained if no such regulations are in force.

Item 2 amends subsections 22(1) and (4) to insert a reference to section 349 into those provisions. As a result, section 22 will apply when ascertaining the boundary of a telecommunications network for the purpose of section 349.

This will have the effect, in particular, of making it clear that, where a service is being provided by radiocommunications and a line that runs into a premises, the line will be considered customer cabling and not a line provided by the carrier. As a result, such scenarios will not be captured by the proposed new definition of 'eligible standard telephone service' to which pre-selection can be applied (see item 7, below).

Item 3 – Section 348

Item 3 amends section 348, the simplified outline of Part 17 of the Telecommunications Act, and reflects the changes made by item 4.

Item 4 – Subsection 349(1)

Item 4 amends subsection 349(1) to replace the word 'must' with the word 'may'. The effect of this change is that the ACMA will no longer be obliged to make a determination imposing a pre-selection requirement under that subsection. Rather, the ACMA will have the discretion to impose (or not to impose) a pre-selection requirement.

This is intended to give the ACMA ongoing discretion as to whether pre-selection needs to be required in the long term, particularly after the disconnection of Telstra's services on its copper network and the migration of such services to the NBN, given changes in industry practice, consumer preference and the technological platforms used by consumers.

A determination is currently in force under subsection 349(1) of the Telecommunications Act – the *Telecommunications (Provision of Pre-selection for a Standard Telephone Service) Determination 1998*. As a result of the amendment made by this item, the ACMA would be able to revoke this declaration, and would not be required to replace it with a new declaration. However, this discretion is affected by new subsection 349(9) of the Telecommunications Act, which is inserted by item 7 – see below.

Item 5 – Subsection 349(1)

Item 5 amends subsection 349(1) to omit the words 'a standard' (occurring in references to 'a standard telephone service') and substitute the words 'an eligible standard' (so that those references will be to 'an eligible standard telephone service'). The new term, 'eligible standard telephone service' will be defined in new subsection 349(10), to be inserted by item 7 – see below. This definition will have the effect of specifying and narrowing the scope of the services to which pre-selection requirements can apply.

Item 6 – After subsection 349(5)

Item 6 inserts new subsections 349(5A) and (5B) into the Telecommunications Act.

The Telecommunications Act uses the term 'standard telephone service' in several provisions. This term is defined in section 7 of the Telecommunications Act, as having the meaning given by section 6 of the Consumer Protection Act. Subsection 349(5) of the Telecommunications Act currently narrows the scope of the term 'standard telephone service' as it appears in section 349, so that it does not include a reference to a service that is supplied by means of a public mobile telecommunications service.

New subsection (5A) will further narrow the scope of the term 'standard telephone service' for the purposes of section 349, by providing that it also does not include a reference to a service that:

- is supplied using:
  - a designated radiocommunications facility owned or operated by a carrier or carriage service provider; and
  - a line that runs directly between the facility and the premises occupied or used by an end-user; and
- if an instrument is in force under new subsection 349(5B) – satisfies the conditions set out in that instrument.

The term 'designated radiocommunications facility' is defined in section 7 of the Telecommunications Act as having the meaning given by section 31. Section 349(5B) is a new power permitting the Minister to set out conditions for the purposes of paragraph 349(5A)(b) by legislative instrument.

These new subsections are intended to have the effect of excluding from the pre-selection requirements services that are provided by radiocommunications particularly in their latter stages (e.g. the access network), but where an antenna may be located off the property on which the premises is located and there is a line running into the premises (see Scenario 3 below). An example of such a scenario is where services are delivered by radiocommunications to a community antenna and are then reticulated to premises by lines. The exclusion is not, however, intended to exclude fixed line connections to a premises simply because there is a radiocommunications link somewhere in the communications chain, for example, in the form of microwave trunk transmission (see Scenario 4 below).

