

2008-2009

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Telecommunications Legislation  
Amendment (Competition and  
Consumer Safeguards) Bill 2009**

**No.     , 2009**

*(Broadband, Communications and the Digital Economy)*

**A Bill for an Act to amend legislation relating to  
telecommunications, and for other purposes**



---

## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	3
<b>Schedule 1—Amendments</b>		<b>4</b>
<b>Part 1—Amendments relating to Telstra</b>		<b>4</b>
Division 1—Amendments commencing on the day after this Act receives the Royal Assent		4
<i>Radiocommunications Act 1992</i>		4
<i>Telecommunications Act 1997</i>		4
<i>Trade Practices Act 1974</i>		35
Division 2—Amendments commencing immediately after a final functional separation undertaking comes into force		37
<i>Telecommunications Act 1997</i>		37
<i>Trade Practices Act 1974</i>		39
Division 3—Amendments commencing immediately after an undertaking about structural separation comes into force		41
<i>Telecommunications Act 1997</i>		41
<i>Trade Practices Act 1974</i>		42
<b>Part 2—Telecommunications access regime</b>		<b>43</b>
Division 1—Amendments		43
<i>National Transmission Network Sale Act 1998</i>		43
<i>Telecommunications Act 1997</i>		43
<i>Trade Practices Act 1974</i>		48
Division 2—Transitional provisions		96
<b>Part 3—Anti-competitive conduct</b>		<b>106</b>
Division 1—Amendments		106
<i>Trade Practices Act 1974</i>		106
Division 2—Application		106
<b>Part 4—Universal service regime</b>		<b>107</b>
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>		107

---

<b>Part 5—Customer service guarantee</b>	121
<i>Telecommunications (Consumer Protection and Service Standards)</i> <i>Act 1999</i>	121
<b>Part 6—Priority assistance</b>	126
<i>Telecommunications Act 1997</i>	126
<b>Part 7—Infringement notices etc.</b>	129
Division 1—Amendments	129
<i>Telecommunications Act 1997</i>	129
Division 2—Application	136
<b>Part 8—Civil penalty provisions</b>	137
<i>Telecommunications Act 1997</i>	137

1     **A Bill for an Act to amend legislation relating to**  
2     **telecommunications, and for other purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Telecommunications Legislation*  
6                     *Amendment (Competition and Consumer Safeguards) Act 2009*.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1, Division 1	The day after this Act receives the Royal Assent.	
3. Schedule 1, Part 1, Division 2	Immediately after a final functional separation undertaking comes into force under Part 9 of Schedule 1 to the <i>Telecommunications Act 1997</i> .  The Minister must announce by notice in the <i>Gazette</i> the time when a final functional separation undertaking comes into force under Part 9 of Schedule 1 to the <i>Telecommunications Act 1997</i> .	
4. Schedule 1, Part 1, Division 3	Immediately after an undertaking comes into force under section 577A of the <i>Telecommunications Act 1997</i> .  The Minister must announce by notice in the <i>Gazette</i> the time when an undertaking comes into force under section 577A of the <i>Telecommunications Act 1997</i> .	
5. Schedule 1, Parts 2 and 3	The day after this Act receives the Royal Assent.	
6. Schedule 1, Parts 4 to 7	1 July 2010.	1 July 2010
7. Schedule 1, Part 8	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

1  
2  
3  
4  
5  
6

---

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Amendments**

2 **Part 1—Amendments relating to Telstra**

3 **Division 1—Amendments commencing on the day after**  
4 **this Act receives the Royal Assent**

5 ***Radiocommunications Act 1992***

6 **1 After subsection 58(1)**

7 Insert:

8 (1A) Subsection (1) has effect subject to section 577J of the  
9 *Telecommunications Act 1997*.

10 **2 At the end of section 60**

11 Add:

12 (15) This section has effect subject to section 577J of the  
13 *Telecommunications Act 1997*.

14 **3 At the end of section 62**

15 Add:

16 (4) This section has effect subject to section 577J of the  
17 *Telecommunications Act 1997*.

18 **4 At the end of section 68**

19 Add:

20 (5) This section has effect subject to section 577K of the  
21 *Telecommunications Act 1997*.

22 **5 Subsection 85(1)**

23 After “section 86”, substitute “of this Act and section 577L of the  
24 *Telecommunications Act 1997*”.

25 ***Telecommunications Act 1997***

26 **6 Section 7**

---

1           Insert:

2                     *designated part of the spectrum* has the meaning given by  
3                     section 577H.

4       **7 Section 7**

5           Insert:

6                     *draft functional separation undertaking* means a draft functional  
7                     separation undertaking under Division 2 of Part 9 of Schedule 1.

8       **8 Section 7**

9           Insert:

10                    *final functional separation undertaking* means a final functional  
11                    separation undertaking under Division 2 of Part 9 of Schedule 1.

12       **9 Section 7**

13           Insert:

14                    *hybrid fibre-coaxial network* means a telecommunications  
15                    network:  
16                    (a) that is for use for the transmission of any broadcasting  
17                    service; and  
18                    (b) that is also capable of being used to supply an internet  
19                    carriage service; and  
20                    (c) the line component of which consists of optical fibre to  
21                    connecting nodes, supplemented by coaxial cable  
22                    connections from the nodes to the premises of end-users.

23       **10 Section 7**

24           Insert:

25                    *internet carriage service* means a carriage service that enables  
26                    end-users to access the internet.

27       **11 Section 7**

28           Insert:

29                    *radiocommunications device* has the same meaning as in the  
30                    *Radiocommunications Act 1992*.

1 **12 Section 7**

2 Insert:

3 *spectrum* has the same meaning as in the *Radiocommunications*  
4 *Act 1992*.

5 **13 Section 7**

6 Insert:

7 *spectrum licence* has the same meaning as in the  
8 *Radiocommunications Act 1992*.

9 **14 Section 7**

10 Insert:

11 *subscription television broadcasting licence* has the same meaning  
12 as in the *Broadcasting Services Act 1992*.

13 **15 Before subsection 69(7)**

14 Insert:

15 (6B) Subsection (1) does not apply to the condition set out in clause 84  
16 of Schedule 1.

17 Note: Clause 84 of Schedule 1 deals with control by Telstra of certain  
18 spectrum licences.

19 **16 Before subsection 70(4)**

20 Insert:

21 (3B) Subsection (1) does not apply to the condition set out in clause 84  
22 of Schedule 1.

23 Note: Clause 84 of Schedule 1 deals with control by Telstra of certain  
24 spectrum licences.

25 **17 After paragraph 564(3)(b)**

26 Insert:

27 (ba) the carrier licence condition set out in clause 84 of  
28 Schedule 1; or

29 **18 Subsection 564(3) (after note 2)**

30 Insert:

---

1 Note 2A: Clause 84 of Schedule 1 deals with control by Telstra of certain  
2 spectrum licences.

3 **19 After paragraph 571(3)(b)**

4 Insert:

5 (ba) the carrier licence condition set out in clause 84 of  
6 Schedule 1; or

7 **20 Subsection 571(3) (after note 2)**

8 Insert:

9 Note 2A: Clause 84 of Schedule 1 deals with control by Telstra of certain  
10 spectrum licences.

11 **21 After Part 32**

12 Insert:

13 **Part 33—Voluntary undertakings given by Telstra**

14 **Division 1—Introduction**

15 **577 Simplified outline**

16 The following is a simplified outline of this Part:

- 17
- 18 • Telstra may give the following undertakings:
    - 19 (a) an undertaking about structural separation;
    - 20 (b) an undertaking about hybrid fibre-coaxial networks;
    - 21 (c) an undertaking about subscription television broadcasting licences.
  - 22 • An undertaking comes into force when it is accepted by the ACCC.
  - 23 • Telstra will not be allowed to supply services using a
  - 24 designated part of the spectrum unless all 3 undertakings
  - 25 given by Telstra are in force.
  - 26
  - 27

1  
2  
3  
4  
5  
6  
7

- However, the Minister may exempt Telstra from the requirement to have an undertaking about hybrid fibre-coaxial networks or subscription television broadcasting licences if the Minister is satisfied that Telstra's undertaking about structural separation is sufficient to address concerns about the degree of Telstra's power in telecommunications markets.

8

## **Division 2—Structural separation**

9

### **577A Acceptance of undertaking about structural separation**

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

(1) The ACCC may accept a written undertaking given by Telstra that:

(a) at all times after a day specified in the undertaking:

(i) Telstra will not supply fixed-line carriage services to retail customers using a telecommunications network over which Telstra is in a position to exercise control; and

(ii) Telstra will not be in a position to exercise control of a company that supplies fixed-line carriage services to retail customers using a telecommunications network over which Telstra is in a position to exercise control; and

(b) Telstra will, in order to comply with paragraph (a), take specified action and/or refrain from taking specified action.

Note 1: For when Telstra is in a position to exercise control of a network, see section 577Q.

Note 2: For control of a company, see section 577P.

(2) In deciding whether to accept an undertaking under subsection (1), the ACCC must have regard to:

(a) the matters (if any) set out in an instrument in force under subsection (3); and

(b) such other matters (if any) as the ACCC considers relevant.

(3) The Minister may, by writing, set out matters for the purposes of paragraph (2)(a).

(4) The day specified in the undertaking as mentioned in paragraph (1)(a) must be:

---

- 1 (a) 1 July 2018; or  
2 (b) if the Minister, by legislative instrument, specifies another  
3 day—that other day.
- 4 (5) The undertaking must be expressed to be an undertaking under this  
5 section.
- 6 (6) The undertaking comes into force when it is accepted by the  
7 ACCC.
- 8 (7) The undertaking may not be withdrawn.
- 9 (8) As soon as practicable after the undertaking comes into force, the  
10 ACCC must publish the undertaking on its website.
- 11 (9) Part 9 of Schedule 1 does not, by implication, limit the matters that  
12 may be included in an undertaking under this section.
- 13 Note: Part 9 of Schedule 1 deals with the functional separation of Telstra.
- 14 (10) Subsection (1) does not apply to a fixed-line carriage service  
15 specified in a legislative instrument made by the Minister.
- 16 (11) Subsection (1) does not apply to a telecommunications network  
17 specified in a legislative instrument made by the Minister.
- 18 (12) The Minister must cause a copy of an instrument under  
19 subsection (3) to be published on the Department’s website.
- 20 (13) An instrument under subsection (3) is not a legislative instrument.
- 21 (14) In this section:
- 22 *fixed-line carriage service* means a carriage service that is  
23 supplied using a line to premises occupied or used by an end-user.

24 **577B Variation of undertaking about structural separation**

- 25 (1) This section applies if an undertaking given by Telstra is in force  
26 under section 577A.
- 27 (2) Telstra may give the ACCC a variation of the undertaking in so far  
28 as the undertaking is covered by paragraph 577A(1)(b).
- 29 (3) After considering the variation, the ACCC must decide to:  
30 (a) accept the variation; or
-

- 1 (b) reject the variation.
- 2 (4) In deciding whether to accept the variation, the ACCC must have  
3 regard to:
- 4 (a) the matters (if any) set out in an instrument in force under  
5 subsection (5); and  
6 (b) such other matters (if any) as the ACCC considers relevant.
- 7 (5) The Minister may, by writing, set out matters for the purposes of  
8 paragraph (4)(a).
- 9 (6) The variation takes effect when it is accepted by the ACCC.
- 10 (7) As soon as practicable after the variation takes effect, the ACCC  
11 must publish the variation on its website.
- 12 (8) The Minister must cause a copy of an instrument under  
13 subsection (5) to be published on the Department's website.
- 14 (9) An instrument under subsection (5) is not a legislative instrument.

### 15 **Division 3—Hybrid fibre-coaxial networks**

#### 16 **577C Acceptance of undertaking about hybrid fibre-coaxial** 17 **networks**

- 18 (1) The ACCC may accept a written undertaking given by Telstra that:  
19 (a) at all times after the end of the period specified in the  
20 undertaking, Telstra will not be in a position to exercise  
21 control of a hybrid fibre-coaxial network; and  
22 (b) Telstra will, in order to comply with paragraph (a), take  
23 specified action and/or refrain from taking specified action.
- 24 Note: For when Telstra is in a position to exercise control of a network, see  
25 section 577Q.
- 26 (2) The period specified in the undertaking as mentioned in  
27 paragraph (1)(a) must not be longer than 12 months.
- 28 (3) The undertaking must be expressed to be an undertaking under this  
29 section.
- 30 (4) The undertaking comes into force when it is accepted by the  
31 ACCC.

1 (5) The undertaking may not be withdrawn.

2 (6) As soon as practicable after the undertaking comes into force, the  
3 ACCC must publish the undertaking on its website.

4 **577D Variation of undertaking about hybrid fibre-coaxial networks**

5 (1) This section applies if an undertaking given by Telstra is in force  
6 under section 577C.

7 (2) Telstra may give the ACCC a variation of the undertaking in so far  
8 as the undertaking is covered by paragraph 577C(1)(b).

9 (3) After considering the variation, the ACCC must decide to:  
10 (a) accept the variation; or  
11 (b) reject the variation.

12 (4) The variation takes effect when it is accepted by the ACCC.

13 (5) As soon as practicable after the variation takes effect, the ACCC  
14 must publish the variation on its website.

15 **Division 4—Subscription television broadcasting licences**

16 **577E Acceptance of undertaking about subscription television**  
17 **broadcasting licences**

18 (1) The ACCC may accept a written undertaking given by Telstra that:  
19 (a) at all times after the end of the period specified in the  
20 undertaking, Telstra will not be in a position to exercise  
21 control of a subscription television broadcasting licence; and  
22 (b) Telstra will, in order to comply with paragraph (a), take  
23 specified action and/or refrain from taking specified action.

24 Note: For when Telstra is in a position to exercise control of a subscription  
25 television broadcasting licence, see subsection (7).

26 (2) The period specified in the undertaking as mentioned in  
27 paragraph (1)(a) must not be longer than 12 months.

28 (3) The undertaking must be expressed to be an undertaking under this  
29 section.

## Schedule 1 Amendments

### Part 1 Amendments relating to Telstra

---

- 1 (4) The undertaking comes into force when it is accepted by the  
2 ACCC.
- 3 (5) The undertaking may not be withdrawn.
- 4 (6) As soon as practicable after the undertaking comes into force, the  
5 ACCC must publish the undertaking on its website.
- 6 (7) For the purposes of this section, the question of whether Telstra is  
7 in a position to exercise control of a subscription television  
8 broadcasting licence is to be determined under Schedule 1 to the  
9 *Broadcasting Services Act 1992*.

#### 10 **577F Variation of undertaking about subscription television** 11 **broadcasting licences**

- 12 (1) This section applies if an undertaking given by Telstra is in force  
13 under section 577E.
- 14 (2) Telstra may give the ACCC a variation of the undertaking in so far  
15 as the undertaking is covered by paragraph 577E(1)(b).
- 16 (3) After considering the variation, the ACCC must decide to:  
17 (a) accept the variation; or  
18 (b) reject the variation.
- 19 (4) The variation takes effect when it is accepted by the ACCC.
- 20 (5) As soon as practicable after the variation takes effect, the ACCC  
21 must publish the variation on its website.

#### 22 **Division 5—Enforcement of undertakings**

##### 23 **577G Enforcement of undertakings**

- 24 (1) If:  
25 (a) an undertaking given by Telstra is in force under  
26 section 577A, 577C or 577E; and  
27 (b) the ACCC considers that Telstra has breached the  
28 undertaking;  
29 the ACCC may apply to the Federal Court for an order under  
30 subsection (2).

- 1 (2) If the Federal Court is satisfied that Telstra has breached the  
2 undertaking, the Court may make any or all of the following  
3 orders:
- 4 (a) an order directing Telstra to comply with the undertaking;  
5 (b) an order directing the disposal of network units, shares or  
6 other assets;  
7 (c) an order restraining the exercise of any rights attached to  
8 shares;  
9 (d) an order prohibiting or deferring the payment of any sums  
10 due to a person in respect of shares held by Telstra;  
11 (e) an order that any exercise of rights attached to shares be  
12 disregarded;  
13 (f) an order directing Telstra to pay to the Commonwealth an  
14 amount up to the amount of any financial benefit that Telstra  
15 has obtained directly or indirectly and that is reasonably  
16 attributable to the breach;  
17 (g) any order that the Court considers appropriate directing  
18 Telstra to compensate any other person who has suffered loss  
19 or damage as a result of the breach;  
20 (h) any other order that the Court considers appropriate.
- 21 (3) In addition to the Federal Court's powers under subsection (2), the  
22 court:
- 23 (a) has power, for the purpose of securing compliance with any  
24 other order made under this section, to make an order  
25 directing any person to do or refrain from doing a specified  
26 act; and  
27 (b) has power to make an order containing such ancillary or  
28 consequential provisions as the court thinks just.
- 29 (4) The Federal Court may, before making an order under this section,  
30 direct that notice of the application be given to such persons as it  
31 thinks fit or be published in such manner as it thinks fit, or both.
- 32 (5) The Federal Court may, by order, rescind, vary or discharge an  
33 order made by it under this section or suspend the operation of  
34 such an order.

1 **Division 6—Limits on allocation of spectrum licences etc.**

2 **577H Designated part of the spectrum**

- 3 (1) For the purposes of this Act, each of the following parts of the  
4 spectrum is a *designated part of the spectrum*:  
5 (a) frequencies higher than 520 MHz, up to and including 820  
6 MHz;  
7 (b) frequencies higher than 2.5 GHz, up to and including 2.69  
8 GHz.
- 9 (2) Subsection (1) has effect subject to subsection (3).
- 10 (3) The Minister may, by legislative instrument, determine that a  
11 specified part of the spectrum is not a *designated part of the*  
12 *spectrum* for the purposes of this Act.
- 13 (4) The Minister may, by legislative instrument, determine that a  
14 specified part of the spectrum is a *designated part of the spectrum*  
15 for the purposes of this Act.

16 **577J Limits on allocation of certain spectrum licences to Telstra**

- 17 (1) The ACMA must not allocate a spectrum licence to Telstra if the  
18 licence relates to a designated part of the spectrum.
- 19 (2) However, the rule in subsection (1) does not apply if:  
20 (a) an undertaking given by Telstra is in force under  
21 section 577A; and  
22 (b) either:  
23 (i) an undertaking given by Telstra is in force under  
24 section 577C; or  
25 (ii) a declaration is in force under subsection (3); and  
26 (c) either:  
27 (i) an undertaking given by Telstra is in force under  
28 section 577E; or  
29 (ii) a declaration is in force under subsection (5).

30 Note 1: Section 577A deals with undertakings about structural separation.

31 Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial  
32 networks.



## Schedule 1 Amendments

### Part 1 Amendments relating to Telstra

---

- 1 (i) an undertaking given by Telstra is in force under  
2 section 577E; or  
3 (ii) a declaration is in force under subsection 577J(5).

4 Note 1: Section 577A deals with undertakings about structural separation.

5 Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial  
6 networks.

7 Note 3: Section 577E deals with undertakings about subscription television  
8 broadcasting licences.

9 (3) A person must not:

- 10 (a) aid, abet, counsel or procure a contravention of  
11 subsection (1); or  
12 (b) induce, whether by threats or promises or otherwise, a  
13 contravention of subsection (1); or  
14 (c) be in any way, directly or indirectly, knowingly concerned in,  
15 or party to, a contravention of subsection (1); or  
16 (d) conspire with others to effect a contravention of  
17 subsection (1).

18 (4) Subsections (1) and (3) are *civil penalty provisions*.

19 Note: Part 31 provides for pecuniary penalties for breaches of civil penalty  
20 provisions.

#### 21 **577L Limits on assignment of certain spectrum licences to Telstra** 22 **etc.**

23 (1) If a spectrum licence relates to a designated part of the spectrum,  
24 the licensee of the spectrum licence must not:

- 25 (a) assign the whole or a part of the licence to Telstra; or  
26 (b) otherwise deal with Telstra in relation to the whole or a part  
27 of the licence.

28 (2) However, the rule in subsection (1) does not apply if:

- 29 (a) an undertaking given by Telstra is in force under  
30 section 577A; and  
31 (b) either:  
32 (i) an undertaking given by Telstra is in force under  
33 section 577C; or  
34 (ii) a declaration is in force under subsection 577J(3); and  
35 (c) either:

- 1 (i) an undertaking given by Telstra is in force under  
2 section 577E; or  
3 (ii) a declaration is in force under subsection 577J(5).

4 Note 1: Section 577A deals with undertakings about structural separation.

5 Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial  
6 networks.

7 Note 3: Section 577E deals with undertakings about subscription television  
8 broadcasting licences.

9 (3) A person must not:

- 10 (a) aid, abet, counsel or procure a contravention of  
11 subsection (1); or  
12 (b) induce, whether by threats or promises or otherwise, a  
13 contravention of subsection (1); or  
14 (c) be in any way, directly or indirectly, knowingly concerned in,  
15 or party to, a contravention of subsection (1); or  
16 (d) conspire with others to effect a contravention of  
17 subsection (1).

18 (4) Subsections (1) and (3) are *civil penalty provisions*.

19 Note: Part 31 provides for pecuniary penalties for breaches of civil penalty  
20 provisions.

## 21 **Division 7—Other provisions**

### 22 **577M Associate**

- 23 (1) For the purposes of this Part, an *associate* of Telstra in relation to  
24 control of:  
25 (a) a hybrid fibre-coaxial network; or  
26 (b) another telecommunications network; or  
27 (c) a company;  
28 is:  
29 (d) a partner of Telstra; or  
30 (e) if Telstra or another person who is an associate of Telstra  
31 under another paragraph receives benefits or is capable of  
32 benefiting under a trust—the trustee of the trust; or  
33 (f) a person (whether a company or not) who:  
34 (i) acts, or is accustomed to act; or

**Schedule 1** Amendments

**Part 1** Amendments relating to Telstra

---

- 1 (ii) under a contract or an arrangement or understanding  
2 (whether formal or informal) is intended or expected to  
3 act;  
4 in accordance with the directions, instructions or wishes of,  
5 or in concert with:  
6 (iii) Telstra; or  
7 (iv) Telstra and another person who is an associate of  
8 Telstra under another paragraph; or  
9 (g) another company if:  
10 (i) the other company is a related body corporate of Telstra  
11 for the purposes of the *Corporations Act 2001*; or  
12 (ii) Telstra, or Telstra and another person who is an  
13 associate of Telstra under another paragraph, are in a  
14 position to exercise control of the other company.
- 15 (2) However, persons are not associates of each other if the ACCC is  
16 satisfied that:  
17 (a) they do not act together in any relevant dealings relating to  
18 the network or company; and  
19 (b) neither of them is in a position to exert influence over the  
20 business dealings of the other in relation to the network or  
21 company.

22 **577N Control**

23 In this Part, *control* includes control as a result of, or by means of,  
24 trusts, agreements, arrangements, understandings and practices,  
25 whether or not having legal or equitable force and whether or not  
26 based on legal or equitable rights.

27 **577P Control of a company**

- 28 (1) For the purposes of this Part, the question of whether a person is in  
29 a position to exercise control of a company is to be determined  
30 under Schedule 1 to the *Broadcasting Services Act 1992*.
- 31 (2) However, in determining that question:  
32 (a) the definition of *associate* in subsection 6(1) of the  
33 *Broadcasting Services Act 1992* does not apply; and  
34 (b) the definition of *associate* in section 577M of this Act applies  
35 instead.

1 **577Q When Telstra is in a position to exercise control of a network**

- 2 (1) For the purposes of this Part, Telstra is in a position to exercise  
3 control of:
- 4 (a) a hybrid fibre-coaxial network; or
  - 5 (b) another telecommunications network;
- 6 if:
- 7 (c) Telstra legally or beneficially owns the network (whether  
8 alone or together with one or more other persons); or
  - 9 (d) Telstra is in a position, either alone or together with an  
10 associate of Telstra and whether directly or indirectly:
    - 11 (i) to exercise control of the operation of all or part of the  
12 network; or
    - 13 (ii) to exercise control of the selection of the kinds of  
14 services that are supplied using the network; or
    - 15 (iii) to exercise control of the supply of services using the  
16 network; or
  - 17 (e) a company other than Telstra legally or beneficially owns the  
18 network (whether alone or together with one or more other  
19 persons), and:
    - 20 (i) Telstra is in a position, either alone or together with an  
21 associate of Telstra, to exercise control of the company;  
22 or
    - 23 (ii) Telstra, either alone or together with an associate of  
24 Telstra, is in a position to veto any action taken by the  
25 board of directors of the company; or
    - 26 (iii) Telstra, either alone or together with an associate of  
27 Telstra, is in a position to appoint or secure the  
28 appointment of, or veto the appointment of, at least half  
29 of the board of directors of the company; or
    - 30 (iv) Telstra, either alone or together with an associate of  
31 Telstra, is in a position to exercise, in any other manner,  
32 whether directly or indirectly, direction or restraint over  
33 any substantial issue affecting the management or  
34 affairs of the company; or

- 1 (v) the company or more than 50% of its directors act, or  
2 are accustomed to act in accordance with the directions,  
3 instructions or wishes of, or in concert with, Telstra or  
4 of Telstra and an associate of Telstra acting together or  
5 of the directors of Telstra; or  
6 (vi) the company or more than 50% of its directors, under a  
7 contract or an arrangement or understanding (whether  
8 formal or informal) are intended or expected to act, in  
9 accordance with the directions, instructions or wishes  
10 of, or in concert with, Telstra or of Telstra and an  
11 associate of Telstra acting together or of the directors of  
12 Telstra.
- 13 (2) An employee is not, except through an association with another  
14 person, to be regarded as being in a position to exercise control of a  
15 network under subsection (1) purely because of being an employee.
- 16 (3) More than one person may be in a position to exercise control of a  
17 network.

## 22 At the end of Schedule 1

18 Add:

## 20 Part 9—Functional separation of Telstra

### 21 Division 1—Introduction

#### 22 68 Simplified outline

23 The following is a simplified outline of this Part:

- |   |
|---|
| <ul style="list-style-type: none"><li>24 • Telstra must prepare a draft functional separation<br/>25 undertaking.</li><li>26 • A final functional separation undertaking is a draft<br/>27 functional separation undertaking that has been approved by<br/>28 the Minister.</li><li>29 • Telstra must comply with a final functional separation<br/>30 undertaking.</li></ul> |
|---|

- 1
- 2
- 3
- However, Telstra is not required to prepare a draft functional separation undertaking if an undertaking about structural separation is in force under section 577A.

4 **69 Definitions**

5 In this Part:

6 *business unit* means a part of Telstra.

7 *declared network service* has the meaning given by clause 70.

8 *eligible service* has the same meaning as in section 152AL of the  
9 *Trade Practices Act 1974*.

10 *equivalence* means:

11 (a) equivalence in relation to terms and conditions relating to  
12 price or a method of ascertaining price; and

13 (b) equivalence in relation to other terms and conditions.

14 *functional* includes organisational.

15 *functional separation principles* means the principles set out in  
16 clause 74.

17 *functional separation requirements determination* means a  
18 determination under clause 75.

19 *quarter* means a period of 3 months beginning on 1 January,  
20 1 April, 1 July or 1 October.

21 *regulated service* has the meaning given by clause 71.

22 *retail business unit* means a business unit by which Telstra deals  
23 with its retail customers.

24 *supply*, in relation to a service, includes supply by Telstra of the  
25 service to itself.

26 *wholesale/network business unit* means the business unit of  
27 Telstra:

28 (a) that supplies the following:

29 (i) fault detection, handling and rectification;

## Schedule 1 Amendments

### Part 1 Amendments relating to Telstra

---

- 1 (ii) service activation and provisioning;  
2 (iii) declared network services;  
3 to Telstra's retail business units, and Telstra's wholesale  
4 customers, in relation to eligible services; and  
5 (b) by which Telstra deals with its wholesale customers.

#### 6 **70 Declared network services**

7 For the purposes of this Part, a *declared network service* is a  
8 service specified in a legislative instrument made by the Minister  
9 for the purposes of this clause.

#### 10 **71 Regulated services**

- 11 (1) For the purposes of this Part, a *regulated service* is a declared  
12 service within the meaning of Part XIC of the *Trade Practices Act*  
13 *1974*.  
14 (2) Subclause (1) has effect subject to subclause (3).  
15 (3) The Minister may, by legislative instrument, determine that a  
16 specified service is not a *regulated service* for the purposes of this  
17 Part.  
18 (4) The Minister may, by legislative instrument, determine that a  
19 specified eligible service is a *regulated service* for the purposes of  
20 this Part.

#### 21 **72 Notional contracts**

22 For the purposes of this Part:

- 23 (a) a notional contract (however described) between any of  
24 Telstra's business units is to be treated as if it were an actual  
25 contract; and  
26 (b) any terms and conditions (whether or not relating to price or  
27 a method of ascertaining price) in such a notional contract are  
28 to be treated as if they were actual terms and conditions.

1 **Division 2—Functional separation undertaking**

2 **73 Contents of draft or final functional separation undertaking**

- 3 (1) A draft or final functional separation undertaking must:
- 4 (a) comply with the functional separation principles; and
- 5 (b) contain provisions requiring Telstra to establish and maintain
- 6 a committee to be known as the Oversight and Equivalence
- 7 Board; and
- 8 (c) contain provisions requiring Telstra to require the Oversight
- 9 and Equivalence Board:
- 10 (i) within a specified period after the end of each quarter
- 11 during which a final functional separation undertaking
- 12 is in force, to prepare a report about the extent (if any)
- 13 to which Telstra complied with the undertaking during
- 14 that quarter; and
- 15 (ii) to give a copy of the report to the ACCC and to
- 16 Telstra's board of directors; and
- 17 (d) comply with such requirements (if any) as are specified in a
- 18 functional separation requirements determination.

19 Note 1: For the functional separation principles, see clause 74.

20 Note 2: For the functional separation requirements determination, see

21 clause 75.

- 22 (2) For the purposes of subparagraph (1)(c)(i), if a final functional
- 23 separation undertaking is in force throughout a part, but not the
- 24 whole, of a particular quarter, that part is taken to be a quarter in its
- 25 own right.

26 **74 Functional separation principles**

27 The *functional separation principles* are as follows:

- 28 (a) the principle that there should be equivalence in relation to
- 29 the supply by Telstra of regulated services to:
- 30 (i) Telstra's wholesale customers; and
- 31 (ii) Telstra's retail business units;
- 32 (b) the principle that Telstra should maintain:
- 33 (i) one or more retail business units; and
- 34 (ii) a wholesale/network business unit;

## Schedule 1 Amendments

### Part 1 Amendments relating to Telstra

---

- 1 (c) the principle that Telstra should maintain arm's length  
2 functional separation between:  
3 (i) its wholesale/network business unit; and  
4 (ii) its retail business units;
- 5 (d) the principle that Telstra should have systems, procedures  
6 and practices that relate to:  
7 (i) compliance with a final functional separation  
8 undertaking; and  
9 (ii) monitoring of, and reporting on, compliance with a final  
10 functional separation undertaking; and  
11 (iii) the development of performance measures relating to  
12 compliance with a final functional separation  
13 undertaking; and  
14 (iv) independent audit, and other checks, of compliance with  
15 a final functional separation undertaking;
- 16 (e) the principle that Telstra's wholesale/network business unit  
17 should not consult Telstra's retail business units about:  
18 (i) proposed services to be supplied by Telstra's  
19 wholesale/network business unit; or  
20 (ii) proposed developments in connection with services  
21 supplied by Telstra's wholesale/network business unit;  
22 unless Telstra's wholesale/network business unit also  
23 consults Telstra's wholesale customers at the same time and  
24 in the same manner.

### 25 **75 Functional separation requirements determination**

- 26 (1) The Minister may make a written determination (a *functional*  
27 *separation requirements determination*) specifying requirements  
28 to be complied with by a draft or final functional separation  
29 undertaking.
- 30 (2) A functional separation requirements determination may deal with  
31 the manner in which the functional separation principles are to be  
32 implemented.
- 33 (3) A functional separation requirements determination may deal with  
34 the manner in which a requirement set out in paragraph 73(1)(b) or  
35 (c) is to be met.
- 36 Note: Clause 73 deals with the contents of a draft or final functional  
37 separation undertaking.
-

- 1 (4) Subclauses (2) and (3) do not limit subclause (1).
- 2 (5) The Minister must ensure that a functional separation requirements  
3 determination comes into force within 90 days after the  
4 commencement of this clause.
- 5 (6) A determination under subclause (1) is not a legislative instrument.

6 **76 Draft functional separation undertaking to be given to Minister**

- 7 (1) Telstra must give the Minister a draft functional separation  
8 undertaking:
- 9 (a) within 90 days after the first functional separation  
10 requirements determination comes into force; or  
11 (b) if a longer period is specified in an instrument under  
12 subclause (3)—within that longer period.
- 13 (2) However, subclause (1) does not apply if an undertaking given by  
14 Telstra is in force under section 577A.
- 15 Note: Section 577A deals with undertakings about structural separation.
- 16 (3) The Minister may, by writing, specify a period for the purposes of  
17 paragraph (1)(b).
- 18 (4) The Minister must not specify a period under subclause (3) unless:
- 19 (a) Telstra satisfies the Minister that Telstra is preparing an  
20 undertaking under section 577A; or  
21 (b) both:
- 22 (i) Telstra has given the ACCC an undertaking under  
23 section 577A; and  
24 (ii) the ACCC has not decided whether to accept the  
25 undertaking.
- 26 Note: Section 577A deals with undertakings about structural separation.
- 27 (5) The Minister may, by writing, vary a subclause (3) instrument.
- 28 (6) A period specified in a subclause (3) instrument may be a period  
29 ascertained wholly or partly by reference to the occurrence of a  
30 specified event.
- 31 (7) The Minister does not have a duty to consider whether to exercise  
32 the power to make or vary a subclause (3) instrument, whether he

1 or she is requested to do so by Telstra or by any other person, or in  
2 any other circumstances.

3 (8) The Minister must cause a copy of an instrument under  
4 subclause (3) or (5) to be published on the Department's website.

5 (9) An instrument under subclause (3) or (5) is not a legislative  
6 instrument.

## 7 **77 Approval of draft functional separation undertaking by Minister**

8 (1) This clause applies if Telstra gives the Minister a draft functional  
9 separation undertaking (the *original undertaking*).

10 (2) The Minister must, by writing:

11 (a) approve the original undertaking; or

12 (b) both:

13 (i) vary the original undertaking; and

14 (ii) approve the original undertaking as varied; or

15 (c) both:

16 (i) determine that Telstra is taken to have given the  
17 Minister another draft functional separation undertaking  
18 (the *replacement undertaking*) in the terms specified in  
19 the determination, instead of the original undertaking;  
20 and

21 (ii) approve the replacement undertaking.

### 22 *Consultation*

23 (3) Before making a decision under subclause (2), the Minister must:

24 (a) cause to be published on the Department's website a notice:

25 (i) setting out the original undertaking; and

26 (ii) inviting persons to make submissions to the Minister  
27 about the original undertaking within 14 days after the  
28 notice is published; and

29 (b) give the ACCC a copy of the notice; and

30 (c) cause to be published on the Department's website a copy of  
31 each submission received within the 14-day period  
32 mentioned in paragraph (a); and

33 (d) consider any submissions received within the 14-day period  
34 mentioned in paragraph (a); and

---

- 1 (e) ask the ACCC to give advice to the Minister, within 44 days  
2 after the notice is published, about the original undertaking;  
3 and  
4 (f) have regard to any advice given by the ACCC.

5 *Consultation—variation of original undertaking*

- 6 (4) Before making a decision under paragraph (2)(b) to approve the  
7 original undertaking as varied, the Minister must:  
8 (a) give Telstra a notice:  
9 (i) setting out the original undertaking as proposed to be  
10 varied; and  
11 (ii) inviting Telstra to make submissions to the Minister,  
12 within 14 days after the notice is given, about the  
13 original undertaking as proposed to be varied; and  
14 (b) consider any submissions received from Telstra within the  
15 14-day period mentioned in paragraph (a).

16 *Consultation—replacement undertaking*

- 17 (5) Before making a decision under paragraph (2)(c) to approve the  
18 replacement undertaking, the Minister must:  
19 (a) give Telstra a notice:  
20 (i) setting out the proposed replacement undertaking; and  
21 (ii) inviting Telstra to make submissions to the Minister  
22 about the proposed replacement undertaking within 14  
23 days after the notice is given; and  
24 (b) consider any submissions received from Telstra within the  
25 14-day period mentioned in paragraph (a).

26 *Advice by the ACCC*

- 27 (6) Subclause (3) does not, by implication, prevent the Minister from  
28 asking the ACCC to give the Minister additional advice about a  
29 matter arising under this clause.

30 *Notification of decision*

- 31 (7) As soon as practicable after making a decision under subclause (2),  
32 the Minister must notify Telstra in writing of the decision.



- 1 (3) The Minister does not have a duty to consider whether to exercise  
2 the power to vary a final functional separation undertaking,  
3 whether he or she is requested to do so by Telstra or by any other  
4 person, or in any other circumstances.

5 *Consultation*

- 6 (4) Before varying a final functional separation undertaking, the  
7 Minister must:
- 8 (a) cause to be published on the Department's website a notice:
    - 9 (i) setting out the proposed variation; and
    - 10 (ii) inviting persons to make submissions to the Minister  
11 about the proposed variation within 14 days after the  
12 notice is published; and
  - 13 (b) give the ACCC a copy of the notice; and
  - 14 (c) cause to be published on the Department's website a copy of  
15 each submission received within the 14-day period  
16 mentioned in paragraph (a); and
  - 17 (d) consider any submissions received within the 14-day period  
18 mentioned in paragraph (a); and
  - 19 (e) ask the ACCC to give advice to the Minister, within 44 days  
20 after the notice is published, about the proposed variation;  
21 and
  - 22 (f) have regard to any advice given by the ACCC.

23 *Minor variation*

- 24 (5) Subclause (4) does not apply to a proposed variation if the  
25 variation is of a minor nature.
- 26 (6) If the proposed variation:
- 27 (a) is of a minor nature; and
  - 28 (b) is not made at the request of Telstra;
- 29 then, before making the proposed variation, the Minister must:
- 30 (c) give Telstra a notice:
    - 31 (i) setting out the proposed variation; and
    - 32 (ii) inviting Telstra to make submissions to the Minister  
33 about the proposed variation within 14 days after the  
34 notice is given; and

1 (d) consider any submissions received from Telstra within that  
2 14-day period.

3 *Advice by the ACCC*

4 (7) Subclause (4) does not, by implication, prevent the Minister from  
5 asking the ACCC to give the Minister additional advice about a  
6 matter arising under this clause.

7 *Notification of variation*

8 (8) As soon as practicable after varying a final functional separation  
9 undertaking, the Minister must notify Telstra in writing of the  
10 variation.

11 *When variation comes into force*

12 (9) A variation of a final functional separation undertaking comes into  
13 force on the day after the notice of the variation is given to Telstra  
14 in accordance with subclause (8).

15 *Variation is not a legislative instrument*

16 (10) A variation of a final functional separation undertaking is not a  
17 legislative instrument.

18 **81 Publication of final functional separation undertaking**

19 (1) As soon as practicable after a final functional separation  
20 undertaking comes into force, Telstra must make a copy of the  
21 undertaking available on Telstra's website.

22 (2) As soon as practicable after a variation of a final functional  
23 separation undertaking comes into force, Telstra must make a copy  
24 of the varied final functional separation undertaking available on  
25 Telstra's website.

26 **82 Compliance with final functional separation undertaking**

27 (1) If a final functional separation undertaking is in force, Telstra must  
28 comply with the undertaking.

29 (2) However, subclause (1) does not apply if an undertaking given by  
30 Telstra is in force under section 577A.

1 Note: Section 577A deals with undertakings about structural separation.

2 **Part 10—Control and use by Telstra of certain**  
3 **spectrum licences**

4 **Division 1—Introduction**

5 **83 Simplified outline**

6 The following is a simplified outline of this Part:

- 7
- 8
- 9
- 10
- If a spectrum licence relates to a designated part of the spectrum, Telstra must not be in a position to exercise control of the licence unless the following undertakings given by Telstra are in force:
    - 11 (a) an undertaking about structural separation;
    - 12 (b) an undertaking about hybrid fibre-coaxial networks;
    - 13
    - 14 (c) an undertaking about subscription television broadcasting licences.
    - 15
  - 16 • However, the Minister may exempt Telstra from the requirement to have an undertaking about hybrid fibre-coaxial networks or subscription television broadcasting licences if the Minister is satisfied that
  - 17 Telstra's undertaking about structural separation is sufficient
  - 18 to address concerns about the degree of Telstra's power in
  - 19 telecommunications markets.
  - 20
  - 21
  - 22

23 **Division 2—Control and use by Telstra of certain spectrum**  
24 **licences**

25 **84 Control by Telstra of certain spectrum licences**

- 26 (1) If a spectrum licence relates to a designated part of the spectrum,  
27 Telstra must not be in a position to exercise control of the licence.
-

## Schedule 1 Amendments

### Part 1 Amendments relating to Telstra

---

1 Note: For when Telstra is in a position to exercise control of a spectrum  
2 licence, see clause 88.

- 3 (2) However, the rule in subclause (1) does not apply if:
- 4 (a) an undertaking given by Telstra is in force under  
5 section 577A; and
- 6 (b) either:
- 7 (i) an undertaking given by Telstra is in force under  
8 section 577C; or
- 9 (ii) a declaration is in force under subsection 577J(3); and
- 10 (c) either:
- 11 (i) an undertaking given by Telstra is in force under  
12 section 577E; or
- 13 (ii) a declaration is in force under subsection 577J(5).

14 Note 1: Section 577A deals with undertakings about structural separation.

15 Note 2: Section 577C deals with undertakings about hybrid fibre-coaxial  
16 networks.

17 Note 3: Section 577E deals with undertakings about subscription television  
18 broadcasting licences.

## 19 **85 Use by Telstra of certain spectrum licences**

20 (1) If a spectrum licence relates to a designated part of the spectrum,  
21 Telstra must not supply a carriage service using a  
22 radiocommunications device the operation of which is authorised  
23 under the licence.

- 24 (2) However, the rule in subclause (1) does not apply if:
- 25 (a) an undertaking given by Telstra is in force under  
26 section 577A; and
- 27 (b) either:
- 28 (i) an undertaking given by Telstra is in force under  
29 section 577C; or
- 30 (ii) a declaration is in force under subsection 577J(3); and
- 31 (c) either:
- 32 (i) an undertaking given by Telstra is in force under  
33 section 577E; or
- 34 (ii) a declaration is in force under subsection 577J(5).

35 Note 1: Section 577A deals with undertakings about structural separation.



1 **87 Control**

2 In this Part, *control* includes control as a result of, or by means of,  
3 trusts, agreements, arrangements, understandings and practices,  
4 whether or not having legal or equitable force and whether or not  
5 based on legal or equitable rights.

6 **88 When Telstra is in a position to exercise control of a spectrum**  
7 **licence**

- 8 (1) For the purposes of this Part, Telstra is in a position to exercise  
9 control of a spectrum licence if:
- 10 (a) Telstra is the licensee; or
  - 11 (b) Telstra, either alone or together with an associate of Telstra,  
12 is in a position to exercise control of the spectrum licensee;  
13 or
  - 14 (c) Telstra, either alone or together with an associate of Telstra,  
15 is in a position to exercise (whether directly or indirectly)  
16 control of the selection of radiocommunications devices  
17 authorised to operate under the licence; or
  - 18 (d) Telstra, either alone or together with an associate of Telstra,  
19 is in a position to exercise (whether directly or indirectly)  
20 control of a significant proportion of the operations of  
21 radiocommunications devices authorised to operate under the  
22 licence; or
  - 23 (e) Telstra, either alone or together with an associate of Telstra,  
24 is in a position to:
    - 25 (i) veto any action taken by the board of directors of the  
26 licensee; or
    - 27 (ii) appoint or secure the appointment of, or veto the  
28 appointment of, at least half of the board of directors of  
29 the licensee; or
    - 30 (iii) exercise, in any other manner, whether directly or  
31 indirectly, direction or restraint over any substantial  
32 issue affecting the management or affairs of the  
33 licensee; or

- 1 (f) the licensee or more than 50% of its directors:  
2 (i) act, or are accustomed to act; or  
3 (ii) under a contract or an arrangement or understanding  
4 (whether formal or informal) are intended or expected to  
5 act;  
6 in accordance with the directions, instructions or wishes of,  
7 or in concert with, Telstra or of Telstra and an associate of  
8 Telstra acting together or of the directors of Telstra.
- 9 (2) An employee of a licensee is not, except through an association  
10 with another person, to be regarded as being in a position to  
11 exercise control of a spectrum licence under subclause (1) purely  
12 because of being an employee.
- 13 (3) More than one person may be in a position to exercise control of a  
14 spectrum licence.