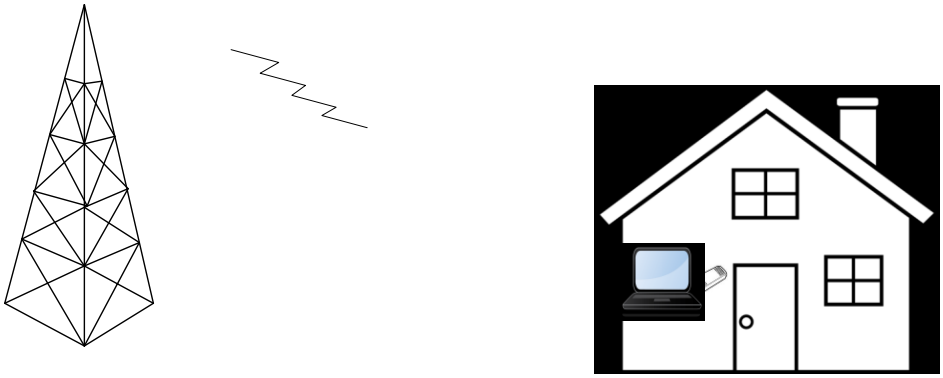
A key issue in the operation of new subsection 349(5A) is the concept of a line running directly between the designated radiocommunications facility and the premises (see Scenario 3 below). As such, it is not intended that a premises connected by a line to a small country automatic exchange (SCAX) or local exchange which is in turn connected to the broader network by radiocommunications would be excluded because the premises is not directly connected to the line.

The Minister's power under new subsection 349(5B) to set conditions for the purposes of new paragraph 349(5A)(b) is designed to enable fine-tuning of such exclusions.

Diagrams showing the intended operation of pre-selection provisions under various radiocommunications scenarios

Scenario 1: radiocommunications system to which pre-selection would not apply

This diagram depicts a radiocommunications signal to a device (e.g. phone, tablet) in a premises.



Pre-selection would not apply in this scenario as the requirement under new subsection 349(10) (see item 7, below) is not met – that is, the service is not provided by a *carrier* line running into the into the premises.

Scenario 2: radiocommunications system to which pre-selection would not apply

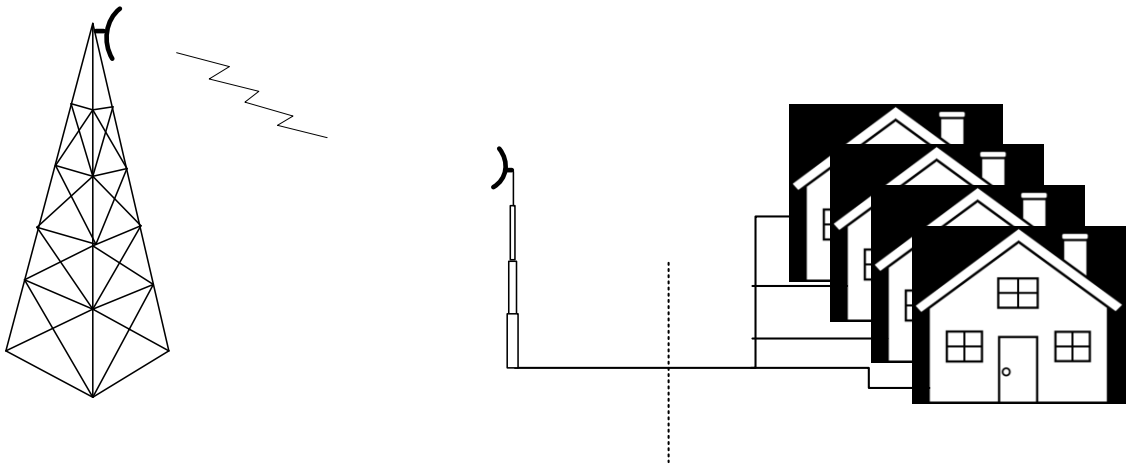
This diagram depicts a radiocommunications signal to an antenna on a property, outside a premises, with a line running into the premises (e.g. interim USO wireless).

Pre-selection would not apply in this scenario as the service is not provided by a *carrier* line running into the premises because the line is beyond the network boundary point (see section 22 of the Telecommunications Act as amended by item 2, above) and is therefore considered to be customer cabling and not a carrier line. As there is no carrier line, the requirement under new subsection 349(10) is not satisfied (see item 7, below).