15 ***Trade Practices Act 1974***

16 **23 Subsection 4(1)**

17 Insert:

18 *Telstra* has the same meaning as in the *Telstra Corporation Act*  
19 *1991*.

20 **24 Subsection 151BTA(13) (definition of *Telstra*)**

21 Repeal the definition.

22 **25 Section 151BUAAA**

23 Repeal the section.

24 **26 At the end of Part XIB**

25 Add:

1 **Division 15—Voluntary undertakings given by Telstra**

2 **151CQ Voluntary undertakings given by Telstra**

3 *Scope*

4 (1) This section applies if Telstra has engaged in conduct in order to  
5 comply with an undertaking in force under section 577A, 577C or  
6 577E of the *Telecommunications Act 1997*.

7 Note 1: Section 577A of the *Telecommunications Act 1997* deals with  
8 undertakings about structural separation.

9 Note 2: Section 577C of the *Telecommunications Act 1997* deals with  
10 undertakings about hybrid fibre-coaxial networks.

11 Note 3: Section 577E of the *Telecommunications Act 1997* deals with  
12 undertakings about subscription television broadcasting licences.

13 *Commission must have regard to Telstra's conduct*

14 (2) In performing a function, or exercising a power, under this Part in  
15 relation to Telstra, the Commission must have regard to the  
16 conduct to the extent that the conduct is relevant.

17 **27 At the end of Part XIC**

18 Add:

19 **152ER Voluntary undertakings given by Telstra**

20 *Scope*

21 (1) This section applies if Telstra has engaged in conduct in order to  
22 comply with an undertaking in force under section 577A, 577C or  
23 577E of the *Telecommunications Act 1997*.

24 Note 1: Section 577A of the *Telecommunications Act 1997* deals with  
25 undertakings about structural separation.

26 Note 2: Section 577C of the *Telecommunications Act 1997* deals with  
27 undertakings about hybrid fibre-coaxial networks.

28 Note 3: Section 577E of the *Telecommunications Act 1997* deals with  
29 undertakings about subscription television broadcasting licences.

1 *Commission must have regard to Telstra's conduct*

2 (2) In performing a function, or exercising a power, under this Part in  
3 relation to Telstra, the Commission must have regard to the  
4 conduct to the extent that the conduct is relevant.

5 **28 Transitional—continuity of special Telstra directions**

6 The repeal of section 151BUAAA of the *Trade Practices Act 1974*  
7 effected by this Part does not affect the continuity of a special Telstra  
8 direction (within the meaning of that section) that was in force  
9 immediately before the commencement of this item.

10 **Division 2—Amendments commencing immediately after**  
11 **a final functional separation undertaking comes**  
12 **into force**

13 *Telecommunications Act 1997*

14 **29 Subsection 61(1)**

15 Omit “(1)”.

16 **30 Subsections 61(2), (3) and (4)**

17 Repeal the subsections.

18 **31 Section 61A**

19 Repeal the section.

20 **32 After subsection 69(6)**

21 Insert:

22 (6A) Subsection (1) does not apply to a condition set out in Part 9 of  
23 Schedule 1.

24 Note: Part 9 of Schedule 1 deals with the functional separation of Telstra.

25 **33 Subsection 69A(1)**

26 Omit “Part 8”, substitute “Part 9”.

27 Note: The heading to section 69A is altered by omitting “operational” and substituting  
28 “functional”.

29 **34 Section 69B**

---

1 Repeal the section.

2 **35 After subsection 70(3)**

3 Insert:

4 (3A) Subsection (1) does not apply to a condition set out in Part 9 of  
5 Schedule 1.

6 Note: Part 9 of Schedule 1 deals with the functional separation of Telstra.

7 **36 Paragraph 70(5)(ba)**

8 Omit “Part 8”, substitute “Part 9”.

9 **37 Subsection 70(6)**

10 Repeal the subsection.

11 **38 Section 104**

12 After:

- 13 

<ul style="list-style-type: none"><li>• The ACMA may be directed by the Minister to monitor, and</li></ul>
--
- 14 

<ul style="list-style-type: none"><li>report on, specified matters relating to the performance of</li></ul>
---
- 15 

<ul style="list-style-type: none"><li>carriers and carriage service providers.</li></ul>
--

16 insert:

- 17 

<ul style="list-style-type: none"><li>• The ACCC is to monitor, and report each year to the Minister</li></ul>
--
- 18 

<ul style="list-style-type: none"><li>on, the compliance by Telstra with a final functional</li></ul>
---
- 19 

<ul style="list-style-type: none"><li>separation undertaking.</li></ul>
---

20 **39 At the end of Part 5**

21 Add:

22 **105B Monitoring of compliance by Telstra with a final functional**  
23 **separation undertaking**

24 (1) The ACCC must monitor, and report each financial year to the  
25 Minister on, the compliance by Telstra with a final functional  
26 separation undertaking.

27 (2) The ACCC must give a report under subsection (1) to the Minister  
28 as soon as practicable after the end of the financial year concerned.

1 (3) The Minister must cause a copy of a report under subsection (1) to  
2 be tabled in each House of the Parliament within 15 sitting days of  
3 that House after receiving the report.

4 **40 After paragraph 564(3)(b)**

5 Insert:  
6 (ba) a carrier licence condition set out in Part 9 of Schedule 1; or

7 **41 Subsection 564(3) (after note 2)**

8 Insert:  
9 Note 2A: Part 9 of Schedule 1 deals with the functional separation of Telstra.

10 **42 After paragraph 571(3)(b)**

11 Insert:  
12 (ba) a carrier licence condition set out in Part 9 of Schedule 1; or

13 **43 Subsection 571(3) (after note 2)**

14 Insert:  
15 Note 2A: Part 9 of Schedule 1 deals with the functional separation of Telstra.

16 **44 Part 8 of Schedule 1**

17 Repeal the Part.

18 ***Trade Practices Act 1974***

19 **45 Division 14 of Part XIB**

20 Repeal the Division, substitute:

21 **Division 14—Functional separation for Telstra**

22 **151CP Functional separation for Telstra**

23 *Scope*

24 (1) This section applies if Telstra has engaged in conduct in order to  
25 comply with a final functional separation undertaking in force  
26 under Part 9 of Schedule 1 to the *Telecommunications Act 1997*.

1                                    *Commission must have regard to Telstra's conduct*

2                                    (2) In performing a function, or exercising a power, under this Part in  
3                                    relation to Telstra, the Commission must have regard to the  
4                                    conduct to the extent that the conduct is relevant.

5                                    **46 After section 152EP**

6                                    Insert:

7                                    **152EPA Assistance to independent telecommunications adjudicator**

- 8                                    (1) For the purposes of this section, the *independent*  
9                                    *telecommunications adjudicator* is a company that:  
10                                    (a) is limited by guarantee; and  
11                                    (b) is identified, in a final functional separation undertaking in  
12                                    force under Part 9 of Schedule 1 to the *Telecommunications*  
13                                    *Act 1997*, as the independent telecommunications adjudicator  
14                                    for the purpose of this section.
- 15                                    (2) The Commission may assist the independent telecommunications  
16                                    adjudicator.
- 17                                    (3) The assistance may include the following:  
18                                    (a) the provision of information (including protected information  
19                                    within the meaning of section 155AAA);  
20                                    (b) the provision of advice;  
21                                    (c) the making available of resources and facilities (including  
22                                    secretariat services and clerical assistance).

23                                    **47 Section 152EQ**

24                                    Repeal the section, substitute:

25                                    **152EQ Functional separation for Telstra**

26                                    *Scope*

- 27                                    (1) This section applies if Telstra has engaged in conduct in order to  
28                                    comply with a final functional separation undertaking in force  
29                                    under Part 9 of Schedule 1 to the *Telecommunications Act 1997*.

1                    *Commission must have regard to Telstra's conduct*

- 2                    (2) In performing a function, or exercising a power, under this Part in  
3                    relation to Telstra, the Commission must have regard to the  
4                    conduct to the extent that the conduct is relevant.

5                    **48 After subsection 155(7B)**

6                    Insert:

- 7                    (7C) Subsection (7B) does not apply in relation to the production by  
8                    Telstra of a document if the document would disclose information  
9                    that is relevant to the extent (if any) to which Telstra has complied,  
10                    or is complying, with a final functional separation undertaking in  
11                    force under Part 9 of Schedule 1 to the *Telecommunications Act*  
12                    1997.

13                    **Division 3—Amendments commencing immediately after**  
14                    **an undertaking about structural separation**  
15                    **comes into force**

16                    *Telecommunications Act 1997*

17                    **49 Subsection 61(1)**

18                    Omit “(1)”.

19                    **50 Subsections 61(2), (3) and (4)**

20                    Repeal the subsections.

21                    **51 Sections 61A, 69A and 69B**

22                    Repeal the sections.

23                    **52 Paragraph 70(5)(ba)**

24                    Repeal the paragraph.

25                    **53 Subsection 70(6)**

26                    Repeal the subsection.

27                    **54 Part 8 of Schedule 1**

28                    Repeal the Part.

1 ***Trade Practices Act 1974***

2 **55 Division 14 of Part XIB**

3 Repeal the Division.

4 **56 Section 152EQ**

5 Repeal the section.  
6

1 **Part 2—Telecommunications access regime**

2 **Division 1—Amendments**

3 *National Transmission Network Sale Act 1998*

4 **57 Section 3 (paragraphs (a) and (b) of the definition of**  
5 **telecommunications access regime)**

6 After “Trade Practices Act”, insert “(as in force immediately before the  
7 commencement of Part 2 of Schedule 1 to the *Telecommunications*  
8 *Legislation Amendment (Competition and Consumer Safeguards) Act*  
9 *2009)*”.

10 **58 At the end of section 16**

11 Add:

12 (6) A reference in this section to the Trade Practices Act is a reference  
13 to that Act as in force immediately before the commencement of  
14 Part 2 of Schedule 1 to the *Telecommunications Legislation*  
15 *Amendment (Competition and Consumer Safeguards) Act 2009*.

16 *Telecommunications Act 1997*

17 **59 After section 62**

18 Insert:

19 **62A Condition of carrier licence set out in section 152BCO of the**  
20 ***Trade Practices Act 1974***

21 A carrier licence is subject to the condition set out in  
22 section 152BCO of the *Trade Practices Act 1974*.

23 Note: Section 152BCO of the *Trade Practices Act 1974* deals with access  
24 determinations.

25 **62B Condition of carrier licence set out in section 152BDF of the**  
26 ***Trade Practices Act 1974***

27 A carrier licence is subject to the condition set out in  
28 section 152BDF of the *Trade Practices Act 1974*.

**Schedule 1** Amendments

**Part 2** Telecommunications access regime

---

1 Note: Section 152BDF of the *Trade Practices Act 1974* deals with binding  
2 rules of conduct.

3 **62C Condition of carrier licence set out in section 152BEC of the**  
4 ***Trade Practices Act 1974***

5 A carrier licence is subject to the condition set out in  
6 section 152BEC of the *Trade Practices Act 1974*.

7 Note: Section 152BEC of the *Trade Practices Act 1974* deals with access  
8 agreements.

9 **60 After subsection 69(7)**

10 Insert:

11 (7A) Subsection (1) does not apply to the condition set out in  
12 section 152BCO of the *Trade Practices Act 1974*.

13 Note: Section 152BCO of the *Trade Practices Act 1974* deals with access  
14 determinations.

15 (7B) Subsection (1) does not apply to the condition set out in  
16 section 152BDF of the *Trade Practices Act 1974*.

17 Note: Section 152BDF of the *Trade Practices Act 1974* deals with binding  
18 rules of conduct.

19 (7C) Subsection (1) does not apply to the condition set out in  
20 section 152BEC of the *Trade Practices Act 1974*.

21 Note: Section 152BEC of the *Trade Practices Act 1974* deals with access  
22 agreements.

23 **61 After subsection 70(4)**

24 Insert:

25 (4A) Subsection (1) does not apply to the condition set out in  
26 section 152BCO of the *Trade Practices Act 1974*.

27 Note: Section 152BCO of the *Trade Practices Act 1974* deals with access  
28 determinations.

29 (4B) Subsection (1) does not apply to the condition set out in  
30 section 152BDF of the *Trade Practices Act 1974*.

31 Note: Section 152BDF of the *Trade Practices Act 1974* deals with binding  
32 rules of conduct.

---

1 (4C) Subsection (1) does not apply to the condition set out in  
2 section 152BEC of the *Trade Practices Act 1974*.

3 Note: Section 152BEC of the *Trade Practices Act 1974* deals with access  
4 agreements.

5 **62 At the end of subsection 70(5)**

6 Add:

7 ; (d) the condition set out in section 152BCO of the *Trade*  
8 *Practices Act 1974*;

9 (e) the condition set out in section 152BDF of the *Trade*  
10 *Practices Act 1974*;

11 (f) the condition set out in section 152BEC of the *Trade*  
12 *Practices Act 1974*.

13 **63 At the end of section 98**

14 Add:

15 (3) In addition to the rules mentioned in subsection (1), the rule set out  
16 in subsection 152BCP(2) of the *Trade Practices Act 1974* is a  
17 service provider rule for the purposes of this Act.

18 Note: Subsection 152BCP(2) of the *Trade Practices Act 1974* provides that  
19 a carriage service provider must comply with any access  
20 determinations that are applicable to the provider.

21 (4) In addition to the rules mentioned in subsection (1), the rule set out  
22 in subsection 152BDG(2) of the *Trade Practices Act 1974* is a  
23 service provider rule for the purposes of this Act.

24 Note: Subsection 152BDG(2) of the *Trade Practices Act 1974* provides that  
25 a carriage service provider must comply with any binding rules of  
26 conduct that are applicable to the provider.

27 (5) In addition to the rules mentioned in subsection (1), the rule set out  
28 in subsection 152BED(2) of the *Trade Practices Act 1974* is a  
29 service provider rule for the purposes of this Act.

30 Note: Subsection 152BED(2) of the *Trade Practices Act 1974* deals with  
31 access agreements.

32 **64 After subsection 102(6)**

33 Insert:

34 (6A) Subsection (1) does not apply to the rule set out in subsection  
35 152BCP(2) of the *Trade Practices Act 1974*.

---

## Schedule 1 Amendments

### Part 2 Telecommunications access regime

---

1 Note: Subsection 152BCP(2) of the *Trade Practices Act 1974* provides that  
2 a carriage service provider must comply with any access  
3 determinations that are applicable to the provider.

4 (6B) Subsection (1) does not apply to the rule set out in subsection  
5 152BDG(2) of the *Trade Practices Act 1974*.

6 Note: Subsection 152BDG(2) of the *Trade Practices Act 1974* provides that  
7 a carriage service provider must comply with any binding rules of  
8 conduct that are applicable to the provider.

9 (6C) Subsection (1) does not apply to the rule set out in subsection  
10 152BED(2) of the *Trade Practices Act 1974*.

11 Note: Subsection 152BED(2) of the *Trade Practices Act 1974* deals with  
12 access agreements.

#### 13 **65 After subsection 103(3)**

14 Insert:

15 (3A) Subsection (1) does not apply to the rule set out in subsection  
16 152BCP(2) of the *Trade Practices Act 1974*.

17 Note: Subsection 152BCP(2) of the *Trade Practices Act 1974* provides that  
18 a carriage service provider must comply with any access  
19 determinations that are applicable to the provider.

20 (3B) Subsection (1) does not apply to the rule set out in subsection  
21 152BDG(2) of the *Trade Practices Act 1974*.

22 Note: Subsection 152BDG(2) of the *Trade Practices Act 1974* provides that  
23 a carriage service provider must comply with any binding rules of  
24 conduct that are applicable to the provider.

25 (3C) Subsection (1) does not apply to the rule set out in subsection  
26 152BED(2) of the *Trade Practices Act 1974*.

27 Note: Subsection 152BED(2) of the *Trade Practices Act 1974* deals with  
28 access agreements.

#### 29 **66 After subsection 103(4)**

30 Insert:

31 (4A) The ACCC may issue a formal warning if a person contravenes the  
32 service provider rule set out in subsection 152BCP(2) of the *Trade*  
33 *Practices Act 1974*.

1           (4B) The ACCC may issue a formal warning if a person contravenes the  
2           service provider rule set out in subsection 152BDG(2) of the *Trade*  
3           *Practices Act 1974*.

4           (4C) The ACCC may issue a formal warning if a person contravenes the  
5           service provider rule set out in subsection 152BED(2) of the *Trade*  
6           *Practices Act 1974*.

7           **67 At the end of subsection 564(3) (before the notes)**

8           Add:

- 9                     ; or (f) the carrier licence condition set out in section 152BCO of the  
10                    *Trade Practices Act 1974*; or  
11                    (g) the service provider rule set out in subsection 152BCP(2) of  
12                    the *Trade Practices Act 1974*; or  
13                    (h) the carrier licence condition set out in section 152BDF of the  
14                    *Trade Practices Act 1974*; or  
15                    (i) the service provider rule set out in subsection 152BDG(2) of  
16                    the *Trade Practices Act 1974*; or  
17                    (j) the carrier licence condition set out in section 152BEC of the  
18                    *Trade Practices Act 1974*; or  
19                    (k) the service provider rule set out in subsection 152BED(2) of  
20                    the *Trade Practices Act 1974*.

21           **68 At the end of subsection 564(3) (after the notes)**

22           Add:

- 23                    Note 5:    Section 152BCO of the *Trade Practices Act 1974* deals with access  
24                    determinations.  
25                    Note 6:    Subsection 152BCP(2) of the *Trade Practices Act 1974* provides that  
26                    a carriage service provider must comply with any access  
27                    determinations that are applicable to the provider.  
28                    Note 7:    Section 152BDF of the *Trade Practices Act 1974* deals with binding  
29                    rules of conduct.  
30                    Note 8:    Subsection 152BDG(2) of the *Trade Practices Act 1974* provides that  
31                    a carriage service provider must comply with any binding rules of  
32                    conduct that are applicable to the provider.  
33                    Note 9:    Section 152BEC of the *Trade Practices Act 1974* deals with access  
34                    agreements.  
35                    Note 10:   Subsection 152BED(2) of the *Trade Practices Act 1974* deals with  
36                    access agreements.

37           **69 At the end of subsection 571(3) (before the notes)**

---

- 1 Add:  
2 ; or (f) the carrier licence condition set out in section 152BCO of the  
3 *Trade Practices Act 1974*; or  
4 (g) the service provider rule set out in subsection 152BCP(2) of  
5 the *Trade Practices Act 1974*; or  
6 (h) the carrier licence condition set out in section 152BDF of the  
7 *Trade Practices Act 1974*; or  
8 (i) the service provider rule set out in subsection 152BDG(2) of  
9 the *Trade Practices Act 1974*; or  
10 (j) the carrier licence condition set out in section 152BEC of the  
11 *Trade Practices Act 1974*; or  
12 (k) the service provider rule set out in subsection 152BED(2) of  
13 the *Trade Practices Act 1974*.

14 **70 At the end of subsection 571(3) (after the notes)**

- 15 Add:  
16 Note 5: Section 152BCO of the *Trade Practices Act 1974* deals with access  
17 determinations.  
18 Note 6: Subsection 152BCP(2) of the *Trade Practices Act 1974* provides that  
19 a carriage service provider must comply with any access  
20 determinations that are applicable to the provider.  
21 Note 7: Section 152BDF of the *Trade Practices Act 1974* deals with binding  
22 rules of conduct.  
23 Note 8: Subsection 152BDG(2) of the *Trade Practices Act 1974* provides that  
24 a carriage service provider must comply with any binding rules of  
25 conduct that are applicable to the provider.  
26 Note 9: Section 152BEC of the *Trade Practices Act 1974* deals with access  
27 agreements.  
28 Note 10: Subsection 152BED(2) of the *Trade Practices Act 1974* deals with  
29 access agreements.

30 ***Trade Practices Act 1974***

31 **71 Section 152AA**

32 Omit:

- 33 • If agreement cannot be reached, but no access undertaking is  
34 in operation, the terms and conditions are to be determined  
35 by the Commission acting as an arbitrator.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

- An access undertaking (other than a special access undertaking) may adopt the terms and conditions set out in a *telecommunications access code*.
- The Commission may conduct an arbitration of a dispute about access to declared services. The Commission's determination on the arbitration must not be inconsistent with the standard access obligations or an access undertaking.
- The Commission may register agreements about access to declared services.
- A carrier, carriage service provider or related body must not prevent or hinder the fulfilment of a standard access obligation.

14

substitute:

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- If agreement cannot be reached, no access undertaking is in operation, but the Commission has made binding rules of conduct, the terms and conditions are as specified in the binding rules of conduct.
- If agreement cannot be reached, no access undertaking is in operation, and no binding rules of conduct have been made, the terms and conditions are as specified in an access determination made by the Commission.
- A carrier, carriage service provider or related body must not prevent or hinder the fulfilment of a standard access obligation.

26  
27  
28

Note: Even though this section mentions binding rules of conduct, it is expected that binding rules of conduct will only be made on an occasional basis.

29  
30

**72 Section 152AC**

Insert:

1                    *access agreement* has the meaning given by section 152BE.

2        **73 Section 152AC**

3                    Insert:

4                    *access determination* means a determination under section 152BC.

5        **74 Section 152AC (definition of *access undertaking*)**

6                    Omit “an ordinary access undertaking or”.

7        **75 Section 152AC**

8                    Insert:

9                    *binding rules of conduct* means rules made under subsection  
10                    152BD(1).

11        **76 Section 152AC**

12                    Insert:

13                    *final access determination* means an access determination other  
14                    than an interim access determination.

15        **77 Section 152AC**

16                    Insert:

17                    *fixed principles provision* has the meaning given by  
18                    section 152BCD.

19        **78 Section 152AC**

20                    Insert:

21                    *interim access determination* means an access determination that  
22                    is expressed to be an interim access determination.

23        **79 Section 152AC (definition of *ordinary access undertaking*)**

24                    Repeal the definition.

25        **80 Section 152AC (definition of *telecommunications access*  
26                    *code*)**

27                    Repeal the definition.

1 **81 Section 152AC**

2 Insert:

3 *variation agreement* has the meaning given by subsection  
4 152BE(3).

5 **82 At the end of section 152AF**

6 Add:

7 (3) For the purposes of this Part, if an access determination imposes a  
8 requirement on a carrier or carriage service provider as mentioned  
9 in paragraph 152BC(3)(e), anything done by the carrier or provider  
10 in fulfilment of the requirement is taken to be an aspect of access  
11 to a declared service.

12 (4) For the purposes of this Part, if binding rules of conduct impose a  
13 requirement on a carrier or carriage service provider as mentioned  
14 in paragraph 152BD(3)(e), anything done by the carrier or provider  
15 in fulfilment of the requirement is taken to be an aspect of access  
16 to a declared service.

17 **83 After section 152AH**

18 Insert:

19 **152AI When public inquiry commences**

20 For the purposes of this Part, a public inquiry held by the  
21 Commission under Part 25 of the *Telecommunications Act 1997*  
22 *commences* when the Commission publishes the notice under  
23 section 498 of that Act about the inquiry.

24 **84 Subsection 152ALA(2)**

25 Repeal the subsection, substitute:

- 26 (2) In specifying an expiry date, the Commission must have regard to:  
27 (a) the principle that the expiry date for a declaration should  
28 occur in the period:  
29 (i) beginning 3 years after the declaration was made; and  
30 (ii) ending 5 years after the declaration was made;

1 unless, in the Commission’s opinion, there are circumstances  
2 that warrant the expiry date occurring in a shorter or longer  
3 period; and  
4 (b) such other matters (if any) as the Commission considers  
5 relevant.

6 **85 After subsection 152ALA(6)**

7 Insert:

8 (6A) If the fresh declaration comes into force immediately after the  
9 expiry of the expired declaration, the fresh declaration is taken to  
10 be a declaration that *replaces* the expired declaration.

11 **86 Paragraph 152ALA(7)(a)**

12 Omit “12-month”, substitute “18-month”.

13 **87 After subparagraph 152ALA(7)(a)(v)**

14 Insert:

15 (vi) whether to extend or further extend the expiry date of a  
16 declaration by a period of not more than 12 months and  
17 then to allow the declaration to expire without making a  
18 new declaration under section 152AL; and

19 **88 Subsection 152AM(3)**

20 Repeal the subsection, substitute:

21 (3) The Commission does not have a duty to consider whether to hold  
22 a public inquiry of a kind mentioned in paragraph 152AL(3)(a) if  
23 the Commission is requested to do so by a person.

24 **89 Subsection 152AQ(3)**

25 Omit “may”, substitute “is to”.

26 **90 Subsections 152AQ(4), (5) and (6)**

27 Repeal the subsections, substitute:

28 (4) The Register is to be made available for inspection on the  
29 Commission’s website.

30 (5) The Register is not a legislative instrument.

1 **91 Sections 152AQA and 152AQB**

2 Repeal the sections.

3 **92 Subsection 152AR(12) (definition of *pre-request right*)**

4 Omit “, or under a determination (within the meaning of Division 8),”.

5 **93 Section 152AS**

6 Repeal the section.

7 **94 After subsection 152ASA(1)**

8 Insert:

9 (1A) A service or a proposed service must not be specified in a  
10 determination under this section if, at the time when the  
11 determination is made, the service or proposed service is a declared  
12 service.

13 **95 After subsection 152ASA(2)**

14 Insert:

15 (2A) A determination under this section may:  
16 (a) provide that the determination must not be varied; or  
17 (b) provide that the determination must not be varied except in  
18 such circumstances as are specified in the determination.

19 (2B) A determination under this section may:  
20 (a) provide that the determination must not be revoked; or  
21 (b) provide that the determination must be revoked except in  
22 such circumstances as are specified in the determination.

23 **96 Subsection 152ASA(8)**

24 Omit all the words from and including “Commission”, substitute  
25 “Commission from making a fresh determination under this section in  
26 the same terms as the expired determination”.

27 **97 After subsection 152ASA(11)**

28 Insert:

1                                    *Variation or revocation of determination*

2                    (11A) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a  
3                    power conferred on the Commission by subsection (1), but it  
4                    applies with the following changes.

5                    (11B) A provision referred to in paragraph (2A)(a) or (b) or (2B)(a) or (b)  
6                    cannot be varied or removed.

7                    (11C) A determination under this section must not be varied or revoked  
8                    in a manner that is inconsistent with a provision referred to in  
9                    paragraph (2A)(a) or (b) or (2B)(a) or (b).

10                    **98 Subsection 152ASA(12)**

11                    Repeal the subsection, substitute:

12                                    *Determination is not a legislative instrument*

13                    (12) A determination made under subsection (1) is not a legislative  
14                    instrument.

15                    **99 Subsection 152ASA(13) (note)**

16                    Repeal the note.

17                    **100 Section 152AT**

18                    Repeal the section.

19                    **101 After subsection 152ATA(3)**

20                    Insert:

21                    (3A) A service or a proposed service must not be specified in an order  
22                    under paragraph (3)(a) if, at the time when the order is made, the  
23                    service or proposed service is a declared service.

24                    **102 After subsection 152ATA(4)**

25                    Insert:

26                    (4A) An order under paragraph (3)(a) may:  
27                    (a) provide that the order must not be varied; or  
28                    (b) provide that the order must not be varied except in such  
29                    circumstances as are specified in the order.

- 1 (4B) An order under paragraph (3)(a) may:  
2 (a) provide that the order must not be revoked; or  
3 (b) provide that the order must not be revoked except in such  
4 circumstances as are specified in the order.

5 **103 After subsection 152ATA(6)**

6 Insert:

7 *Serial applications*

- 8 (7) If:  
9 (a) a person makes an application (the *first application*) under  
10 subsection (1) for an order in relation to a service or proposed  
11 service; and  
12 (b) the Commission refuses the first application; and  
13 (c) the person subsequently makes another application under  
14 subsection (1); and  
15 (d) the Commission is satisfied that:  
16 (i) the first application and the other application have  
17 material similarities; or  
18 (ii) the grounds on which the person made the first  
19 application are materially similar to the grounds on  
20 which the person has made the other application;  
21 the Commission may refuse to consider the other application.

22 **104 Subsection 152ATA(10)**

23 Omit all the words from and including “Commission”, substitute  
24 “Commission from making a fresh order under paragraph (3)(a) in the  
25 same terms as the expired order”.

26 **105 After subsection 152ATA(16)**

27 Insert:

- 28 (16A) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a  
29 power conferred on the Commission by paragraph (3)(a), but it  
30 applies with the following changes.  
31 (16B) A provision referred to in paragraph (4A)(a) or (b) or (4B)(a) or (b)  
32 cannot be varied or removed.

1 (16C) An order under paragraph (3)(a) must not be varied or revoked in a  
2 manner that is inconsistent with a provision referred to in (4A)(a)  
3 or (b) or (4B)(a) or (b).

4 **106 Subsection 152ATA(18) (note)**

5 Repeal the note.

6 **107 Subsection 152AU(1)**

7 Omit “152AT(1) or”.

8 **108 Sections 152AV to 152AX**

9 Repeal the sections.

10 **109 Subsection 152AXA(1)**

11 Omit “(1)”.

12 Note: The heading to section 152AXA is altered by omitting “reviewable”.

13 **110 Paragraph 152AXA(1)(a)**

14 Omit “152AT or”.

15 **111 Subsection 152AXA(2)**

16 Repeal the subsection.

17 **112 Section 152AY**

18 Repeal the section, substitute:

19 **152AY Compliance with standard access obligations**

20 (1) This section applies if a carrier or carriage service provider is  
21 required to comply with any or all of the standard access  
22 obligations.

23 (2) The carrier or carriage service provider must comply with the  
24 obligations:

25 (a) if an access agreement between:

26 (i) the carrier or carriage service provider, as the case  
27 requires; and

28 (ii) the access seeker;

- 1 is in operation and specifies terms and conditions about a  
2 particular matter—on such terms conditions relating to that  
3 matter as are set out in the agreement; or  
4 (b) if:  
5 (i) paragraph (a) does not apply in relation to terms and  
6 conditions about a particular matter; and  
7 (ii) a special access undertaking given by the carrier or  
8 carriage service provider is in operation, and the  
9 undertaking specifies terms and conditions about that  
10 matter—on such terms and conditions relating to that  
11 matter as are set out in the undertaking; or  
12 (c) if:  
13 (i) neither paragraph (a) nor (b) applies to terms and  
14 conditions about a particular matter; and  
15 (ii) binding rules of conduct specify terms and conditions  
16 about that matter;  
17 on such terms and conditions relating to that matter as are set  
18 out in the binding rules of conduct; or  
19 (d) if:  
20 (i) none of the above paragraphs applies to terms and  
21 conditions about a particular matter; and  
22 (ii) an access determination specifies terms and conditions  
23 about that matter;  
24 on such terms and conditions relating to that matter as are set  
25 out in the access determination.

26 Note 1: Sections 152BCC, 152BDB, 152BDE, 152CBIA, 152CBIB and  
27 152CBIC, which deal with inconsistency, should be read and applied  
28 before this section is read and applied.

29 Note 2: Even though subsection (2) mentions binding rules of conduct, it is  
30 expected that binding rules of conduct will only be made on an  
31 occasional basis.

32 Note 3: For transitional provisions, see Division 2 of Part 2 of Schedule 1 to  
33 the *Telecommunications Legislation Amendment (Competition and*  
34 *Consumer Safeguards) Act 2009*.

35 **113 Paragraph 152BBAA(1)(a)**

36 Omit “152AS or”.

37 **114 Paragraph 152BBAA(1)(b)**

38 Omit “152AT or”.

---

1 **115 Subsection 152BBC(5)**

2 Repeal the subsection.

3 **116 Division 4 of Part XIC**

4 Repeal the Division, substitute:

5 **Division 4—Access determinations**

6 **Subdivision A—Commission may make access determinations**

7 **152BC Access determinations**

8 (1) The Commission may make a written determination relating to  
9 access to a declared service.

10 (2) A determination under subsection (1) is to be known as an *access*  
11 *determination*.

12 (3) An access determination may:

13 (a) specify the terms and conditions on which a carrier or  
14 carriage service provider is to comply with any or all of the  
15 standard access obligations applicable to the carrier or  
16 provider; or

17 (b) specify any other terms and conditions of an access seeker's  
18 access to the declared service; or

19 (c) require a carrier or carriage service provider to comply with  
20 any or all of the standard access obligations applicable to the  
21 carrier or provider in a manner specified in the determination;  
22 or

23 (d) require a carrier or carriage service provider to extend or  
24 enhance the capability of a facility by means of which the  
25 declared service is supplied; or

26 (e) impose other requirements on a carrier or carriage service  
27 provider in relation to access to the declared service; or

28 (f) specify the terms and conditions on which a carrier or  
29 carriage service provider is to comply with any or all of those  
30 other requirements; or

31 (g) require access seekers to accept, and pay for, access to the  
32 declared service; or

- 1 (h) provide that any or all of the obligations referred to in  
2 section 152AR are not applicable to a carrier or carriage  
3 service provider, either:  
4 (i) unconditionally; or  
5 (ii) subject to such conditions or limitations as are specified  
6 in the determination; or  
7 (i) restrict or limit the application to a carrier or carriage service  
8 provider of any or all of the obligations referred to in  
9 section 152AR.
- 10 (4) Subsection (3) does not limit subsection (1).
- 11 (5) An access determination may make different provision with respect  
12 to:  
13 (a) different carriers or carriage service providers; or  
14 (b) different classes of carriers or carriage service providers; or  
15 (c) different access seekers; or  
16 (d) different classes of access seekers.
- 17 (6) Subsection (5) does not, by implication, limit subsection 33(3A) of  
18 the *Acts Interpretation Act 1901*.
- 19 (7) An access determination may provide for the Commission to  
20 perform functions, and exercise powers, under the determination.
- 21 (8) Terms and conditions specified in an access determination as  
22 mentioned in paragraph (3)(a), (b) or (f) must include terms and  
23 conditions relating to price or a method of ascertaining price.
- 24 (9) An access determination is not a legislative instrument.

25 **152BCA Matters that the Commission must take into account**

- 26 (1) The Commission must take the following matters into account in  
27 making an access determination:  
28 (a) whether the determination will promote the long-term  
29 interests of end-users of carriage services or of services  
30 supplied by means of carriage services;  
31 (b) the legitimate business interests of a carrier or carriage  
32 service provider who supplies, or is capable of supplying, the  
33 declared service, and the carrier's or provider's investment in  
34 facilities used to supply the declared service;

**Schedule 1** Amendments

**Part 2** Telecommunications access regime

---

- 1 (c) the interests of all persons who have rights to use the  
2 declared service;
- 3 (d) the direct costs of providing access to the declared service;
- 4 (e) the value to a person of extensions, or enhancement of  
5 capability, whose cost is borne by someone else;
- 6 (f) the operational and technical requirements necessary for the  
7 safe and reliable operation of a carriage service, a  
8 telecommunications network or a facility;
- 9 (g) the economically efficient operation of a carriage service, a  
10 telecommunications network or a facility.
- 11 (2) If a carrier or carriage service provider who supplies, or is capable  
12 of supplying, the declared service supplies one or more other  
13 eligible services, then, in making an access determination that is  
14 applicable to the carrier or provider, as the case may be, the  
15 Commission may take into account:
- 16 (a) the characteristics of those other eligible services; and  
17 (b) the costs associated with those other eligible services; and  
18 (c) the revenues associated with those other eligible services;  
19 and  
20 (d) the demand for those other eligible services.
- 21 (3) The Commission may take into account any other matters that it  
22 thinks are relevant.
- 23 (4) This section does not apply to an interim access determination.
- 24 (5) In this section:
- 25 *eligible service* has the same meaning as in section 152AL.

26 **152BCB Restrictions on access determinations**

- 27 (1) The Commission must not make an access determination that  
28 would have any of the following effects:
- 29 (a) preventing a service provider who already has access to the  
30 declared service from obtaining a sufficient amount of the  
31 service to be able to meet the service provider's reasonably  
32 anticipated requirements, measured at the time when the  
33 access seeker made a request in relation to the service under  
34 section 152AR;

- 1 (b) preventing a carrier or carriage service provider from  
2 obtaining a sufficient amount of the service to be able to meet  
3 the carrier's or provider's reasonably anticipated  
4 requirements, measured at the time when the access seeker  
5 made a request in relation to the service under  
6 section 152AR;
- 7 (c) preventing a person from obtaining, by the exercise of a  
8 pre-determination right, a sufficient level of access to the  
9 declared service to be able to meet the person's actual  
10 requirements;
- 11 (d) depriving any person of a protected contractual right;
- 12 (e) resulting in an access seeker becoming the owner (or one of  
13 the owners) of any part of a facility without the consent of  
14 the owner of the facility;
- 15 (f) requiring a person (other than an access seeker) to bear an  
16 unreasonable amount of the costs of:
  - 17 (i) extending or enhancing the capability of a facility; or
  - 18 (ii) maintaining extensions to or enhancements of the  
19 capability of a facility;
- 20 (g) requiring a carrier or carriage service provider to provide an  
21 access seeker with access to a declared service if there are  
22 reasonable grounds to believe that:
  - 23 (i) the access seeker would fail, to a material extent, to  
24 comply with the terms and conditions on which the  
25 carrier or provider provides, or is reasonably likely to  
26 provide, that access; or
  - 27 (ii) the access seeker would fail, in connection with that  
28 access, to protect the integrity of a telecommunications  
29 network or to protect the safety of individuals working  
30 on, or using services supplied by means of, a  
31 telecommunications network or a facility.
- 32 (2) Examples of grounds for believing as mentioned in  
33 subparagraph (1)(g)(i) include:
  - 34 (a) evidence that the access seeker is not creditworthy; and
  - 35 (b) repeated failures by the access seeker to comply with the  
36 terms and conditions on which the same or similar access has  
37 been provided (whether or not by the carrier or carriage  
38 service provider).

- 1 (3) The Commission must not make an access determination that is  
2 inconsistent with any of the standard access obligations that are, or  
3 will be, applicable to a carrier or carriage service provider.
- 4 (4) If the Commission makes an access determination that has the  
5 effect of depriving a person (the *second person*) of a  
6 pre-determination right to require the carrier or provider to provide  
7 access to the declared service to the second person, the  
8 determination must also require the access seeker:
- 9 (a) to pay to the second person such amount (if any) as the  
10 Commission considers is fair compensation for the  
11 deprivation; and
- 12 (b) to reimburse the carrier or provider and the Commonwealth  
13 for any compensation that the carrier or provider or the  
14 Commonwealth agrees, or is required by a court order, to pay  
15 to the second person as compensation for the deprivation.
- 16 (5) An access determination is of no effect to the extent to which it  
17 contravenes subsection (1) or (3).
- 18 (6) In this section:
- 19 *pre-determination right* means a right under a contract that was in  
20 force:
- 21 (a) if the access determination is one of a series of 2 or more  
22 successive access determinations—immediately before the  
23 first access determination came into force; or  
24 (b) otherwise—immediately before the access determination  
25 came into force.

26 *protected contractual right* means a right under a contract that was  
27 in force at the beginning of 13 September 1996.

28 **152BCC Access determinations that are inconsistent with access**  
29 **agreements**

- 30 If:
- 31 (a) an access determination specifies terms and conditions that,  
32 apart from this section, would be applicable to the following  
33 parties:
- 34 (i) a carrier or carriage service provider;  
35 (ii) an access seeker; and
-

- 1 (b) those terms and conditions are inconsistent with terms and  
2 conditions set out in an access agreement that is applicable to  
3 those parties;  
4 the terms and conditions specified in the access determination have  
5 no effect to the extent of the inconsistency.

6 **152BCD Fixed principles provisions**

- 7 (1) An access determination may include a provision that is specified  
8 in the determination to be a fixed principles provision.
- 9 (2) If a fixed principles provision is included in an access  
10 determination, the determination must provide that a specified date  
11 is the nominal termination date for the fixed principles provision.  
12 The nominal termination date may be later than the expiry date for  
13 the determination.
- 14 (3) If:
- 15 (a) an access determination (the *replacement access*  
16 *determination*) is expressed to replace a previous access  
17 determination; and
  - 18 (b) the previous access determination included a fixed principles  
19 provision; and
  - 20 (c) the nominal termination date for the fixed principles  
21 provision is later than the day on which the replacement  
22 access determination comes into force;
- 23 then:
- 24 (d) the replacement access determination must include a  
25 provision in the same terms as the fixed principles provision;  
26 and
  - 27 (e) the provision must be specified in the replacement access  
28 determination to be a fixed principles provision; and
  - 29 (f) the nominal termination date for the fixed principles  
30 provision so included in the replacement access  
31 determination must be the same as, or later than, the nominal  
32 termination date for the fixed principles provision included in  
33 the previous access determination; and
  - 34 (g) if the previous access determination provided that the  
35 previous access determination must not be varied so as to  
36 alter or remove the fixed principles provision—the  
37 replacement access determination must provide that the

- 1 replacement access determination must not be varied so as to  
2 alter or remove the fixed principles provision; and  
3 (h) if the previous access determination provided that the  
4 previous access determination must not be varied so as to  
5 alter or remove the fixed principles provision except in such  
6 circumstances as are specified in the previous access  
7 determination:  
8 (i) the replacement access determination must provide that  
9 the replacement access determination must not be varied  
10 so as to alter or remove the fixed principles provision  
11 except in such circumstances as are specified in the  
12 replacement access determination; and  
13 (ii) those circumstances must be the same as the  
14 circumstances specified in the previous access  
15 determination.

- 16 (4) If:  
17 (a) a fixed principles provision is included in an access  
18 determination; and  
19 (b) the access determination ceases to be in force before the  
20 nominal termination date for the fixed principles provision;  
21 the fixed principles provision ceases to be in force when the access  
22 determination ceases to be in force.

23 Note: Even though a fixed principles provision ceases to be in force when  
24 the access determination ceases to be in force, subsection (3) requires  
25 that a replacement access determination include a provision in the  
26 same terms as the fixed principles provision.

- 27 (5) If a fixed principles provision is included in an access  
28 determination, the access determination must:  
29 (a) provide that the access determination must not be varied so  
30 as to alter or remove the fixed principles provision; or  
31 (b) provide that the access determination must not be varied so  
32 as to alter or remove the fixed principles provision except in  
33 such circumstances as are specified in the access  
34 determination.

35 **152BCE Access determinations may be set out in the same document**

36 Two or more access determinations may be set out in the same  
37 document.

**152BCF Duration of access determination**

- 1
- 2 (1) An access determination relating to access to a declared service:
- 3 (a) comes into force on the day specified in the determination as
- 4 the day on which the determination is to come into force; and
- 5 (b) unless sooner revoked, ceases to be in force on the expiry
- 6 date for the determination.
- 7 (2) The specified day may be earlier than the day on which the
- 8 determination was made.
- 9 (3) If the relevant declaration under section 152AL is not a fresh
- 10 declaration that replaces a previous declaration, the specified day
- 11 must not be earlier than the day on which the declaration came into
- 12 force.
- 13 (4) If an access determination is expressed to replace a previous access
- 14 determination relating to access to the declared service, the
- 15 specified day must be the first day after the expiry of the previous
- 16 access determination.
- 17 *Expiry date*
- 18 (5) An access determination must specify an expiry date for the
- 19 determination.
- 20 (6) In specifying an expiry date for an access determination, the
- 21 Commission must have regard to:
- 22 (a) the principle that the expiry date for the determination should
- 23 be the same as the expiry date for the relevant declaration
- 24 under section 152AL (as that declaration stood at the time
- 25 when the access determination was made) unless, in the
- 26 Commission's opinion, there are circumstances that warrant
- 27 the specification of another date as the expiry date for the
- 28 access determination; and
- 29 (b) such other matters (if any) as the Commission considers
- 30 relevant.
- 31 (7) If an access determination expires, this Part does not prevent the
- 32 Commission from making a fresh access determination under
- 33 section 152BC in the same terms as the expired access
- 34 determination.

*Automatic revocation of access determination*

- 1
- 2 (8) If:
- 3 (a) an access determination relating to access to a declared  
4 service is in force; and
- 5 (b) the relevant declaration under section 152AL ceases to be in  
6 force; and
- 7 (c) the Commission does not make a fresh declaration under  
8 section 152AL that replaces the declaration referred to in  
9 paragraph (b) of this subsection;
- 10 the access determination is taken to be revoked at the time of the  
11 cessation.