Scenario 3: radiocommunications system to which pre-selection would not normally apply, but could by ministerial instrument

This diagram depicts a radiocommunications signal to an antenna outside premises and off the property on which the premises is located (the dotted line in the diagram

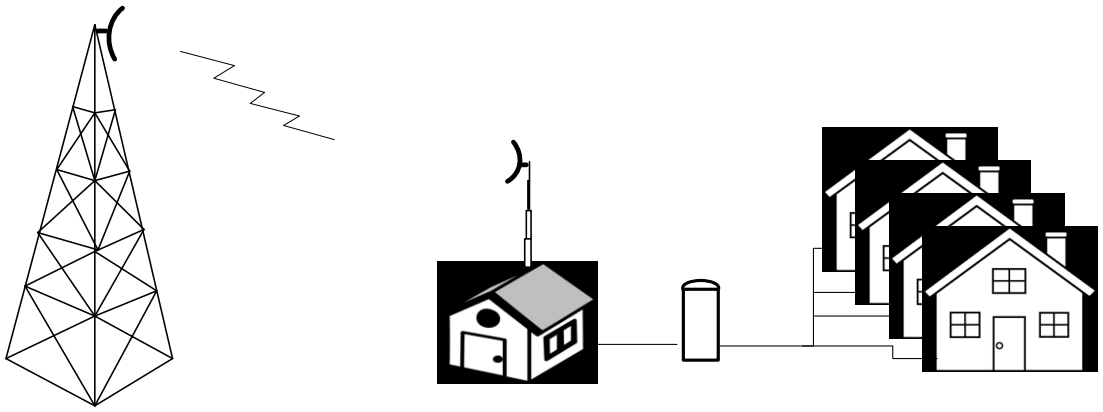
below signifies a property boundary), with a line running into the premises (e.g. community antenna).



Pre-selection would not apply in this scenario as the service is provided by a designated radiocommunications facility and a carrier line running directly into the premises (see new subsection 349(5A)).

Scenario 4: radiocommunications system to which pre-selection would apply

This diagram depicts a radiocommunications signal sent to an antenna at an exchange with a line running into the premises (PSTN service) (microwave trunk to community).



Pre-selection would apply in this scenario as the service is not provided by a line running *directly* from a designated radiocommunications facility into the premises. Rather, the service is provided by a line running from an intervening exchange building. This scenario is more akin to a standard fixed line access network; the fact that some trunk transmission is provided by radiocommunications is not material.

Item 7 – At the end of section 349

Item 7 inserts several new subsections at the end of section 349.

New subsection 349(9) requires the ACMA to take all reasonable steps to ensure that a determination is in force under subsection 349(1) at all times before the start of the 'designated day' (within the meaning of section 577A of the Telecommunications Act). The 'designated day' is defined in section 577A as meaning 1 July 2018, or

another day specified by the Minister in a written instrument made for the purpose of subsection 577A(10). It would be open to the ACMA, after the designated day, to revoke any determination made under subsection 349(1), thereby removing any pre-selection obligations under that provision. While the ACMA is being given discretion as to whether it makes a pre-selection determination under subsection 349(1) (see item 4, above), the general expectation is that a determination under subsection 349(1) will be in force up until the designated day (that is, the date at which Telstra will be structurally separated and the NBN will be completed). Accordingly, new subsection 349(9) requires the ACMA to take all reasonable steps to ensure such a determination is in force prior to the designated day.

Eligible standard telephone service

New subsection 349(10) defines the expression 'eligible standard telephone service', for the purposes of section 349.

Under this definition, an 'eligible standard telephone service' is a 'standard telephone service' (as defined in section 7 of the Telecommunications Act) that is supplied using a local access line (other than an 'exempt line') to premises occupied or used by an end-user and which satisfies the requirements set out in new paragraph 349(10)(a), (b), (c) or (d).

New paragraph 349(10)(a) requires that the local access line forms part of the infrastructure of any of the following three types of networks:

- a PSTN (other than a 'designated network') that was in existence immediately before the commencement of the amendments (including any subsequent extensions to that network); or
- an ISDN (other than a 'designated network') that was in existence immediately before the commencement of the amendments (including any subsequent extensions to that network); or
- a telecommunications network specified in a legislative instrument made by the Minister under new subsection 349(11).

This paragraph is intended to ensure that pre-selection can continue to be provided on PSTN and ISDN services on which it is already provided. The PSTN and ISDN are best understood as notional networks that may be provided by a range of technologies.

For other networks, a pre-selection obligation will not apply.

The intention of the reference to a PSTN or ISDN being in existence immediately before the commencement of the provisions is to help define the nature of those networks – that is, the networks are of a kind in operation immediately before the provisions commence. Pre-selection could continue to apply to such networks if they are geographically expanded (i.e. by any subsequent extensions to those networks).