- 12 (9) If:
- 13 (a) an access determination relating to access to a declared  
14 service is in force; and
- 15 (b) the relevant declaration under section 152AL is revoked; and
- 16 (c) the Commission does not make a fresh declaration under  
17 section 152AL that replaces the declaration referred to in  
18 paragraph (b) of this subsection;
- 19 the access determination is taken to be revoked at the time of the  
20 revocation of the declaration.

*Extension of access determination*

- 21
- 22 (10) If:
- 23 (a) an access determination (the ***original access determination***)  
24 relating to access to a declared service is in force; and
- 25 (b) the Commission has commenced to hold a public inquiry  
26 under Part 25 of the *Telecommunications Act 1997* about a  
27 proposal to make another access determination in relation to  
28 access to the service; and
- 29 (c) the Commission considers that it will make the other access  
30 determination, but will not be in a position to do so before the  
31 expiry date for the original access determination;
- 32 the Commission may, by writing, declare that the expiry date for  
33 the original access determination is taken to be the day  
34 immediately before the day on which the other access  
35 determination comes into force.

- 1 (11) The Commission must publish a declaration under subsection (10)  
2 on the Commission's website.
- 3 (12) If:  
4 (a) after holding a public inquiry under subsection 152ALA(7) in  
5 relation to a section 152AL declaration, the Commission:  
6 (i) extends or further extends the expiry date for the  
7 declaration by a period of not more than 12 months; and  
8 (ii) decides to allow the declaration to expire after the end  
9 of that period; and  
10 (b) an access determination is in force in relation to access to the  
11 declared service;  
12 the Commission may, by writing, extend the expiry date for the  
13 access determination by the same period.
- 14 (13) The Commission must publish an instrument under subsection (12)  
15 on the Commission's website.
- 16 (14) The Commission is not required to observe any requirements of  
17 procedural fairness in relation to a decision under subsection (10)  
18 or (12).
- 19 (15) A declaration under subsection (10) is not a legislative instrument.
- 20 (16) An instrument under subsection (12) is not a legislative instrument.

21 **152BCG Interim access determinations**

- 22 (1) If:  
23 (a) the Commission makes a declaration under section 152AL  
24 after the commencement of this section; and  
25 (b) the declaration is not a fresh declaration that replaces a  
26 previous declaration; and  
27 (c) the Commission has commenced to hold a public inquiry  
28 under Part 25 of the *Telecommunications Act 1997* about a  
29 proposal to make an access determination in relation to  
30 access to the declared service; and  
31 (d) either:  
32 (i) the Commission considers that it is unlikely that a final  
33 access determination in relation to access to the service  
34 will be made within 6 months after the commencement  
35 of the public inquiry; or
-

- 1 (ii) the Commission considers that there is an urgent need to  
2 make an access determination in relation to access to the  
3 service before the completion of the public inquiry;  
4 the Commission must make an interim access determination in  
5 relation to access to the service.
- 6 (2) If:  
7 (a) a declaration is in force under section 152AL; and  
8 (b) no access determination has previously been made in relation  
9 to access to the declared service;  
10 the Commission may make an interim access determination in  
11 relation to access to the service.
- 12 (3) The day specified in an interim access determination as the day on  
13 which the determination is to come into force must not be earlier  
14 than the day on which the declaration mentioned in  
15 paragraph (1)(a) or (2)(a), as the case may be, came into force.
- 16 (4) The Commission is not required to observe any requirements of  
17 procedural fairness in relation to the making of an interim access  
18 determination.
- 19 (5) The Commission must not make an interim access determination  
20 otherwise than in accordance with this section.

21 **Subdivision B—Public inquiries about proposals to make access**  
22 **determinations**

23 **152BCH Access determination to be made after public inquiry**

- 24 (1) The Commission must not make an access determination unless:  
25 (a) the Commission has held a public inquiry under Part 25 of  
26 the *Telecommunications Act 1997* about a proposal to make  
27 the determination; and  
28 (b) the Commission has prepared a report about the inquiry  
29 under section 505 of the *Telecommunications Act 1997*; and  
30 (c) the report was published during the 180-day period ending  
31 when the determination was made.
- 32 (2) Subsection (1) does not apply to an interim access determination.
- 33 (3) Subsection (1) has effect subject to section 152BCI.
-

1 **152BCI When public inquiry must be held**

2 (1) If:

3 (a) the Commission makes a declaration under section 152AL  
4 after the commencement of this section; and

5 (b) no access determination has previously been made in relation  
6 to access to the declared service;

7 the Commission must, within 30 days after the declaration is made,  
8 commence to hold a public inquiry under Part 25 of the  
9 *Telecommunications Act 1997* about a proposal to make an access  
10 determination relating to access to the declared service.

11 (2) If:

12 (a) a declaration is in force under section 152AL immediately  
13 after the commencement of this section; and

14 (b) no access determination has previously been made in relation  
15 to access to the declared service;

16 the Commission must, during the 12-month period beginning at the  
17 commencement of this section, commence to hold a public inquiry  
18 under Part 25 of the *Telecommunications Act 1997* about a  
19 proposal to make an access determination relating to access to the  
20 declared service.

21 (3) If:

22 (a) a declaration is in force under section 152AL; and

23 (b) an access determination has previously been made in relation  
24 to access to the declared service;

25 the Commission must, during the period:

26 (c) beginning 18 months before the expiry date for the access  
27 determination; and

28 (d) ending 6 months before the expiry date for the access  
29 determination;

30 commence to hold a public inquiry under Part 25 of the  
31 *Telecommunications Act 1997* about a proposal to make an access  
32 determination relating to access to the declared service.

33 (4) Subsection (3) has effect subject to subsections (5), (6) and (7).

34 (5) If:

35 (a) a declaration (the *current declaration*) is in force under  
36 section 152AL; and

---

**Schedule 1** Amendments

**Part 2** Telecommunications access regime

---

- 1 (b) an access determination has previously been made in relation  
2 to access to the declared service; and  
3 (c) the expiry date of the current declaration is extended or  
4 further extended for a period of not more than 12 months;  
5 and  
6 (d) the Commission decides to allow the current declaration to  
7 expire without making a new declaration under  
8 section 152AL;  
9 the Commission is not required to hold a public inquiry under  
10 Part 25 of the *Telecommunications Act 1997* about a proposal to  
11 make an access determination relating to access to the declared  
12 service.

13 (6) If:

- 14 (a) a declaration is in force under section 152AL; and  
15 (b) an access determination (the *current determination*) is in  
16 force in relation to access to the declared service; and  
17 (c) the Commission commences to hold a public inquiry under  
18 subsection 152ALA(7) in relation to the declaration;  
19 then:  
20 (d) the Commission may defer holding a public inquiry under  
21 Part 25 of the *Telecommunications Act 1997* about a proposal  
22 to make an access determination relating to access to the  
23 declared service until the Commission decides whether to  
24 extend or further extend the expiry date for the declaration;  
25 and  
26 (e) if the Commission decides to extend or further extend the  
27 expiry date for the declaration—the Commission must  
28 commence to hold such a public inquiry before the expiry  
29 date for the current access determination; and  
30 (f) if the Commission decides not to extend or further extend the  
31 expiry date for the declaration—the Commission is not  
32 required to hold such a public inquiry.

33 (7) If:

- 34 (a) a declaration is in force under section 152AL; and  
35 (b) an access determination has previously been made in relation  
36 to access to the declared service; and  
37 (c) after holding a public inquiry under subsection 152ALA(7) in  
38 relation to the declaration, the Commission decides to allow
-

1                               the declaration to expire without making a new declaration  
2                               under section 152AL;  
3                               the Commission is not required to hold a public inquiry under  
4                               Part 25 of the *Telecommunications Act 1997* about a proposal to  
5                               make an access determination relating to access to the declared  
6                               service.

7                               **152BCJ Combined inquiries about proposals to make access**  
8                               **determinations**

- 9                               (1) The Commission may decide to combine 2 or more public inquiries  
10                               of a kind mentioned in section 152BCH.
- 11                               (2) If the Commission makes such a decision:
- 12                               (a) the Commission may publish a single notice relating to the  
13                               combined inquiry under section 498 of the  
14                               *Telecommunications Act 1997*; and
- 15                               (b) the Commission may prepare a single discussion paper about  
16                               the combined inquiry under section 499 of that Act; and
- 17                               (c) the Commission may hold hearings relating to the combined  
18                               inquiry under section 501 of that Act; and
- 19                               (d) the Commission must ensure that each inquiry is covered by  
20                               a report under section 505 of that Act, whether the report  
21                               relates:
- 22                               (i) to a single one of those inquiries; or  
23                               (ii) to any 2 or more of those inquiries.

24                               **152BCK Time limit for making an access determination**

- 25                               (1) This section applies if the Commission commences to hold a public  
26                               inquiry under Part 25 of the *Telecommunications Act 1997* about a  
27                               proposal to make an access determination.
- 28                               (2) The Commission must make a final access determination within 6  
29                               months after that commencement.

30                               *Extension of decision-making period*

- 31                               (3) The Commission may, by written notice published on its website,  
32                               extend or further extend the 6-month period referred to in  
33                               subsection (2), so long as:

- 1 (a) the extension or further extension is for a period of not more  
2 than 6 months; and  
3 (b) the notice includes a statement explaining why the  
4 Commission has been unable to make a final access  
5 determination within that 6-month period or that 6-month  
6 period as previously extended, as the case may be.
- 7 Note: The Commission may be required to make an interim access  
8 determination—see section 152BCG.

9 **152BCL Commission may use material presented to a previous**  
10 **public inquiry etc.**

- 11 (1) This section applies if:  
12 (a) the Commission has held a public inquiry (the *original*  
13 *inquiry*) under Part 25 of the *Telecommunications Act 1997*  
14 about a proposal to make an access determination; and  
15 (b) any of the following subparagraphs applies:  
16 (i) evidence or other material was presented to a hearing  
17 for the purposes of the original inquiry;  
18 (ii) a written submission was lodged with the Commission  
19 for the purposes of the original inquiry;  
20 (iii) any other information obtained by the Commission was  
21 used by the Commission for the purposes of the original  
22 inquiry; and  
23 (c) the Commission holds another public inquiry under Part 25  
24 of the *Telecommunications Act 1997* about a proposal to  
25 make another access determination.
- 26 (2) The Commission may:  
27 (a) in the case of evidence or other material presented to a  
28 hearing—treat the whole or a part of the evidence or other  
29 material as if it had also been presented to a hearing for the  
30 purposes of the other public inquiry; or  
31 (b) in the case of a written submission lodged with the  
32 Commission—treat the whole or a part of the written  
33 submission as if it had also been lodged with the Commission  
34 for the purposes of the other public inquiry; or  
35 (c) in the case of any other information obtained by the  
36 Commission—use the whole or a part of the information for  
37 the purposes of the other public inquiry.
-

- 1 (3) This section does not, by implication, limit the information that  
2 may be used by the Commission for the purposes of a public  
3 inquiry under Part 25 of the *Telecommunications Act 1997*.

4 **152BCM Commission may adopt a finding from a previous public**  
5 **inquiry**

6 If:

- 7 (a) the Commission has held a public inquiry (the *original*  
8 *inquiry*) under Part 25 of the *Telecommunications Act 1997*  
9 about a proposal to make an access determination; and  
10 (b) the Commission has prepared a report about the original  
11 inquiry under section 505 of that Act; and  
12 (c) the Commission holds another public inquiry under Part 25  
13 of that Act about a proposal to make another access  
14 determination;  
15 the Commission may, for the purposes of the other public inquiry,  
16 adopt a finding set out in the report about the original inquiry.

17 **Subdivision C—Variation or revocation of access**  
18 **determinations**

19 **152BCN Variation or revocation of access determinations**

- 20 (1) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a  
21 power conferred on the Commission by section 152BC, but it  
22 applies with the following changes.
- 23 (2) The Commission is not required to hold a public inquiry under  
24 Part 25 the *Telecommunications Act 1997* about a proposal to vary  
25 an access determination if:  
26 (a) the variation is of a minor nature; or  
27 (b) each:  
28 (i) carrier or carriage service provider; and  
29 (ii) access seeker;  
30 whose interests are likely to be affected by the variation has  
31 consented in writing to the variation.
- 32 (3) The Commission is not required to hold a public inquiry under  
33 Part 25 of the *Telecommunications Act 1997* about a proposal to

**Schedule 1** Amendments

**Part 2** Telecommunications access regime

---

- 1 revoke an access determination if the Commission is satisfied that  
2 each:
- 3 (a) carrier or service provider; and  
4 (b) access seeker;
- 5 whose interests are likely to be affected by the revocation has  
6 consented in writing to the revocation.
- 7 (4) If a fixed principles provision is included in an access  
8 determination:
- 9 (a) a provision referred to in paragraph 152BCD(5)(a) or (b)  
10 cannot be varied or removed; and  
11 (b) the access determination must not be varied in a manner that  
12 is inconsistent with a provision referred to in paragraph  
13 152BCD(5)(a) or (b).
- 14 (5) The Commission does not have a duty to consider whether to  
15 exercise the power to vary or revoke an access determination,  
16 whether the Commission is requested to do so by another person,  
17 or in any other circumstances.
- 18 (6) If the Commission has commenced to hold a public inquiry under  
19 Part 25 of the *Telecommunications Act 1997* about a proposal to  
20 vary an access determination, the Commission may alter the  
21 proposed variation.
- 22 (7) Notice of the alteration is to be published in the same way in which  
23 a notice relating to the public inquiry was published under  
24 section 498 of the *Telecommunications Act 1997*.
- 25 (8) Subsection (7) does not apply in relation to an alteration if:  
26 (a) the alteration is of a minor nature; or  
27 (b) each:  
28 (i) carrier or carriage service provider; and  
29 (ii) access seeker;  
30 whose interests are likely to be affected by the alteration has  
31 consented in writing to the alteration.

1       **Subdivision D—Compliance with access determinations**

2       **152BCO Carrier licence condition**

3                     A carrier licence held by a carrier is subject to a condition that the  
4                     carrier must comply with any access determinations that are  
5                     applicable to the carrier.

6       **152BCP Service provider rule**

7                     (1) In addition to the rules mentioned in section 98 of the  
8                     *Telecommunications Act 1997*, the rule set out in subsection (2) of  
9                     this section is a service provider rule for the purposes of that Act.

10                    (2) A carriage service provider must comply with any access  
11                    determinations that are applicable to the provider.

12       **Subdivision E—Private enforcement of access determinations**

13       **152BCQ Private enforcement of access determinations**

14                    (1) If the Federal Court is satisfied, on the application of:

15                       (a) an access seeker; or

16                       (b) a carrier; or

17                       (c) a carriage service provider;

18                    that a person has engaged, is engaging, or is proposing to engage in  
19                    conduct that constitutes a contravention of an access determination,  
20                    the Court may make any or all of the following orders:

21                       (d) an order granting an injunction on such terms as the Court  
22                       thinks appropriate:

23                           (i) restraining the person from engaging in the conduct; or

24                           (ii) if the conduct involves refusing or failing to do  
25                           something—requiring the person to do that thing;

26                       (e) an order directing the person to compensate the applicant for  
27                       loss or damage suffered as a result of the contravention;

28                       (f) any other order that the Court thinks appropriate.

29                    (2) The revocation or expiry of an access determination does not affect  
30                    any remedy under subsection (1) in respect of a contravention of  
31                    the access determination that occurred when the access  
32                    determination was in force.

- 1 (3) If the Federal Court has power under subsection (1) to grant an  
2 injunction restraining a person from engaging in particular  
3 conduct, or requiring a person to do anything, the Court may make  
4 any other orders (including granting an injunction) that it thinks  
5 appropriate against any other person who was involved in the  
6 contravention concerned.
- 7 (4) A reference in this section to a person involved in the  
8 contravention is a reference to a person who has:
- 9 (a) aided, abetted, counselled or procured the contravention; or
  - 10 (b) induced the contravention, whether through threats or  
11 promises or otherwise; or
  - 12 (c) been in any way (directly or indirectly) knowingly concerned  
13 in or a party to the contravention; or
  - 14 (d) conspired with others to effect the contravention.

15 **152BCR Consent injunctions**

16 On an application for an injunction under section 152BCQ, the  
17 Federal Court may grant an injunction by consent of all of the  
18 parties to the proceedings, whether or not the Court is satisfied that  
19 the section applies.

20 **152BCS Interim injunctions**

21 The Federal Court may grant an interim injunction pending  
22 determination of an application under section 152BCQ.

23 **152BCT Factors relevant to granting a restraining injunction**

24 The power of the Federal Court to grant an injunction under  
25 section 152BCQ restraining a person from engaging in conduct  
26 may be exercised whether or not:

- 27 (a) it appears to the Court that the person intends to engage  
28 again, or to continue to engage, in conduct of that kind; or
- 29 (b) the person has previously engaged in conduct of that kind; or
- 30 (c) there is an imminent danger of substantial damage to any  
31 person if the first-mentioned person engages in conduct of  
32 that kind.

1       **152BCU Factors relevant to granting a mandatory injunction**

2                   The power of the Federal Court to grant an injunction under  
3                   section 152BCQ requiring a person to do a thing may be exercised  
4                   whether or not:

- 5                   (a) it appears to the Court that the person intends to refuse or fail  
6                   again, or to continue to refuse or fail, to do that thing; or  
7                   (b) the person has previously refused or failed to do that thing; or  
8                   (c) there is an imminent danger of substantial damage to any  
9                   person if the first-mentioned person refuses or fails to do that  
10                  thing.

11       **152BCV Discharge or variation of injunction or other order**

12                   The Federal Court may discharge or vary an injunction or order  
13                   granted under this Subdivision.

14       **Subdivision F—Register of Access Determinations**

15       **152BCW Register of Access Determinations**

- 16                   (1) The Commission is to maintain a register, to be known as the  
17                   Register of Access Determinations, in which the Commission  
18                   includes all access determinations in force.
- 19                   (2) The Register is to be maintained by electronic means.
- 20                   (3) The Register is to be made available for inspection on the  
21                   Commission’s website.
- 22                   (4) The Register is not a legislative instrument.
- 23                   (5) If the Commission is satisfied that:  
24                   (a) publication of a particular provision of an access  
25                   determination could reasonably be expected to prejudice  
26                   substantially the commercial interests of a person; and  
27                   (b) the prejudice outweighs the public interest in the publication  
28                   of the provision;  
29                   the Commission may remove the provision from the version of the  
30                   access determination that is included in the Register.
- 31                   (6) If the Commission does so, the Commission must include in the  
32                   Register an annotation to that effect.
-

1 **Division 4A—Binding rules of conduct**

2 **Subdivision A—Commission may make binding rules of**  
3 **conduct**

4 **152BD Binding rules of conduct**

5 (1) The Commission may make written rules relating to access to a  
6 declared service.

7 Note: For variation and revocation, see subsection 33(3) of the *Acts*  
8 *Interpretation Act 1901*.

9 (2) Rules under subsection (1) are to be known as *binding rules of*  
10 *conduct*.

11 (3) Binding rules of conduct may:

- 12 (a) specify the terms and conditions on which a carrier or  
13 carriage service provider is to comply with any or all of the  
14 standard access obligations applicable to the carrier or  
15 provider; or  
16 (b) specify any other terms and conditions of an access seeker's  
17 access to the declared service; or  
18 (c) require a carrier or carriage service provider to comply with  
19 any or all of the standard access obligations applicable to the  
20 carrier or provider in a manner specified in the rules; or  
21 (d) require a carrier or carriage service provider to extend or  
22 enhance the capability of a facility by means of which the  
23 declared service is supplied; or  
24 (e) impose other requirements on a carrier or carriage service  
25 provider in relation to access to the declared service; or  
26 (f) specify the terms and conditions on which a carrier or  
27 carriage service provider is to comply with any or all of those  
28 other requirements; or  
29 (g) require access seekers to accept, and pay for, access to the  
30 declared service; or  
31 (h) provide that any or all of the obligations referred to in  
32 section 152AR are not applicable to a carrier or carriage  
33 service provider, either:  
34 (i) unconditionally; or

- 1 (ii) subject to such conditions or limitations as are specified  
2 in the rules; or  
3 (i) restrict or limit the application to a carrier or carriage service  
4 provider of any or all of the obligations referred to in  
5 section 152AR.
- 6 (4) Subsection (3) does not limit subsection (1).
- 7 (5) Binding rules of conduct may be of general application or may be  
8 limited as provided in the rules.
- 9 (6) In particular, binding rules of conduct may be limited to:  
10 (a) particular carriers or carriage service providers; or  
11 (b) particular classes of carriers or carriage service providers; or  
12 (c) particular access seekers; or  
13 (d) particular classes of access seekers.
- 14 (7) Subsection (6) does not, by implication, limit subsection 33(3A) of  
15 the *Acts Interpretation Act 1901*.
- 16 (8) The Commission is not required to observe any requirements of  
17 procedural fairness in relation to the making of binding rules of  
18 conduct.
- 19 (9) The Commission does not have a duty to consider whether to make  
20 binding rules of conduct, whether at the request of a person or in  
21 any other circumstances.
- 22 (10) Binding rules of conduct may provide for the Commission to  
23 perform functions, and exercise powers, under the rules.
- 24 (11) An instrument under subsection (1) is not a legislative instrument.

25 **152BDA Restrictions on binding rules of conduct**

- 26 (1) The Commission must not make binding rules of conduct that  
27 would have any of the following effects:  
28 (a) preventing a service provider who already has access to the  
29 declared service from obtaining a sufficient amount of the  
30 service to be able to meet the service provider's reasonably  
31 anticipated requirements, measured at the time when the  
32 access seeker made a request in relation to the service under  
33 section 152AR;
-

- 1 (b) preventing a carrier or carriage service provider from  
2 obtaining a sufficient amount of the service to be able to meet  
3 the carrier's or provider's reasonably anticipated  
4 requirements, measured at the time when the access seeker  
5 made a request in relation to the service under  
6 section 152AR;
- 7 (c) preventing a person from obtaining, by the exercise of a  
8 pre-rules right, a sufficient level of access to the declared  
9 service to be able to meet the person's actual requirements;
- 10 (d) depriving any person of a protected contractual right;
- 11 (e) resulting in an access seeker becoming the owner (or one of  
12 the owners) of any part of a facility without the consent of  
13 the owner of the facility;
- 14 (f) requiring a person (other than an access seeker) to bear an  
15 unreasonable amount of the costs of:
- 16 (i) extending or enhancing the capability of a facility; or  
17 (ii) maintaining extensions to or enhancements of the  
18 capability of a facility;
- 19 (g) requiring a carrier or carriage service provider to provide an  
20 access seeker with access to a declared service if there are  
21 reasonable grounds to believe that:
- 22 (i) the access seeker would fail, to a material extent, to  
23 comply with the terms and conditions on which the  
24 carrier or provider provides, or is reasonably likely to  
25 provide, that access; or
- 26 (ii) the access seeker would fail, in connection with that  
27 access, to protect the integrity of a telecommunications  
28 network or to protect the safety of individuals working  
29 on, or using services supplied by means of, a  
30 telecommunications network or a facility.
- 31 (2) Examples of grounds for believing as mentioned in  
32 subparagraph (1)(g)(i) include:
- 33 (a) evidence that the access seeker is not creditworthy; and  
34 (b) repeated failures by the access seeker to comply with the  
35 terms and conditions on which the same or similar access has  
36 been provided (whether or not by the carrier or carriage  
37 service provider).

- 1 (3) The Commission must not make binding rules of conduct that are  
2 inconsistent with any of the standard access obligations that are, or  
3 will be, applicable to a carrier or carriage service provider.
- 4 (4) If the Commission makes binding rules of conduct that have the  
5 effect of depriving a person (the *second person*) of a pre-rules right  
6 to require the carrier or provider to provide access to the declared  
7 service to the second person, the rules must also require the access  
8 seeker:
- 9 (a) to pay to the second person such amount (if any) as the  
10 Commission considers is fair compensation for the  
11 deprivation; and
- 12 (b) to reimburse the carrier or provider and the Commonwealth  
13 for any compensation that the carrier or provider or the  
14 Commonwealth agrees, or is required by a court order, to pay  
15 to the second person as compensation for the deprivation.
- 16 (5) Binding rules of conduct are of no effect to the extent to which  
17 they contravene subsection (1) or (3).
- 18 (6) In this section:

19 *pre-rules right* means a right under a contract that was in force  
20 immediately before the binding rules of conduct came into force.

21 *protected contractual right* means a right under a contract that was  
22 in force at the beginning of 13 September 1996.

23 **152BDB Binding rules of conduct that are inconsistent with access**  
24 **agreements**

25 If:

- 26 (a) binding rules of conduct specify terms and conditions that,  
27 apart from this section, would be applicable to the following  
28 parties:
- 29 (i) a carrier or carriage service provider;  
30 (ii) an access seeker; and
- 31 (b) those terms and conditions are inconsistent with terms and  
32 conditions set out in an access agreement that is applicable to  
33 those parties;
- 34 the terms and conditions specified in the binding rules of conduct  
35 have no effect to the extent of the inconsistency.

1 **152BDC Duration of binding rules of conduct**

- 2 (1) Binding rules of conduct come into force on the day specified in  
3 the rules as the day on which the rules are to come into force.
- 4 (2) Binding rules of conduct must specify an expiry date for the rules.
- 5 (3) An expiry date must occur in the 12-month period beginning when  
6 the rules were made.
- 7 (4) Unless sooner revoked, binding rules of conduct cease to be in  
8 force on the expiry date for the rules.

9 **152BDD Commission must give copy of binding rules of conduct to**  
10 **carrier etc.**

11 If binding rules of conduct are limited to a particular carrier,  
12 carriage service provider or access seeker, as soon as practicable  
13 after making the rules, the Commission must give a copy of the  
14 rules to the carrier, carriage service provider or access seeker, as  
15 the case may be.

16 **152BDE Access determinations that are inconsistent with binding**  
17 **rules of conduct**

18 If a provision of an access determination is inconsistent with  
19 binding rules of conduct, the provision has no effect to the extent  
20 of the inconsistency.

21 **Subdivision B—Compliance with binding rules of conduct**

22 **152BDF Carrier licence condition**

23 A carrier licence held by a carrier is subject to a condition that the  
24 carrier must comply with any binding rules of conduct that are  
25 applicable to the carrier.

26 **152BDG Service provider rule**

- 27 (1) In addition to the rules mentioned in section 98 of the  
28 *Telecommunications Act 1997*, the rule set out in subsection (2) of  
29 this section is a service provider rule for the purposes of that Act.

- 1                   (2) A carriage service provider must comply with any binding rules of  
2                   conduct that are applicable to the provider.

3                   **Subdivision C—Private enforcement of binding rules of**  
4                   **conduct**

5                   **152BDH Private enforcement of binding rules of conduct**

- 6                   (1) If the Federal Court is satisfied, on the application of:  
7                   (a) an access seeker; or  
8                   (b) a carrier; or  
9                   (c) a carriage service provider;  
10                  that a person has engaged, is engaging, or is proposing to engage in  
11                  conduct that constitutes a contravention of binding rules of  
12                  conduct, the Court may make any or all of the following orders:  
13                  (d) an order granting an injunction on such terms as the Court  
14                  thinks appropriate:  
15                      (i) restraining the person from engaging in the conduct; or  
16                      (ii) if the conduct involves refusing or failing to do  
17                      something—requiring the person to do that thing;  
18                  (e) an order directing the person to compensate the applicant for  
19                  loss or damage suffered as a result of the contravention;  
20                  (f) any other order that the Court thinks appropriate.
- 21                  (2) The revocation or expiry of binding rules of conduct does not  
22                  affect any remedy under subsection (1) in respect of a  
23                  contravention of the rules that occurred when the rules were in  
24                  force.
- 25                  (3) If the Federal Court has power under subsection (1) to grant an  
26                  injunction restraining a person from engaging in particular  
27                  conduct, or requiring a person to do anything, the Court may make  
28                  any other orders (including granting an injunction) that it thinks  
29                  appropriate against any other person who was involved in the  
30                  contravention concerned.
- 31                  (4) A reference in this section to a person involved in the  
32                  contravention is a reference to a person who has:  
33                      (a) aided, abetted, counselled or procured the contravention; or  
34                      (b) induced the contravention, whether through threats or  
35                      promises or otherwise; or
-

- 1 (c) been in any way (directly or indirectly) knowingly concerned  
2 in or a party to the contravention; or  
3 (d) conspired with others to effect the contravention.

4 **152BDI Consent injunctions**

5 On an application for an injunction under section 152BDH, the  
6 Federal Court may grant an injunction by consent of all of the  
7 parties to the proceedings, whether or not the Court is satisfied that  
8 the section applies.

9 **152BDJ Interim injunctions**

10 The Federal Court may grant an interim injunction pending  
11 determination of an application under section 152BDH.

12 **152BDK Factors relevant to granting a restraining injunction**

13 The power of the Federal Court to grant an injunction under  
14 section 152BDH restraining a person from engaging in conduct  
15 may be exercised whether or not:

- 16 (a) it appears to the Court that the person intends to engage  
17 again, or to continue to engage, in conduct of that kind; or  
18 (b) the person has previously engaged in conduct of that kind; or  
19 (c) there is an imminent danger of substantial damage to any  
20 person if the first-mentioned person engages in conduct of  
21 that kind.

22 **152BDL Factors relevant to granting a mandatory injunction**

23 The power of the Federal Court to grant an injunction under  
24 section 152BDH requiring a person to do a thing may be exercised  
25 whether or not:

- 26 (a) it appears to the Court that the person intends to refuse or fail  
27 again, or to continue to refuse or fail, to do that thing; or  
28 (b) the person has previously refused or failed to do that thing; or  
29 (c) there is an imminent danger of substantial damage to any  
30 person if the first-mentioned person refuses or fails to do that  
31 thing.

1 **152BDM Discharge or variation of injunction or other order**

2 The Federal Court may discharge or vary an injunction or order  
3 granted under this Subdivision.

4 **Subdivision D—Register of Binding Rules of Conduct**

5 **152BDN Register of Binding Rules of Conduct**

- 6 (1) The Commission is to maintain a register, to be known as the  
7 Register of Binding Rules of Conduct, in which the Commission  
8 includes all binding rules of conduct in force.
- 9 (2) The Register is to be maintained by electronic means.
- 10 (3) The Register is to be made available for inspection on the  
11 Commission's website.
- 12 (4) The Register is not a legislative instrument.
- 13 (5) If the Commission is satisfied that:  
14 (a) publication of a particular provision of binding rules of  
15 conduct could reasonably be expected to prejudice  
16 substantially the commercial interests of a person; and  
17 (b) the prejudice outweighs the public interest in the publication  
18 of the provision;  
19 the Commission may remove the provision from the version of the  
20 rules that is included in the Register.
- 21 (6) If the Commission does so, the Commission must include in the  
22 Register an annotation to that effect.

23 **Division 4B—Access agreements**

24 **152BE Access agreements**

- 25 (1) For the purposes of this Part, an *access agreement* is an agreement,  
26 where:  
27 (a) the agreement is in writing; and  
28 (b) the agreement is legally enforceable; and  
29 (c) the agreement relates to access to a declared service; and  
30 (d) the parties to the agreement are:

- 1 (i) an access seeker; and  
2 (ii) the carrier or carriage service provider who supplies, or  
3 proposes to supply, the declared service; and  
4 (e) any of the following subparagraphs applies:  
5 (i) the agreement embodies any or all of the terms and  
6 conditions on which the carrier or carriage service  
7 provider is to comply with any or all of the standard  
8 access obligations applicable to the carrier or provider;  
9 (ii) if an access determination imposes requirements on a  
10 carrier or carriage service provider in relation to access  
11 to the declared service, as mentioned in paragraph  
12 152BC(3)(e)—the agreement embodies any or all of the  
13 terms and conditions on which the carrier or carriage  
14 service provider is to comply with any or all of those  
15 requirements;  
16 (iii) if binding rules of conduct impose requirements on the  
17 carrier or carriage service provider in relation to access  
18 to the declared service, as mentioned in paragraph  
19 152BD(3)(e)—the agreement embodies any or all of the  
20 terms and conditions on which the carrier or carriage  
21 service provider is to comply with any or all of those  
22 requirements;  
23 (iv) the agreement embodies any other terms and conditions  
24 of the access seeker’s access to the declared service.
- 25 (2) If:  
26 (a) an agreement relates to access to an eligible service (within  
27 the meaning of section 152AL); and  
28 (b) at the time the agreement was entered into to, the eligible  
29 service was a not a declared service; and  
30 (c) at a later time (the *declaration time*), the eligible service  
31 becomes a declared service; and  
32 (d) if the agreement had been entered into immediately after the  
33 declaration time, the agreement would have been an access  
34 agreement;  
35 the agreement becomes an *access agreement* immediately after the  
36 declaration time.
- 37 (3) If:  
38 (a) an access agreement is varied by another agreement (the  
39 *variation agreement*); and
-

- 1 (b) the variation agreement is in writing; and  
2 (c) the variation agreement is legally enforceable;  
3 a reference in this Part to the ***access agreement*** is a reference to the  
4 access agreement as varied by the variation agreement.
- 5 (4) It is immaterial whether an access agreement or variation  
6 agreement was entered into before or after the commencement of  
7 this section.

8 **152BEA Lodgment of access agreements with the Commission**

- 9 (1) If:  
10 (a) an access agreement is covered by subsection 152BE(1); and  
11 (b) the agreement was entered into after the commencement of  
12 this section;  
13 the carrier or carriage service provider who supplies, or proposes to  
14 supply, the service to which the agreement relates must, within 28  
15 days after the day on which the agreement was entered into, give  
16 the Commission:  
17 (c) a copy of the agreement; and  
18 (d) a written statement setting out such information (if any)  
19 about the agreement as is specified in an instrument in force  
20 under subsection (6).
- 21 (2) If:  
22 (a) an access agreement is covered by subsection 152BE(1); and  
23 (b) the agreement was entered into before the commencement of  
24 this section; and  
25 (c) the agreement is in operation as at the commencement of this  
26 section;  
27 the carrier or carriage service provider who supplies, or proposes to  
28 supply, the service to which the agreement relates must, within 28  
29 days after the commencement of this section, give the  
30 Commission:  
31 (d) a copy of the agreement; and  
32 (e) a written statement setting out such information (if any)  
33 about the agreement as is specified in an instrument in force  
34 under subsection (7).
- 35 (3) If, under subsection 152BE(2), an agreement becomes an access  
36 agreement after the commencement of this section, the carrier or
-

**Schedule 1** Amendments

**Part 2** Telecommunications access regime

---

1 carriage service provider who supplies, or proposes to supply, the  
2 service to which the agreement relates must, within 28 days after  
3 the day on which the agreement became an access agreement, give  
4 the Commission:

- 5 (a) a copy of the agreement; and
- 6 (b) a written statement setting out such information (if any)  
7 about the agreement as is specified in an instrument in force  
8 under subsection (8).

9 (4) If:

- 10 (a) under subsection 152BE(2), an agreement became an access  
11 agreement before the commencement of this section; and
- 12 (b) the agreement is in operation as at the commencement of this  
13 section;

14 the carrier or carriage service provider who supplies, or proposes to  
15 supply, the service to which the agreement relates must, within 28  
16 days after the commencement of this section, give the  
17 Commission:

- 18 (c) a copy of the agreement (or, if the agreement has been varied,  
19 the varied agreement); and
- 20 (d) a written statement setting out such information (if any)  
21 about the agreement, or varied agreement, as the case may  
22 be, as is specified in an instrument in force under  
23 subsection (9).

24 (5) If a variation agreement is entered into after the commencement of  
25 this section, the carrier or carriage service provider who supplies,  
26 or proposes to supply, the service to which the relevant access  
27 agreement relates must, within 28 days after the day on which the  
28 variation agreement was entered into, give the Commission:

- 29 (a) a copy of the variation agreement; and
- 30 (b) a written statement setting out such information (if any)  
31 about the variation agreement as is specified in an instrument  
32 in force under subsection (10).

33 (6) The Commission may, by writing, specify information for the  
34 purposes of paragraph (1)(d).

35 (7) The Commission may, by writing, specify information for the  
36 purposes of paragraph (2)(e).

- 1           (8) The Commission may, by writing, specify information for the  
2           purposes of paragraph (3)(b).
- 3           (9) The Commission may, by writing, specify information for the  
4           purposes of paragraph (4)(d).
- 5           (10) The Commission may, by writing, specify information for the  
6           purposes of paragraph (5)(b).
- 7           (11) The Commission may, by writing, require information in a  
8           statement given to the Commission under subsection (1), (2), (3),  
9           (4) or (5) to be verified by statutory declaration.
- 10          (12) The Commission must publish an instrument under subsection (6),  
11          (7), (8), (9), (10) or (11) on the Commission's website.
- 12          (13) The Commission may, before the end of the 28-day period referred  
13          to in subsection (1), (2), (3), (4) or (5), extend that period.
- 14          (14) An instrument under subsection (6), (7), (8), (9), (10) or (11) is not  
15          a legislative instrument.

16       **152BEB Notification of termination of access agreement**

- 17           (1) This section applies if:  
18           (a) a copy of an access agreement has been given to the  
19           Commission under section 152BEA; and  
20           (b) the agreement is terminated, rescinded or cancelled before  
21           the expiry of the agreement.
- 22           (2) The carrier or carriage service provider who supplied, or proposed  
23           to supply, the service to which the agreement relates must, within  
24           28 days after the termination, rescission or cancellation, as the case  
25           may be, notify the Commission, in writing, of the termination,  
26           rescission or cancellation.

27       **152BEC Carrier licence condition**

- 28           A carrier licence held by a carrier is subject to a condition that the  
29           carrier must comply with sections 152BEA and 152BEB.

1 **152BED Service provider rule**

- 2 (1) In addition to the rules mentioned in section 98 of the  
3 *Telecommunications Act 1997*, the rule set out in subsection (2) of  
4 this section is a service provider rule for the purposes of that Act.
- 5 (2) A carriage service provider must comply with sections 152BEA  
6 and 152BEB.

7 **117 Subdivision A of Division 5 of Part XIC**

8 Repeal the Subdivision.

9 **118 Subsection 152CBA(1)**

10 Omit “an active”, substitute “a”.

11 **119 Subsection 152CBA(10)**

12 Repeal the subsection, substitute:

- 13 (10) If the undertaking expires, this Part does not prevent the person  
14 from giving a fresh special access undertaking in the same terms as  
15 the expired undertaking.

16 **120 Before paragraph 152CBC(6)(a)**

17 Insert:

18 (aa) if:

- 19 (i) the Commission has given a notice under  
20 section 152CBDA in relation to the undertaking; and  
21 (ii) no varied undertaking was given to the Commission in  
22 response to the notice;  
23 a day in the period specified in the notice; and

24 (ab) if:

- 25 (i) the Commission has given a notice under  
26 section 152CBDA in relation to the undertaking; and  
27 (ii) a varied undertaking was given to the Commission in  
28 response to the notice; and  
29 (iii) the Commission did not publish the varied undertaking  
30 under paragraph 152CBD(2)(d);  
31 a day in the period:  
32 (iv) beginning on the day in which the notice was given; and

- 1 (v) ending when the varied undertaking was given to the  
2 Commission in response to the notice; and  
3 (ac) if:  
4 (i) the Commission has given a notice under  
5 section 152CBDA in relation to the undertaking; and  
6 (ii) a varied undertaking was given to the Commission in  
7 response to the notice; and  
8 (iii) the varied undertaking was published under paragraph  
9 152CBD(2)(d);  
10 a day in the period:  
11 (iv) beginning on the day on which the notice was given;  
12 and  
13 (v) ending at the end of the time specified by the  
14 Commission when it published the varied undertaking;  
15 and

16 **121 Paragraph 152CBC(6)(a)**

17 After “if”, insert “paragraph (ac) does not apply and”.

18 **122 After section 152CBC**

19 Insert:

20 **152BCA Serial undertakings**

21 If:

- 22 (a) a person gives a special access undertaking (the *first special*  
23 *access undertaking*) to the Commission; and  
24 (b) the Commission rejects the first special access undertaking;  
25 and  
26 (c) the person subsequently gives another special access  
27 undertaking to the Commission; and  
28 (d) the Commission is satisfied that any or all of the provisions  
29 of the first special access application are materially similar to  
30 any or all of the provisions of the other special access  
31 undertaking;

32 the Commission may refuse to consider the other special access  
33 undertaking.

34 **123 At the end of section 152CBD**

---

1 Add:

- 2 (3) If a special access undertaking is given to the Commission in  
3 response to a notice under section 152CBDA, the Commission is  
4 not required to publish the undertaking under paragraph (2)(d) of  
5 this section unless the Commission is satisfied that:  
6 (a) the variations specified in the notice are not of a minor  
7 nature; or  
8 (b) the variations specified in the notice are likely to have a  
9 material adverse effect on the legitimate commercial interests  
10 of any person.

11 **124 After section 152CBD**

12 Insert:

13 **152CBDA Variation of special access undertaking**

- 14 (1) This section applies if a person gives a special access undertaking  
15 (the *original undertaking*) to the Commission.
- 16 (2) The Commission may give the person a written notice stating that,  
17 if the person:  
18 (a) makes such variations to the original undertaking as are  
19 specified in the notice; and  
20 (b) gives the varied undertaking to the Commission within the  
21 period specified in the notice;  
22 the Commission will consider the varied undertaking under  
23 section 152CBC as if the varied undertaking had been given to the  
24 Commission instead of the original undertaking.
- 25 (3) If the person gives the Commission a varied undertaking in  
26 response to the notice, the Commission must consider the varied  
27 undertaking under section 152CBC as if the varied undertaking had  
28 been given to the Commission instead of the original undertaking.
- 29 (4) The Commission does not have a duty to consider whether to give  
30 a notice under subsection (2).

31 **125 After section 152CBI**

32 Insert:

1 **152CBIA Special access undertakings prevail over inconsistent**  
2 **access determinations**

3 An access determination has no effect to the extent to which it is  
4 inconsistent with a special access undertaking that is in operation.

5 **152CBIB Special access undertakings prevail over inconsistent**  
6 **binding rules of conduct**

7 Binding rules of conduct have no effect to the extent to which they  
8 are inconsistent with a special access undertaking that is in  
9 operation.

10 **152CBIC Access agreements prevail over special access**  
11 **undertakings**

12 A special access undertaking has no effect to the extent to which it  
13 is inconsistent with an access agreement.

14 **126 Subsection 152CC(2)**

15 Omit “may”, substitute “is to”.

16 **127 Subsections 152CC(3), (4) and (5)**

17 Repeal the subsections, substitute:

18 (3) The Register is to be made available for inspection on the  
19 Commission’s website.

20 (4) The Register is not a legislative instrument.

21 **128 Sections 152CE, 152CF, 152CG and 152CGA**

22 Repeal the sections.

23 **129 Section 152CGB**

24 Repeal the section.

25 **130 Subsection 152CH(1) (notes 1A, 1B, 2 and 3)**

26 Repeal the notes.

27 **131 Subsection 152CH(1) (note 5)**

28 Repeal the note, substitute:

---

## Schedule 1 Amendments

### Part 2 Telecommunications access regime

---

1 Note 5: Subsection 152CI(2) provides that a provision of an access  
2 determination has no effect to the extent that the provision is  
3 inconsistent with any Ministerial pricing determination.

4 Note 5A: Subsection 152CI(3) provides that a provision of binding rules of  
5 conduct have no effect to the extent that the provision is inconsistent  
6 with any Ministerial pricing determination.

#### 7 **132 Subsection 152CH(1) (note 6)**

8 Repeal the note.

#### 9 **133 Subsection 152CI(2)**

10 Repeal the subsection, substitute:

11 (2) If a provision of an access determination is inconsistent with any  
12 Ministerial pricing determination, the provision has no effect to the  
13 extent of the inconsistency.

14 (3) If a provision of binding rules of conduct is inconsistent with any  
15 Ministerial pricing determination, the provision has no effect to the  
16 extent of the inconsistency.

17 Note: The heading to section 152CI is altered by omitting “**and codes**” and substituting “,  
18 **access determinations and binding rules of conduct**”.

#### 19 **134 Subsection 152CJ(2)**

20 Omit “may”, substitute “is to”.

#### 21 **135 Subsections 152CJ(3), (4) and (5)**

22 Repeal the subsections, substitute:

23 (3) The Register is to be made available for inspection on the  
24 Commission’s website.