Because a service subject to pre-selection will need to be provided by a line provided by a carrier, pre-selection would not be applicable to:

- a service provided directly into a premises by radiocommunications (see Scenario 1, above); or

- a service provided by means of a radiocommunications signal to an antenna outside a premises from which a line then runs into the premises (see Scenario 2, above). In this circumstance, the line is not provided by a carrier because the line is beyond the network boundary point and is therefore customer cabling (see item 2 above which amends the definition of the network boundary point for the purposes of section 349).

New paragraph 349(10)(b) alternatively provides for the following set of conditions to be satisfied:

- the service is a public switched telephone service supplied by a carriage service provider;
- the local access line is part of a designated network (other than a hybrid fibre-coaxial network);
- the relevant carriage service provider is in a position to exercise control over the designated network (new subsection 349(15A) sets out the test to be applied in order to determine the control issue); and
- such other conditions (if any) as are set out in an instrument in force under new subsection (11A);

New paragraph 349(10)(c) alternatively provides for the following set of conditions to be satisfied:

- the service is an integrated services digital service supplied by a carriage service provider;
- the local access line is part of a designated network (other than a hybrid fibre-coaxial network);
- the relevant carriage service provider is in a position to exercise control over the designated network (new subsection 349(15A) sets out the test to be applied in order to determine the control issue); and
- such other conditions (if any) as are set out in an instrument in force under new subsection (11B);

The conditions provided in new paragraphs 349(10)(b) and (c) are designed to capture the situation where a carriage service provider currently provides a voice service over the PSTN or ISDN to which pre-selection obligations apply and parts of the network over which the service is provided consist of optical fibre (other than a hybrid fibre-coaxial network), given optical fibre networks as 'designated networks' are otherwise being generally excluded from Part 17 (proposed subsection 349(14)). Hybrid fibre-coaxial networks are not captured in this instance because the advice of industry is that pre-selection is not provided on the major hybrid fibre-coaxial networks.

New paragraph 349(10)(d) alternatively provides for the following set of conditions to be satisfied:

- the service is a PSTN pass-through service supplied by a carriage service provider in conjunction with a telecommunications network covered by paragraph (b) of the definition of 'optical fibre network' in proposed new subsection 349(16); and
- such other conditions (if any) as are set out in an instrument in force under new subsection (11C).

'PSTN pass-through service' itself is also defined in proposed new subsection 349(16) (see below).

The narrowing of scope of the pre-selection obligations in respect of standard telephone services to only apply to an 'eligible standard telephone service' under proposed new subsection 349(10) in this way will deliver significant cost savings to the telecommunications industry by removing the need to provide unnecessary pre-selection capability and not adversely affecting competition or consumer choice.

New subsection 349(11) inserts a new power for the Minister to make a legislative instrument for the purpose of the proposed new definition of 'eligible standard telephone service' (see new subparagraph 349(10)(a)(iii)).

New subsection 349(11A) inserts a new power for the Minister to make a legislative instrument setting out conditions for the purposes of new subparagraph (10)(b)(iv). Similarly, new subsection (11B) inserts a new power for the Minister to make a legislative instrument setting out conditions for the purposes of new subparagraph (10)(c)(iv), and subsection (11C) provides for a similar condition specification power for the purposes of subparagraph (10)(d)(ii) relating to a PSTN pass-through service.

New subsections 349(11A) and (11B) and (11C) are included to allow the Minister to further fine-tune of the application of the pre-selection provisions from time to time, if needed.

Exempt line and designated network

New subsections 349(12) and (14) define the terms 'exempt line' and 'designated network' for the purposes of section 349. These terms are used in the definition of 'eligible standard telephone service' and in the transitional provision in item 11, below.

The term 'exempt line' will mean a line specified in an instrument made by the Minister. This is designed to enable fine-tuning of the scope of services to which pre-selection applies, if required, particularly if a line is used in combination with radiocommunications.

The term 'designated network' will be defined to cover the following three types of networks:

- an 'optical fibre network';
- a hybrid fibre-coaxial network;
- a telecommunications network specified in a legislative instrument made by the Minister.

The exclusion of optical fibre networks generally reflects the fact that pre-selection has not been widely deployed on fibre networks and that there will be greater use of fibre infrastructure in the customer access networks in future, particularly under the rollout of the NBN. The exclusion of hybrid fibre-coaxial networks generally reflects the fact that these networks have not generally offered pre-selection to date and, to the extent that they are used to provide voice services in future, it will generally be by using voice over internet protocol (VOIP), a service to which pre-selection has not applied.