25 (4) The Register is not a legislative instrument.

#### 26 **136 Division 8 of Part XIC**

27 Repeal the Division.

#### 28 **137 Division 9 of Part XIC**

29 Repeal the Division.

#### 30 **138 Paragraph 152EF(1)(b)**

31 Repeal the paragraph, substitute:

---

- 1 (b) a requirement imposed by an access determination; or  
2 (ba) a requirement imposed by binding rules of conduct;

3 **139 Subparagraph 152ELA(3)(a)(i)**

4 Omit “152AT(1) or”.

5 **140 Subparagraph 152ELA(3)(a)(ii)**

6 Omit “or” (last occurring).

7 **141 Subparagraph 152ELA(3)(a)(iii)**

8 Repeal the subparagraph.

9 **142 Paragraph 152ELA(3)(b)**

10 Repeal the paragraph.

11 **143 Paragraph 152ELA(3)(c)**

12 Omit “this Part;”, substitute “this Part.”.

13 **144 Paragraph 152ELA(3)(d)**

14 Repeal the paragraph.

15 **145 Subsections 152ELA(6) and (7)**

16 Repeal the subsections, substitute:

- 17 (6) Subsection (5) does not limit subsection (1).

18 **146 Before section 152EM**

19 Insert:

20 **152ELD Compensation for acquisition of property**

- 21 (1) If the operation of this Part would result in an acquisition of  
22 property from a person otherwise than on just terms, the  
23 Commonwealth is liable to pay a reasonable amount of  
24 compensation to the person.
- 25 (2) If the Commonwealth and the person do not agree on the amount  
26 of the compensation, the person may institute proceedings in a  
27 court of competent jurisdiction for the recovery from the

1 Commonwealth of such reasonable amount of compensation as the  
2 court determines.

3 (3) In this section:

4 *acquisition of property* has the same meaning as in paragraph  
5 51(xxxi) of the Constitution.

6 *just terms* has the same meaning as in paragraph 51(xxxi) of the  
7 Constitution.

8 *this Part* includes Division 2 of Part 2 of Schedule 1 to the  
9 *Telecommunications Legislation Amendment (Competition and*  
10 *Consumer Safeguards) Act 2009.*

11 **147 Subsection 155AAA(21) (subparagraph (c)(i) of the**  
12 **definition of *protected information*)**

13 Omit “152BT, 152BZ.”

14 **148 Subsection 171B(1)**

15 Omit “and Division 8 of Part XIC have no effect to the extent (if any) to  
16 which they purport”, substitute “has no effect to the extent (if any) to  
17 which it purports”.

18 Note: The heading to section 171B is altered by omitting “and Division 8 of Part XIC do”  
19 and substituting “does”.

20 **Division 2—Transitional provisions**

21 **149 Definitions**

22 In this Division:

23 *access agreement* has the same meaning as in Part XIC of the *Trade*  
24 *Practices Act 1974* as amended by this Part.

25 *access determination* has the same meaning as in Part XIC of the *Trade*  
26 *Practices Act 1974* as amended by this Part.

27 *binding rules of conduct* has the same meaning as in Part XIC of the  
28 *Trade Practices Act 1974* as amended by this Part.

29 **150 Transitional—ordinary class exemptions from standard**  
30 **access obligations**

31 (1) This item applies to a determination that:

---

- 1 (a) was made under section 152AS of the *Trade Practices Act*  
2 *1974*; and  
3 (b) was in force immediately before the commencement of this  
4 item.

- 5 (2) Despite:  
6 (a) the repeal of section 152AS of the *Trade Practices Act 1974*  
7 effected by this Part; and  
8 (b) the amendment of paragraph 152BBAA(1)(a) of that Act  
9 made by this Part;

10 that section and that paragraph continue to apply, in relation to the  
11 determination, as if that repeal had not happened and that amendment  
12 had not been made. This subitem has effect subject to the following  
13 subitem.

- 14 (3) The determination ceases to have effect, to the extent to which it relates  
15 to a particular declared service, when the first access determination  
16 relating to access to the declared service comes into force.

17 **151 Transitional—ordinary individual exemptions from**  
18 **standard access obligations**

- 19 (1) This item applies to a determination that:  
20 (a) was made under section 152AT of the *Trade Practices Act*  
21 *1974*; and  
22 (b) was in force immediately before the commencement of this  
23 item.

- 24 (2) Despite:  
25 (a) the repeal of section 152AT of the *Trade Practices Act 1974*  
26 effected by this Part; and  
27 (b) the amendment of paragraph 152BBAA(1)(b) of that Act  
28 made by this Part;

29 that section and that paragraph continue to apply, in relation to the  
30 determination, as if that repeal had not happened and that amendment  
31 had not been made. This subitem has effect subject to the following  
32 subitem.

- 33 (3) The determination ceases to have effect, to the extent to which it relates  
34 to a particular declared service, when the first access determination  
35 relating to access to the declared service comes into force.

1 **152 Transitional—ordinary access undertakings given to the**  
2 **Commission before 15 September 2009**

- 3 (1) This item applies to an ordinary access undertaking that:  
4 (a) was given by a carrier or carriage service provider to the  
5 Commission under section 152BS of the *Trade Practices Act*  
6 *1974* before 15 September 2009; and  
7 (b) was accepted by the Commission under section 152BU of  
8 that Act before the commencement of this item; and  
9 (c) was in operation immediately before the commencement of  
10 this item.

- 11 (2) Despite the following repeals effected, and amendments made, by this  
12 Part:  
13 (a) the repeal of Subdivision A of Division 5 of Part XIC of the  
14 *Trade Practices Act 1974*;  
15 (b) the amendment of the definition of *access undertaking* in  
16 section 152AC of that Act;  
17 (c) the repeal of the definition of *ordinary access undertaking* in  
18 section 152AC of that Act;  
19 (d) the amendment of subparagraph (c)(i) of the definition of  
20 *protected information* in subsection 155AAA(21) of that  
21 Act;

22 that Subdivision and those definitions continue to apply, in relation to  
23 the undertaking, as if those repeals had not happened and those  
24 amendments had not been made. This subitem has effect subject to the  
25 following subitems.

- 26 (3) The undertaking cannot be varied so as to extend its duration.  
27 (4) If the undertaking adopts a set of model terms and conditions set out in  
28 the telecommunications access code, then, despite the repeal of  
29 sections 152BJ and 152BK of the *Trade Practices Act 1974*, those  
30 sections continue to apply, in relation to the undertaking, as if those  
31 repeals had not happened.  
32 (5) If the undertaking is inconsistent with an access agreement, the  
33 undertaking has no effect to the extent of the inconsistency.

34 **153 Transitional—ordinary access undertakings given to the**  
35 **Commission on or after 15 September 2009**

---

- 1 (1) This item applies to an ordinary access undertaking that:  
2 (a) was given to the Commission under section 152BS of the  
3 *Trade Practices Act 1974* on or after 15 September 2009; and  
4 (b) was accepted by the Commission under section 152BU of  
5 that Act before the commencement of this item; and  
6 (c) was in operation immediately before the commencement of  
7 this item.
- 8 (2) Despite the following repeals effected, and amendments made, by this  
9 Part:  
10 (a) the repeal of Subdivision A of Division 5 of Part XIC of the  
11 *Trade Practices Act 1974*;  
12 (b) the amendment of the definition of *access undertaking* in  
13 section 152AC of that Act;  
14 (c) the repeal of the definition of *ordinary access undertaking* in  
15 section 152AC of that Act;  
16 (d) the amendment of subparagraph (c)(i) of the definition of  
17 *protected information* in subsection 155AAA(21) of that  
18 Act;  
19 that Subdivision and those definitions continue to apply, in relation to  
20 the undertaking, as if those repeals had not happened and those  
21 amendments had not been made. This subitem has effect subject to the  
22 following subitems.
- 23 (3) The undertaking cannot be varied so as to extend its duration.
- 24 (4) The undertaking ceases to have effect, to the extent to which it relates to  
25 a particular declared service, when the first access determination  
26 relating to access to the declared service comes into force.
- 27 (5) If the undertaking adopts a set of model terms and conditions set out in  
28 the telecommunications access code, then, despite the repeal of  
29 sections 152BJ and 152BK of the *Trade Practices Act 1974*, those  
30 sections continue to apply, in relation to the undertaking, as if those  
31 repeals had not happened.
- 32 (6) If the undertaking is inconsistent with an access agreement, the  
33 undertaking has no effect to the extent of the inconsistency.

34 **154 Transitional—arbitration of access disputes**

---

**Schedule 1** Amendments

**Part 2** Telecommunications access regime

---

1 (1) Despite the following repeals effected, and amendments made, by this  
2 Part:

- 3 (a) the repeal of Division 8 of Part XIC of the *Trade Practices*  
4 *Act 1974*;
- 5 (b) the amendment of the definition of *pre-request right* in  
6 subsection 152AR(12) of that Act;
- 7 (c) the repeal of subsection 152BBC(5) of that Act;
- 8 (d) the repeal of section 152CGB of that Act;
- 9 (e) the amendments of section 152ELA of that Act;
- 10 (f) the amendment of subsection 171B(1) of that Act;

11 that Division, that definition, and those sections and subsections  
12 continue to apply as if those repeals had not happened and those  
13 amendments had not been made. This subitem has effect subject to the  
14 following subitems.

15 (2) If:

- 16 (a) a declared service is supplied, or proposed to be supplied, by  
17 a carrier or a carriage service provider; and
- 18 (b) one or more standard access obligations apply, or will apply,  
19 to the carrier or provider in relation to the declared service;  
20 and
- 21 (c) an access seeker is unable to agree with the carrier or  
22 provider about one or more aspects of access to the declared  
23 service;

24 then:

- 25 (d) if the declared service was a declared service immediately  
26 before the commencement of this item—a person is not  
27 entitled to notify an access dispute to the Commission under  
28 section 152CM of the *Trade Practices Act 1974* at any time  
29 after the first final access determination relating to access to  
30 the declared service has come into force; or
- 31 (e) otherwise—a person is not entitled to notify an access dispute  
32 to the Commission under section 152CM of the *Trade*  
33 *Practices Act 1974*.

34 (3) If:

- 35 (a) a declared service is supplied, or proposed to be supplied, by  
36 a carrier or a carriage service provider; and
-

- 1 (b) one or more standard access obligations apply, or will apply,  
2 to the carrier or provider in relation to the declared service;  
3 and  
4 (c) an access seeker is unable to agree with the carrier or  
5 provider about the terms and conditions on which the carrier  
6 or provider is to comply with those obligations;
- 7 then:
- 8 (d) if the declared service was a declared service immediately  
9 before the commencement of this item—a person is not  
10 entitled to notify an access dispute to the Commission under  
11 section 152CM of the *Trade Practices Act 1974* at any time  
12 after the first final access determination relating to access to  
13 the declared service has come into force; or  
14 (e) otherwise—a person is not entitled to notify an access dispute  
15 to the Commission under section 152CM of the *Trade*  
16 *Practices Act 1974*.
- 17 (4) A final determination made by the Commission under Division 8 of  
18 Part XIC of the *Trade Practices Act 1974* after the commencement of  
19 this item must specify an expiry date for the determination. Unless  
20 sooner revoked, the determination ceases to be in force on the expiry  
21 date for the determination.
- 22 (5) If a determination under Division 8 of Part XIC of the *Trade Practices*  
23 *Act 1974* is inconsistent with a final access determination that was in  
24 force when the first-mentioned determination was made or varied, the  
25 first-mentioned determination has no effect to the extent of the  
26 inconsistency.
- 27 (6) If a determination under Division 8 of Part XIC of the *Trade Practices*  
28 *Act 1974*:
- 29 (a) does not have an expiry date; and  
30 (b) is inconsistent with a final access determination that came  
31 into force after the first-mentioned determination was made  
32 or varied;
- 33 the first-mentioned determination has no effect to the extent of the  
34 inconsistency.
- 35 (7) If:

**Schedule 1** Amendments

**Part 2** Telecommunications access regime

---

- 1 (a) a final access determination is inconsistent with a  
2 determination under Division 8 of Part XIC of the *Trade*  
3 *Practices Act 1974*; and  
4 (b) the determination under Division 8 of Part XIC of the *Trade*  
5 *Practices Act 1974* has an expiry date; and  
6 (c) the final access determination came into force after the  
7 determination under Division 8 of Part XIC of the *Trade*  
8 *Practices Act 1974* was made or varied;  
9 the final access determination has no effect to the extent of the  
10 inconsistency.
- 11 (8) If an interim access determination is inconsistent with a determination  
12 under Division 8 of Part XIC of the *Trade Practices Act 1974*, the  
13 interim access determination has no effect to the extent of the  
14 inconsistency.
- 15 (9) If a determination under Division 8 of Part XIC of the *Trade Practices*  
16 *Act 1974*:  
17 (a) does not have an expiry date; and  
18 (b) is inconsistent with binding rules of conduct;  
19 the determination has no effect to the extent of the inconsistency.
- 20 (10) If:  
21 (a) binding rules of conduct are inconsistent with a  
22 determination under Division 8 of Part XIC of the *Trade*  
23 *Practices Act 1974*; and  
24 (b) the determination under Division 8 of Part XIC of the *Trade*  
25 *Practices Act 1974* has an expiry date;  
26 the binding rules of conduct have no effect to the extent of the  
27 inconsistency.
- 28 (11) If a determination under Division 8 of Part XIC of the *Trade Practices*  
29 *Act 1974* is inconsistent with an access agreement, the determination  
30 has no effect to the extent of the inconsistency.
- 31 (12) The Commission may, at any time, terminate an arbitration under  
32 Division 8 of Part XIC of the *Trade Practices Act 1974* (without  
33 making a determination under that Division) if the Commission  
34 commences to hold a public inquiry under Part 25 of the  
35 *Telecommunications Act 1997* about a proposal to make an access  
36 determination relating to access to the declared service concerned.
-

1 **155 Transitional—compliance with standard access**  
2 **obligations**

3 (1) This item applies if:

4 (a) a carrier or carriage service provider is required to comply  
5 with any or all of the standard access obligations; and

6 (b) either:

7 (i) an ordinary access undertaking given by the carrier or  
8 carriage service provider is in operation, and the  
9 undertaking specifies any or all of the terms and  
10 conditions on which the carrier or carriage service  
11 provider is to comply with any of the standard  
12 obligations; or

13 (ii) a determination made by the Commission under  
14 Division 8 of Part XIC of the *Trade Practices Act 1974*  
15 is in force, and the determination specifies any or all of  
16 the terms and conditions on which the carrier or carriage  
17 service provider is to comply with any of the standard  
18 obligations.

19 (2) The carrier or carriage service provider must comply with the  
20 obligations mentioned in paragraph (1)(a):

21 (a) if an access agreement between:

22 (i) the carrier or carriage service provider, as the case  
23 requires; and

24 (ii) the access seeker;

25 is in operation and specifies terms and conditions about a  
26 particular matter—on such terms conditions relating to that  
27 matter as are set out in the agreement; or

28 (b) if:

29 (i) paragraph (a) does not apply in relation to terms and  
30 conditions about a particular matter; and

31 (ii) an access undertaking given by the carrier or carriage  
32 service provider is in operation, and the undertaking  
33 specifies terms and conditions about that matter—on  
34 such terms and conditions relating to that matter as are  
35 set out in the undertaking; or

36 (c) if:

37 (i) neither paragraph (a) nor (b) applies to terms and  
38 conditions about a particular matter; and

## Schedule 1 Amendments

### Part 2 Telecommunications access regime

---

- 1 (ii) binding rules of conduct specify terms and conditions  
2 about that matter;  
3 on such terms and conditions relating to that matter as are set  
4 out in the binding rules of conduct; or  
5 (d) if:  
6 (i) none of the above paragraphs applies to terms and  
7 conditions about a particular matter; and  
8 (ii) a determination made by the Commission under  
9 Division 8 of Part XIC of the *Trade Practices Act 1974*  
10 specifies terms and conditions about that matter;  
11 on such terms and conditions relating to that matter as are set  
12 out in the determination; or  
13 (e) if:  
14 (i) none of the above paragraphs applies to terms and  
15 conditions about a particular matter; and  
16 (ii) an access determination specifies terms and conditions  
17 about that matter;  
18 on such terms and conditions relating to that matter as are set  
19 out in the access determination.

20 Note 1: Subitems 152(5), 153(6) and 154(5) to (11) of this Schedule, and sections 152BCC,  
21 152BDB, 152BDE, 152CBIA, 152CBIB, 152CBIC and 152CGB of the *Trade Practices*  
22 *Act 1974*, which deal with inconsistency, should be read and applied before this item is  
23 read and applied.

24 Note 2: Even though subitem (2) mentions binding rules of conduct, it is expected that binding  
25 rules of conduct will only be made on an occasional basis.

- 26 (3) Section 152AY of the *Trade Practices Act 1974* as amended by this Part  
27 does not apply in relation to compliance by the carrier or carriage  
28 service provider with the standard access obligations.

### 29 **156 Transitional—hindering the fulfilment of an obligation** 30 **imposed by an arbitration determination**

31 In addition to its effect apart from this item, section 152EF of the *Trade*  
32 *Practices Act 1974* as amended by this Part also has the effect it would  
33 have if the reference in paragraph (1)(a) of that section to a standard  
34 access obligation included a reference to an obligation imposed by a  
35 determination made by the Commission under Division 8 of Part XIC of  
36 the *Trade Practices Act 1974*.

### 37 **157 Transitional—regulations**

---

1           The Governor-General may make regulations in relation to transitional  
2 matters arising out of the amendments made by this Part.  
3

1 **Part 3—Anti-competitive conduct**

2 **Division 1—Amendments**

3 *Trade Practices Act 1974*

4 **158 At the end of section 151AF (before the note)**

5 Add:  
6 ; (d) content services.

7 **159 Subsections 151AKA(9) and (10)**

8 Repeal the subsections (including the note), substitute:

9 *Procedural fairness*

10 (9) The Commission is not required to observe any requirements of  
11 procedural fairness in relation to the issue of a Part A competition  
12 notice.

13 Note: For the effect of a Part A competition notice, see subsections  
14 151BY(3), 151CB(3), 151CC(3) and 151CE(5).

15 **Division 2—Application**

16 **160 Application—competition notices**

17 The amendment of section 151AKA of the *Trade Practices Act 1974*  
18 made by this Part applies in relation to Part A competition notices  
19 issued after the commencement of this item.  
20

1 **Part 4—Universal service regime**

2 ***Telecommunications (Consumer Protection and Service***  
3 ***Standards) Act 1999***

4 **161 Subsection 5(2)**

5 Insert:

6 *payphone carriage service* means a carriage service supplied by  
7 means of a payphone.

8 **162 Subsection 5(2)**

9 Insert:

10 *price-related terms and conditions* means terms and conditions  
11 relating to price or a method of ascertaining price.

12 **163 Subsection 5(2)**

13 Insert:

14 *VOIP service* means a carriage service that enables a voice call to  
15 originate on customer equipment by means of the internet protocol.

16 **164 After section 6**

17 Insert:

18 **6A When a standard telephone service is supplied in fulfilment of**  
19 **the universal service obligation**

20 *Mobile and VOIP services*

21 (1) For the purposes of this Act, if:

22 (a) a standard telephone service is supplied, or proposed to be  
23 supplied, to a customer by a primary universal service  
24 provider; and

25 (b) the service is:

26 (i) a public mobile telecommunications service; or

27 (ii) a VOIP service;

28 the service is taken not to be supplied in fulfilment of the universal  
29 service obligation unless, before the customer entered into an

- 1 agreement with the primary universal service provider for the  
2 supply of the service:
- 3 (c) the provider notified the customer, in writing, that the service  
4 is supplied in fulfilment of the universal service obligation;  
5 and  
6 (d) the notice complied with such requirements (if any) as are  
7 specified in a determination under subsection (2).
- 8 (2) The ACMA may, by legislative instrument, determine  
9 requirements for the purposes of paragraph (1)(d).
- 10 *Other services*
- 11 (3) For the purposes of this Act, if:
- 12 (a) a standard telephone service (the *relevant service*) is  
13 supplied, or proposed to be supplied, to a customer by a  
14 primary universal service provider; and  
15 (b) the relevant service is not:
- 16 (i) a public mobile telecommunications service; or  
17 (ii) a VOIP service;
- 18 the relevant service is taken not to be supplied in fulfilment of the  
19 universal service obligation if, before the customer entered into an  
20 agreement with the primary universal service provider for the  
21 supply of the relevant service:
- 22 (c) the customer was given the option of being supplied with  
23 another standard telephone service by the provider on the  
24 basis that the other standard telephone service would be  
25 supplied in fulfilment of the universal service obligation; and  
26 (d) the customer has, by written notice given to the provider,  
27 acknowledged that the relevant service is not supplied in  
28 fulfilment of the universal service obligation; and  
29 (e) the notice complied with such requirements (if any) as are  
30 specified in a determination under subsection (4).
- 31 (4) The ACMA may, by legislative instrument, determine  
32 requirements for the purposes of paragraph (3)(e).

33 **165 After section 8B**

34 Insert:

---

1 **8BA Special meaning of *standard telephone service***

- 2 (1) A reference in this Part to a *standard telephone service* is a  
3 reference to a *standard telephone service* (within the meaning of  
4 section 6) that has the characteristics (if any) specified in a  
5 determination under subsection (2).
- 6 (2) The Minister may, by legislative instrument, determine specified  
7 characteristics for the purposes of subsection (1).

8 **166 Subsections 9(2) and (3)**

9 Repeal the subsections, substitute:

- 10 (2) The obligation mentioned in paragraph (1)(a) includes the  
11 obligation to supply standard telephone services to people in  
12 Australia on request.
- 13 (2A) The obligation mentioned in paragraph (1)(b) includes the  
14 obligation to supply, install and maintain payphones in Australia.
- 15 (2B) The obligation mentioned in paragraph (1)(c) includes the  
16 obligation to supply prescribed carriage services to people in  
17 Australia on request.
- 18 (2C) An obligation does not arise under paragraph (1)(a) or  
19 subsection (2) in relation to the supply of a standard telephone  
20 service to a person on request unless the request complies with the  
21 requirements (if any) set out in a determination under  
22 subsection (2D).
- 23 (2D) The Minister may, by legislative instrument, determine  
24 requirements for the purposes of subsection (2C).
- 25 (2E) An obligation does not arise under paragraph (1)(a) or  
26 subsection (2) in relation to the supply of a standard telephone  
27 service in the circumstances (if any) specified in a determination  
28 under subsection (3).
- 29 (3) The Minister may, by legislative instrument, determine  
30 circumstances for the purposes of subsection (2E).