New subsections 349(13) and (15) each insert a new power for the Minister to make a legislative instrument for the purpose of these definitions. The ability to do this provides greater flexibility if, for example, technology were to change in the future and there was uncertainty about whether these changes should be encompassed by the definitions.

New subsection 349(15A) specifies how the question of whether a carriage service provider is in a position to exercise control over a designated network is to be determined:

(a) in the case where the carriage service provider is Telstra, the test to be applied is that set out in in Division 7 of Part 33 of the Telecommunications Act, which is Telstra-specific; and

(b) in all other cases, Division 7 of Part 33 is taken to apply to a carriage service provider in a corresponding way to the way in which that Division would apply in relation to Telstra.

In order to ensure that the ongoing need for pre-selection is evaluated, new subsection 349(15B) will require the ACMA to review whether a determination in force under subsection 349(1) needs to be varied or revoked. This review must be carried out at least two months before the start of the designated day (within the meaning of section 577A of the Telecommunications Act). The ACMA does not need to publish the outcome of its review nor does it need to formally table the results of its review, however, it is expected it would be made public. In the event that the ACMA at such future time considered that a determination was no longer required, given the transition to the NBN, it is expected that the results of the ACMA's review would be the revocation of the determination in force under subsection 349(1) at the relevant time.

Other definitions

New subsection 349(16) sets out definitions of several terms for the purposes of section 349.

The following terms will be defined as having the generally accepted meaning within the telecommunications industry at the time immediately before the amendments come into effect:

- 'integrated services digital network';
- 'integrated services digital service';

- ‘PSTN pass-through service’;
- ‘public switched telephone network’;
- ‘public switched telephone service’.

A ‘PSTN pass-through service’ is effectively a PSTN service operated in parallel with other services offered over a fibre-to-the-node or a fibre-to-the-basement network.

For clarity, a VOIP service is not considered to be a public switched telephone service or an integrated services digital service; nor is a VOIP service intended to be subject to the pre-selection obligations, irrespective of the technology platform (fibre, copper, wireless, satellite) or the network type (PSTN, ISDN) over which it is provided.

The following additional terms would also be defined:

- ‘local access line’ – this term will be defined as having the same meaning as in section 141D of the Telecommunications Act;
- ‘non-optical-fibre cable’ – this term will be defined as meaning a line other than an optical fibre line;
- ‘optical fibre network’ – this term will be defined as meaning a telecommunications network the line component of which consists of:
  - optical fibre lines; or
  - optical fibre lines to connecting nodes, supplemented by either or both of the following:
    - non-optical-fibre cable connections from the nodes to premises occupied or used by end-users;
    - non-optical-fibre cable connections from the nodes to main distribution frames, and non-optical-fibre cable connections from main distribution frames to premises occupied or used by end-users.

Specific reference is made to main distribution frames to make it clear that the exclusion of optical fibre networks is intended to cover fibre-to-the-basement networks as well as fibre-to-the-node and fibre-to-the-premises networks.

The overall effect of the changes set out in Schedule 6 to the Bill is that pre-selection functionality would no longer need to be applied to voice telephony services using any of the following types of networks:

- a public mobile network;
- a fixed wireless network;
- a satellite network; or
- a hybrid fibre-coaxial network.

Pre-selection functionality would also no longer need to be applied to voice telephony services using any of the following types of networks, except to the extent that a carriage service provider controls the network and has been using it to provide PSTN or ISDN services:

- a fibre-to-the-premises network;
- a fibre-to-the-node network; or
- a fibre-to-the-basement network.

A new power is included in new subsection 349(15) to enable the Minister to bring any of the above networks back within scope of the pre-selection obligation, by legislative instrument if necessary, with any necessary caveats. Again, this is designed to enable fine-tuning of the proposed provisions given their technical complexity. Before exercising such power, the Minister would consult with stakeholders.

Item 8 – Subsection 352(1)
Item 9 – At the end of section 352

Items 8 and 9 modernise publishing requirements in section 352 of the Telecommunications Act.

Subsection 352(1) of the Telecommunications Act permits the ACMA to declare that a specified carrier or carriage service provider is exempt from a requirement imposed under section 349. Currently, such a declaration must be by notice in the *Gazette*.

Item 8 amends subsection 352(1) with the effect that the declaration must instead be 'by writing'. This is designed to streamline regulatory requirements and reduce costs by enabling the ACMA to publish instruments directly online rather than requiring publication in the *Gazette*.

Item 9 makes related amendments to section 352, and inserts new subsections (5), (6) and (7).

New subsection 352(5) requires the ACMA to publish a copy of a declaration under section 352 on its website.

To assist readers, new subsections 352(6) and (7) provide for when such a declaration will be a legislative instrument.

New subsection (6) provides that the declaration is not a legislative instrument if it specifies a carrier or carriage service provider by name. This provision is declarative of the law – such a declaration would apply the law in a particular case, and would not determine the content of the law or alter the law. In accordance with section 5 of the *Legislative Instruments Act 2003*, such a declaration would therefore not be a legislative instrument.

New subsection (7) provides that the declaration is a legislative instrument if it specifies a class of carriers or a class of carriage service providers. This provision also is declarative of the general law – such a declaration would apply generally to any carrier or carriage service provider within the declared class, and so would determine the content of the law.

Item 12 is an application provision that relates to the amendment made by these items – see below.

Item 10 – Transitional—determinations under subsection 349(1) of the Telecommunications Act 1997

Item 10 is a transitional measure that applies to a determination made by the ACMA under subsection 349(1) of the Telecommunications Act and which was in force immediately before the commencement of the item.

This item provides that, subject to subitem (4), the amendments made by Schedule 6 to the Bill do not affect the continuity of such a determination. However, the overall purpose of the new provision is to read down the determination in line with the amendments to Part 17.

Subitem (4) provides that such a determination does not apply to a standard telephone service unless the service is an 'eligible standard telephone service' (within the meaning of section 349 of the Telecommunications Act as amended by Schedule 6). The effect of this provision is to restrict the operation of existing determinations so that they will apply only in relation to standard telephone services that are 'eligible standard telephone services' (see the definition of 'eligible standard telephone service' to be inserted by item 7, above, and the modified meaning of 'standard telephone service' for the purposes of section 349 in item 6, above).

The ACMA has made a determination that will be affected by this provision: the *Telecommunications (Provision of Pre-selection for a Standard Telephone Service) Determination 1998*.

Item 11 – Transitional—determinations under subsection 349(2) of the *Telecommunications Act 1997*

Item 11 sets out a transitional measure that applies to a determination made by the ACMA under subsection 349(2) of the Telecommunications Act and which was in force immediately before the commencement of the item. Such a determination is modified in accordance with subitems (2) and (3).

Subitem (2) provides that the determination does not apply to a declared carriage service unless the service is supplied under the same circumstances as an 'eligible standard telephone service' (see item 7, above).

Subitem (3) provides that the determination does not apply to a declared carriage service if the service is supplied under the same circumstances as described in new subsection 349(5A) (see item 5, above).

The overall purpose of item 11 is to read down the determination in line with the amendments to Part 17.

Subitem (4) permits the Minister, by legislative instrument, to set out conditions for the purposes of paragraph (3)(b). Subitem (5) provides that an expression used in subitem (2) has the same meaning as in section 349 of the Telecommunications Act as amended by Schedule 6 to the Bill.

The ACMA has made a declaration that will be affected by this provision: the *Telecommunications (Provision of Pre-selection for Specified Carriage Services) Determination 1998*.

Item 12 – Application—declaration under subsection 352(1) of the *Telecommunications Act 1997*

Item 12 sets out an application provision that applies to a declaration made under section 352 of the Telecommunications Act. This item provides that the amendments made to section 352 by items 8 and 9 apply in relation to a declaration made after the commencement of this item. Accordingly, section 352 as in force prior to the commencement of this item will continue to apply in relation to any declaration that was made prior to commencement of this item.

The ACMA has made a declaration that will be impacted by this provision: the *Telecommunications (Standard Telephone Service and Specified Carriage Service Exemption) Declaration 1998*.

Schedule 7—Telecommunications Industry Ombudsman

Telecommunications (Consumer Protection and Service Standards) Act 1999

Schedule 7 to the Bill sets out amendments to the Consumer Protection Act to modernise a number of publication requirements.

Item 1 – Subsection 119(6)

Subsection 119 of the Consumer Protection Act gives the TIO the power to issue evidentiary certificates stating that a specified carriage service provider has contravened a performance standard under the Customer Service Guarantee (see Part 5 of the Consumer Protection Act). However, in recognition that the TIO scheme is an industry-based scheme, the TIO only obtains that power if the TIO gives a written notice consenting to the conferral of the power. Currently, subsection 119(6) requires the Minister to cause of copy of such a notice to be published in the *Gazette*.

Item 1 substitutes the requirement to publish in the *Gazette* with a requirement for the Minister to cause the copy of the notice to be published on the Department's website.

Item 2 – Subsection 129(1)
Item 3 – At the end of section 129

Section 129 of the Consumer Protection Act enables the ACMA to declare that a carrier or carriage service provider is exempt from the requirement to enter into the TIO scheme (see section 128). Currently, subsection 129(1) requires the ACMA to publish a notice of such a declaration in the *Gazette*.

Items 2 and 3 amend section 129 to substitute the requirement to publish in the *Gazette* with a requirement for the ACMA to publish a copy of such a declaration on the ACMA's website.

To assist readers, item 3 also clarifies when a declaration made under subsection 129(1) is a legislative instrument. A declaration is not a legislative instrument when it specifies a carrier or eligible carriage service provider by name, as such a declaration would be administrative in character. A declaration is a legislative instrument when it specifies a class of carriers or eligible carriage service providers (see new subsections 129(6) and (7).

Item 4 – Subsection 131(1)
Item 5 – Subsection 131(2)

Section 131 of the Consumer Protection Act enables the ACMA to make a written determination that requires all members of a class of carriage service providers to enter into the TIO scheme. Subsection 131(2) requires a copy of such a determination to be published in the *Gazette*.

Item 4 amends subsection 131(1) to clarify that a determination is a legislative instrument, which would accordingly be registered on the Federal Register of Legislative Instruments.

Item 5 repeals subsection 131(2) removing the requirement to publish a copy of a determination in the *Gazette*.

Item 6 – Application—notice under subsection 119(6) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

Item 6 makes it clear that the proposed amendment of subsection 119(6) of the Consumer Protection Act contained in Schedule 7 to the Bill (see item 1, above) only applies in relation to a notice, if a copy of the notice was published under that subsection after the commencement of this item. This item commences the day after the Act receives Royal Assent (see clause 2 of the Bill).

Item 7 – Application—declaration under subsection 129(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

Item 7 makes it clear that the proposed amendments of section 129 of the Consumer Protection Act contained in Schedule 7 to the Bill (see items 2 and 3, above) only apply in relation to a declaration made after the commencement of this item. This item commences the day after the Act receives Royal Assent (see clause 2 of the Bill).

Schedule 8—Customer service guarantee

Telecommunications (Consumer Protection and Service Standards) Act 1999

Division 2 of Part 5 of the Consumer Protection Act provides for performance standards and benchmarks that carriage service providers are required to comply with in respect of supplying certain kinds of carriage services to retail customers. If a carriage service provider contravenes a performance standard, the carriage service provider is liable to pay damages to the customer for the contravention.

Item 1 – Subsection 117A(3)

Subsection 117A(3) of the Consumer Protection Act currently requires a carriage service provider to give a customer written notification of a decision to accept, or not to accept, a liability to pay damages in respect of a claimed contravention of a performance standard.

Item 1 amends subsection 117A(3) so that a carriage service provider only has to advise a customer if it is not accepting liability. This reduces the compliance burden on industry, but does not negatively affect consumers; if the provider accepts liability, this will be obvious to the consumer, as the provider must discharge that liability within 14 weeks as set out in subsection 117A(4) – typically through a payment to the customer or a credit on the customer's next bill).

Item 2 – Application—notification under subsection 117A(3) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

Item 2 provides that the proposed amendment to subsection 117A(3) made by item 1 only applies in relation to a decision made after the commencement of this item. This item commences the day after the Act receives Royal Assent (see clause 2 of the Bill).

TELECOMMUNICATIONS (INDUSTRY LEVY) AMENDMENT BILL 2014

Clause 1 – Short title

Clause 1 provides that the Levy Amendment Bill, when enacted, may be cited as the *Telecommunications (Industry Levy) Amendment Act 2014*.

Clause 2 – Commencement

Clause 2 provides for the commencement of the Levy Amendment Bill.

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

Schedule 1 to the Levy Amendment Bill is to commence at the same time as Part 3 of Schedule 1 to the Bill commences.

Clause 3 – Schedules

Clause 3 provides that legislation specified in a Schedule to the Levy Amendment Bill is amended or repealed as set out in that Schedule and any other item in a Schedule to the Levy Amendment Bill has effect according to its terms. The Levy Amendment Bill has one Schedule which contains amendments to the Levy Act.

Schedule 1—Amendments

Telecommunications (Industry Levy) Act 2012

The Levy Amendment Bill makes consequential and transitional changes to the Levy Act, reflecting that the intended abolition of TUSMA will require substantive provisions concerning the assessment, collection and recovery of the industry levy to be transitioned from the TUSMA Act to the Consumer Protection Act.

Item 1 – Before section 1

Item 1 inserts a new Part heading into the Levy Act.

Item 2 – Section 3

Item 2 repeals section 3 of the Levy Act, which is a definitions section. A new definitions section is proposed to be inserted by item 3 (see below).

Item 3 – After section 4

Item 3 inserts a new Part 2 into the Levy Act.

Definitions

New section 4A sets out definitions of three key terms used in new Part 2 of the Levy Act – 'eligible levy period', 'levy amount' and 'person'. 'Eligible levy period' and 'levy amount' are defined as having the same meaning as in the Consumer Protection Act (see new definitions inserted by items 68 and 73 of the Bill). 'Person' is defined as having the same meaning as in the Telecommunications Act.

The note to new section 4A refers to subsection 5(1) of the Consumer Protection Act, which provides that, unless the contrary intention appears, expressions used in the Consumer Protection Act and the Telecommunications Act have the same meaning in the Consumer Protection Act as they have in the Telecommunications Act.

Extension to external Territories

New section 4B extends the application of new Part 2 of the Levy Act to each external Territory referred to in section 10 of the Telecommunications Act. Section 10 of the Telecommunications Act refers to the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and any other external Territories prescribed by the regulations made for the purposes of paragraph 10(c) of the Telecommunications Act.

The note to new section 4B refers to section 7 of the Consumer Protection Act, which relevantly provides that section 10 of the Telecommunications Act applies to the Consumer Protection Act in a corresponding way to the way in which it applies to the Telecommunications Act.

Imposition of levy

New section 4C provides that if a person has a levy amount for an eligible levy period because of new section 50 of the Consumer Protection Act (see item 123 of Schedule 1 to the Bill), levy will be imposed on that amount.

New section 4C must be read in conjunction with new section 50 of the Consumer Protection Act, which sets out the means of determining a person's levy amount for an eligible levy period. In general, the levy amount will be a person's levy contribution factor for the relevant eligible levy period (as worked out under new section 49 of the Consumer Protection Act (see item 123 of Schedule 1 to the Bill)) multiplied by the overall levy target amount for the eligible levy period (as worked out under new section 41 of the Consumer Protection Act (see item 123 of Schedule 1 to the Bill)).

Amount of levy

New section 4D provides that the amount of a levy that this Part imposes on a levy amount for an eligible levy period is equal to that levy amount.

Person liable to pay levy

New section 4E provides that the levy imposed on a person's levy amount for an eligible levy period is payable by that person. Under new section 56 of the Consumer Protection Act (see item 123 of Schedule 1 to the Bill), the levy is due and payable on the 28th day (or a later day determined in writing by the ACMA) after the ACMA gives the person a copy of the ACMA's assessment of levy made under new section 51 of the Consumer Protection Act (see item 123 of Schedule 1 to the Bill). Under new section 57 of the Consumer Protection Act (see item 123 of Schedule 1 to the Bill), the levy is a debt due to, and is recoverable in a court of competent jurisdiction by, the ACMA on behalf of the Commonwealth.

Item 4 – Sections 5, 6, 7 and 8

Item 4 repeals section 5, 6, 7 and 8 of the Levy Act. These sections are proposed to be replaced by new sections 4B, 4C, 4D and 4E (see item 3, above).

Item 5 – Transitional—levy for the 2012-13 financial year or the 2013-14 financial year

Item 5 provides a transitional mechanism permitting sections 3, 5, 6, 7, and 8 of the Levy Act (in spite of the repeal of those sections by Schedule 1 to the Levy Amendment Bill (see items 2 and 4, above)) to continue in force in relation to a levy amount for the eligible levy periods that began on 1 July 2012 and 1 July 2013 as if those sections had not been repealed.