31 **167 Subsection 9(4)**

32 Omit “(2)(a)”, substitute “(1)(a) or subsection (2)”.

1 **168 Subsection 9(5)**

2 Omit “(2)(c)”, substitute “(1)(c) or subsection (2B)”.

3 **169 Subsection 9(6)**

4 Omit “(2)(a)”, substitute “(1)(a) or subsection (2)”.

5 **170 Section 9A**

6 Repeal the section, substitute:

7 **9A Reasonable accessibility of prescribed carriage services**

8 (1) The Minister may determine in writing, for the purpose of  
9 paragraph 9(1)(c), what is, or is not, necessary to ensure that  
10 prescribed carriage services are reasonably accessible as mentioned  
11 in that paragraph.

12 (2) A determination under subsection (1) is a legislative instrument.

13 **171 Subsection 9B(1)**

14 Omit “(1)” (first occurring).

15 **172 Subsection 9B(1)**

16 Omit “Unless the Minister makes a determination under subsection (2),  
17 each”, substitute “Each”.

18 **173 Subsections 9B(2), (3) and (4)**

19 Repeal the subsections.

20 **174 Subsection 12C(1)**

21 Omit “take all reasonable steps to”.

22 **175 After Subdivision B of Division 5 of Part 2**

23 Insert:

1 **Subdivision BA—Standard telephone service requirements**

2 **12EB Performance standards**

3 *Determination*

- 4 (1) The Minister may make a written determination setting out  
5 standards to be complied with by a primary universal service  
6 provider in relation to any or all of the following matters:  
7 (a) the terms and conditions of the supply of a standard  
8 telephone service to a customer, other than price-related  
9 terms and conditions;  
10 (b) the reliability of a standard telephone service supplied to a  
11 customer;  
12 (c) the supply of a temporary standard telephone service to a  
13 customer;  
14 (d) the maximum period within which a primary universal  
15 service provider must supply a standard telephone service  
16 following the making of a request by a prospective customer;  
17 (e) the maximum period within which a primary universal  
18 service provider must rectify a fault or service difficulty  
19 relating to a standard telephone service following the making  
20 of a report by a customer about the fault or service difficulty;  
21 (f) any other matter concerning the supply, or proposed supply,  
22 of a standard telephone service to a customer or prospective  
23 customer.
- 24 (2) A determination under subsection (1) may be of general  
25 application or may be limited as provided in the determination.
- 26 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of  
27 the *Acts Interpretation Act 1901*.

28 *Compliance*

- 29 (4) A primary universal service provider must comply with a standard  
30 in force under subsection (1).

31 *Determination prevails over inconsistent instruments*

- 32 (5) Each of the following instruments:
-

- 1 (a) an approved policy statement for a primary universal service  
2 provider;  
3 (b) an approved standard marketing plan for a primary universal  
4 service provider;  
5 has no effect to the extent to which the instrument is inconsistent  
6 with a determination in force under subsection (1).

7 *Service supplied in fulfilment of the universal service obligation*

- 8 (6) This section does not apply to a standard telephone service unless  
9 the service is supplied, or proposed to be supplied, in fulfilment of  
10 the universal service obligation.

11 Note: See also section 6A (when a standard telephone service is supplied in  
12 fulfilment of the universal service obligation).

13 *Determination is a legislative instrument*

- 14 (7) A determination under subsection (1) is a legislative instrument.

15 **12EC Performance benchmarks**

16 *Determination*

- 17 (1) The Minister may make a written determination setting out  
18 standards to be complied with by a primary universal service  
19 provider in relation to any or all of the following matters:  
20 (a) the terms and conditions of the supply of a standard  
21 telephone service to a customer, other than price-related  
22 terms and conditions;  
23 (b) the reliability of a standard telephone service supplied to a  
24 customer;  
25 (c) the supply of a temporary standard telephone service to a  
26 customer;  
27 (d) the maximum period within which a primary universal  
28 service provider must supply a standard telephone service  
29 following the making of a request by a prospective customer;  
30 (e) the maximum period within which a primary universal  
31 service provider must rectify a fault or service difficulty  
32 relating to a standard telephone service following the making  
33 of a report by a customer about the fault or service difficulty;

1 (f) any other matter concerning the supply, or proposed supply,  
2 of a standard telephone service to a customer or prospective  
3 customer.

4 (2) A determination under subsection (1) may be of general  
5 application or may be limited as provided in the instrument.

6 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of  
7 the *Acts Interpretation Act 1901*.

8 *Determination prevails over inconsistent instruments*

9 (4) Each of the following instruments:

10 (a) an approved policy statement for a primary universal service  
11 provider;

12 (b) an approved standard marketing plan for a primary universal  
13 service provider;

14 has no effect to the extent to which the instrument is inconsistent  
15 with a determination in force under subsection (1).

16 *Determination is a legislative instrument*

17 (5) A determination under subsection (1) is a legislative instrument.

18 *Performance benchmarks*

19 (6) The Minister may, by legislative instrument, set minimum  
20 benchmarks in relation to compliance by a primary universal  
21 service provider with a standard in force under subsection (1).

22 (7) An instrument under subsection (6) may be of general application  
23 or may be limited as provided in the instrument.

24 (8) Subsection (7) does not, by implication, limit subsection 33(3A) of  
25 the *Acts Interpretation Act 1901*.

26 *Provider must meet or exceed minimum benchmarks*

27 (9) A primary universal service provider must meet or exceed a  
28 minimum benchmark set by an instrument under subsection (6).

1                    *Clause 1 of Schedule 1 to the Telecommunications Act 1997 does*  
2                    *not apply to a breach of a standard*

3                    (10) Clause 1 of Schedule 1 to the *Telecommunications Act 1997* does  
4                    not apply to a contravention of a standard in force under  
5                    subsection (1).

6                    Note:        Clause 1 of Schedule 1 to the *Telecommunications Act 1997* requires  
7                    carriers to comply with this Act.

8                    *Clause 1 of Schedule 2 to the Telecommunications Act 1997 does*  
9                    *not apply to a breach of a standard*

10                  (11) Clause 1 of Schedule 2 to the *Telecommunications Act 1997* does  
11                  not apply to a contravention of a standard in force under  
12                  subsection (1).

13                  Note:        Clause 1 of Schedule 2 to the *Telecommunications Act 1997* requires  
14                  carriage service providers to comply with this Act.

## 15                  **Subdivision BB—Payphone requirements**

### 16                  **12ED Performance standards**

#### 17                                  *Determination*

- 18                  (1) The Minister may make a written determination setting out  
19                  standards to be complied with by a primary universal service  
20                  provider in relation to any or all of the following matters:
- 21                                  (a) the characteristics of a payphone carriage service;
  - 22                                  (b) the supply, installation or maintenance of a payphone;
  - 23                                  (c) the supply of a payphone carriage service;
  - 24                                  (d) the reliability of a payphone;
  - 25                                  (e) the reliability of a payphone carriage service;
  - 26                                  (f) the maximum period within which a primary universal  
27                                  service provider must rectify a fault or service difficulty  
28                                  relating to a payphone following the making of a report about  
29                                  a fault or service difficulty;
  - 30                                  (g) the maximum period within which a primary universal  
31                                  service provider must rectify a fault or service difficulty  
32                                  relating to a payphone carriage service following the making  
33                                  of a report about a fault or service difficulty;
  - 34                                  (h) the handling of requests for the removal of a payphone;
-

- 1 (i) any other matter concerning:  
2 (i) the supply, installation or maintenance of a payphone;  
3 or  
4 (ii) the supply of a payphone carriage service.
- 5 (2) A determination under subsection (1) may be of general  
6 application or may be limited as provided in the determination.
- 7 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of  
8 the *Acts Interpretation Act 1901*.

9 *Compliance*

- 10 (4) A primary universal service provider must comply with a  
11 determination under subsection (1).

12 *Determination prevails over inconsistent instruments*

- 13 (5) Each of the following instruments:  
14 (a) an approved policy statement for a primary universal service  
15 provider;  
16 (b) an approved standard marketing plan for a primary universal  
17 service provider;  
18 has no effect to the extent to which the instrument is inconsistent  
19 with a determination in force under subsection (1).

20 *Determination is a legislative instrument*

- 21 (6) A determination under subsection (1) is a legislative instrument.

22 **12EE Performance benchmarks**

23 *Determination*

- 24 (1) The Minister may make a written determination setting out  
25 standards to be complied with by a primary universal service  
26 provider in relation to any or all of the following matters:  
27 (a) the characteristics of a payphone carriage service;  
28 (b) the supply, installation or maintenance of a payphone;  
29 (c) the supply of a payphone carriage service;  
30 (d) the reliability of a payphone;  
31 (e) the reliability of a payphone carriage service;
-

- 1 (f) the maximum period within which a primary universal  
2 service provider must rectify a fault or service difficulty  
3 relating to a payphone following the making of a report about  
4 a fault or service difficulty;  
5 (g) the maximum period within which a primary universal  
6 service provider must rectify a fault or service difficulty  
7 relating to a payphone carriage service following the making  
8 of a report about a fault or service difficulty;  
9 (h) the handling of requests for the removal of a payphone;  
10 (i) any other matter concerning:  
11 (i) the supply, installation or maintenance of a payphone;  
12 or  
13 (ii) the supply of a payphone carriage service.

- 14 (2) A determination under subsection (1) may be of general  
15 application or may be limited as provided in the determination.  
16 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of  
17 the *Acts Interpretation Act 1901*.

18 *Determination prevails over inconsistent instruments*

- 19 (4) Each of the following instruments:  
20 (a) an approved policy statement for a primary universal service  
21 provider;  
22 (b) an approved standard marketing plan for a primary universal  
23 service provider;  
24 has no effect to the extent to which the instrument is inconsistent  
25 with a determination in force under subsection (1).

26 *Determination is a legislative instrument*

- 27 (5) A determination under subsection (1) is a legislative instrument.

28 *Performance benchmarks*

- 29 (6) The Minister may, by legislative instrument, set minimum  
30 benchmarks in relation to compliance by a primary universal  
31 service provider with a standard in force under subsection (1).  
32 (7) An instrument under subsection (6) may be of general application  
33 or may be limited as provided in the instrument.

1 (8) Subsection (7) does not, by implication, limit subsection 33(3A) of  
2 the *Acts Interpretation Act 1901*.

3 *Provider must meet or exceed minimum benchmarks*

4 (9) A primary universal service provider must meet or exceed a  
5 minimum benchmark set by an instrument under subsection (6).

6 *Clause 1 of Schedule 1 to the Telecommunications Act 1997 does*  
7 *not apply to a breach of a standard*

8 (10) Clause 1 of Schedule 1 to the *Telecommunications Act 1997* does  
9 not apply to a contravention of a standard in force under  
10 subsection (1).

11 Note: Clause 1 of Schedule 1 to the *Telecommunications Act 1997* requires  
12 carriers to comply with this Act.

13 *Clause 1 of Schedule 2 to the Telecommunications Act 1997 does*  
14 *not apply to a breach of a standard*

15 (11) Clause 1 of Schedule 2 to the *Telecommunications Act 1997* does  
16 not apply to a contravention of a standard in force under  
17 subsection (1).

18 Note: Clause 1 of Schedule 2 to the *Telecommunications Act 1997* requires  
19 carriage service providers to comply with this Act.

## 20 **12EF Rules about the location of payphones**

21 (1) The Minister may make a determination setting out rules to be  
22 complied with by a primary universal service provider in relation  
23 to the places or areas in which payphones are to be located.

24 *Compliance*

25 (2) A primary universal service provider must comply with a  
26 determination under subsection (1).

27 (3) If a primary universal service provider complies with a  
28 determination under subsection (1), the provider is taken to have  
29 complied with an obligation under paragraph 9(1)(b) or subsection  
30 9(2A), to the extent to which the obligation relates to the location  
31 of payphones.

1 *Determination prevails over inconsistent instruments*

- 2 (4) Each of the following instruments:  
3 (a) an approved policy statement for a primary universal service  
4 provider;  
5 (b) an approved standard marketing plan for a primary universal  
6 service provider;  
7 has no effect to the extent to which the instrument is inconsistent  
8 with a determination in force under subsection (1).

9 *Determination is a legislative instrument*

- 10 (5) A determination under subsection (1) is a legislative instrument.

11 **12EG Rules about the process for public consultation on the location**  
12 **or removal of payphones**

- 13 (1) The Minister may make a determination setting out rules to be  
14 complied with by a primary universal service provider in relation  
15 to the process for public consultation on the location or removal of  
16 payphones.
- 17 (2) The Minister must ensure that a determination under subsection (1)  
18 provides that, if:  
19 (a) a primary universal service provider makes a decision to  
20 remove a payphone from a particular location; and  
21 (b) that payphone is the only payphone at that location;  
22 then:  
23 (c) the provider must undertake a process for public consultation  
24 on the removal of that payphone; and  
25 (d) if, in accordance with that process, a person makes a  
26 submission to the provider—the provider must notify the  
27 person, in writing, of the outcome of that process.

28 *Compliance*

- 29 (3) A primary universal service provider must comply with a  
30 determination under subsection (1).

31 *Determination prevails over inconsistent instruments*

- 32 (4) Each of the following instruments:
-

- 1 (a) an approved policy statement for a primary universal service  
2 provider;  
3 (b) an approved standard marketing plan for a primary universal  
4 service provider;  
5 has no effect to the extent to which the instrument is inconsistent  
6 with a determination in force under subsection (1).

7 *Determination is a legislative instrument*

- 8 (5) A determination under subsection (1) is a legislative instrument.

9 **12EH Rules about the process for resolution of complaints about the**  
10 **location or removal of payphones**

- 11 (1) The Minister may make a determination setting out rules to be  
12 complied with by a primary universal service provider in relation  
13 to the process for resolution of complaints about the location or  
14 removal of payphones.

15 *Compliance*

- 16 (2) A primary universal service provider must comply with a  
17 determination under subsection (1).

18 *Determination prevails over inconsistent instruments*

- 19 (3) Each of the following instruments:  
20 (a) an approved policy statement for a primary universal service  
21 provider;  
22 (b) an approved standard marketing plan for a primary universal  
23 service provider;  
24 has no effect to the extent to which the instrument is inconsistent  
25 with a determination in force under subsection (1).

26 *Determination is a legislative instrument*

- 27 (4) A determination under subsection (1) is a legislative instrument.

28 **12EI Directions by the ACMA about the removal of payphones**

29 *Scope*

- 30 (1) This section applies if:
-

- 1 (a) a primary universal service provider has made a decision to  
2 remove a payphone from a particular location; and  
3 (b) a person notifies the ACMA, in writing, that the person  
4 objects to the removal; and  
5 (c) the ACMA is satisfied that:  
6 (i) the removal would breach, or has breached, a  
7 determination under subsection 12EF(1); or  
8 (ii) the provider has breached a determination under  
9 subsection 12EG(1) in relation to the removal.

10 *Direction*

- 11 (2) If the payphone has not been removed, the ACMA may, by written  
12 notice given to the provider, direct the provider not to remove the  
13 payphone from that location.  
14 (3) If the payphone has been removed, the ACMA may, by written  
15 notice given to the provider, direct the provider:  
16 (a) to supply and install a payphone at that location; and  
17 (b) to do so within the period specified in the notice.  
18 (4) A period specified under paragraph (3)(b) must not be shorter than  
19 30 days after the notice is given.  
20 (5) A direction under subsection (2) or (3) must not be inconsistent  
21 with a determination under subsection 12EF(1).

22 *Compliance*

- 23 (6) A primary universal service provider must comply with a direction  
24 under subsection (2) or (3).

25 *Direction is not a legislative instrument*

- 26 (7) A direction under subsection (2) or (3) is not a legislative  
27 instrument.

28 **176 Subsection 150(3)**

29 Repeal the subsection.  
30

1 **Part 5—Customer service guarantee**

2 ***Telecommunications (Consumer Protection and Service***  
3 ***Standards) Act 1999***

4 **177 Before section 113**

5 Insert:

6 **Division 1—Introduction**

7 **178 Section 113**

8 Before:

- 9
- 10
- 11
- |  |
|--|
| <ul style="list-style-type: none"><li>• The Telecommunications Industry Ombudsman may issue an evidentiary certificate in relation to a contravention of a performance standard.</li></ul> |
|--|

12 insert:

- 13
- 14
- 15
- 16
- 17
- 18
- |   |
|---|
| <ul style="list-style-type: none"><li>• The Minister may make performance standards to be complied with by carriage service providers in relation to the supply of wholesale carriage services.</li><li>• The Minister may set minimum benchmarks in relation to compliance by carriage service providers with performance standards.</li></ul> |
|---|

19 **179 After section 114**

20 Insert:

21 **114A Wholesale carriage service and wholesale customer**

22 For the purposes of this Part, if:

- 23 (a) a carriage service provider (the ***first provider***) supplies, or  
24 proposes to supply, a carriage service to another carriage  
25 service provider (the ***second provider***); and

- 1 (b) the carriage service is, or is to be, supplied to the second  
2 provider in order that the second provider can provide a  
3 carriage service;  
4 then:  
5 (c) the carriage service that is, or is to be, supplied to the second  
6 provider is a *wholesale carriage service*; and  
7 (d) the second provider is a *wholesale customer* of the first  
8 provider.

## 9 **Division 2—Retail performance standards and** 10 **benchmarks**

### 11 **180 After subsection 115(2)**

12 Insert:

- 13 (2A) A standard under this section does not apply in relation to matter  
14 concerning the supply, or proposed supply, of a wholesale carriage  
15 service.

### 16 **181 Subsections 115(5) and (6)**

17 Repeal the subsections, substitute:

- 18 (5) An instrument under subsection (1) is a legislative instrument.

### 19 **182 After section 117A**

20 Insert:

#### 21 **117B Performance benchmarks**

- 22 (1) The Minister may, by legislative instrument, set minimum  
23 benchmarks in relation to compliance by carriage service providers  
24 with a standard in force under section 115.  
25 (2) An instrument under this section may be of general application or  
26 may be limited as provided in the instrument.  
27 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of  
28 the *Acts Interpretation Act 1901*.

1 **117C Compliance with performance benchmarks**

2 *Scope*

3 (1) This section applies to a carriage service provider if an instrument  
4 under section 117B is applicable to the provider.

5 *Provider must meet or exceed minimum benchmark*

6 (2) The carriage service provider must meet or exceed a minimum  
7 benchmark set by the instrument.

8 **Division 3—Wholesale performance standards and**  
9 **benchmarks**

10 **117D Performance standards**

11 (1) The Minister may, by legislative instrument, make standards to be  
12 complied with by carriage service providers in relation to a matter  
13 that:

14 (a) concerns the supply, or proposed supply, of wholesale  
15 carriage services to a wholesale customer; and

16 (b) is capable of affecting the capacity or ability of a wholesale  
17 customer to comply with a standard in force under  
18 section 115 in relation to a matter concerning the supply, or  
19 proposed supply, of a carriage service by the wholesale  
20 customer.

21 (2) A standard under this section may be of general application or may  
22 be limited as provided in the standard.

23 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of  
24 the *Acts Interpretation Act 1901*.

25 **117E Performance benchmarks**

26 (1) The Minister may, by legislative instrument, set minimum  
27 benchmarks in relation to compliance by carriage service providers  
28 with a standard in force under section 117D.

29 (2) An instrument under this section may be of general application or  
30 may be limited as provided in the instrument.

- 1 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of  
2 the *Acts Interpretation Act 1901*.

3 **117F Compliance with performance benchmarks**

4 *Scope*

- 5 (1) This section applies to a carriage service provider if an instrument  
6 under section 117E is applicable to the provider.

7 *Provider must meet or exceed minimum benchmark*

- 8 (2) The carriage service provider must meet or exceed a minimum  
9 benchmark set by the instrument.

10 **Division 4—Other provisions**

11 **183 At the end of subsection 118(1)**

12 Add “or 117D”.

13 **184 At the end of paragraph 118(3)(a)**

14 Add “or 117D”.

15 **185 Subsection 120(4)**

16 Repeal the subsection, substitute:

- 17 (4) A waiver must be in the form specified in the instrument.
- 18 (5) The form must include a statement that summarises the  
19 consequences of the waiver.
- 20 (6) A waiver must not be set out in a standard form of agreement  
21 formulated by a carriage service provider for the purposes of  
22 section 479 of the *Telecommunications Act 1997*.
- 23 (7) A customer is not entitled to waive, in whole or in part, the  
24 customer’s protection and rights under this Part in relation to a  
25 particular standard telephone service supplied, or proposed to be  
26 supplied, by the carriage service provider concerned if the service  
27 is supplied, or proposed to be supplied, in fulfilment of the  
28 universal service obligation.
- 29 (8) An instrument under subsection (1) is a legislative instrument.
-

1 **186 After section 120**

2 Insert:

3 **120A Carriage service may be supplied on condition that the**  
4 **customer waives the customer service guarantee**

5 This Act does not prevent, and is taken never to have prevented, a  
6 carriage service provider from supplying, or proposing to supply, a  
7 particular carriage service to a customer on condition that the  
8 customer waives, in accordance with section 120, the customer's  
9 protection and rights under this Part in relation to the carriage  
10 service.

11 **187 Section 122**

12 After "115", insert "or 117D".

13 **188 After section 122**

14 Insert:

15 **122A Failure to meet or exceed a minimum benchmark is not an**  
16 **offence**

17 A contravention of section 117C or 117F is not an offence.

18 **189 At the end of section 123 (before the note)**

19 Add "or 117D".

20 **190 Application—waiver**

21 The amendments of section 120 of the *Telecommunications (Consumer*  
22 *Protection and Service Standards) Act 1999* made by this Part apply in  
23 relation to a waiver given after the commencement of this item.  
24

1 **Part 6—Priority assistance**

2 *Telecommunications Act 1997*

3 **191 At the end of Schedule 2**

4 Add:

5 **Part 6—Priority assistance**  
6

7 **16 Simplified outline**

8 The following is a simplified outline of this Part:

- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- This Part deals with priority assistance for people with life-threatening medical conditions.
  - A carriage service provider must comply with the priority assistance industry code.
  - If a carriage service provider receives an inquiry from a prospective residential customer about the supply of a standard telephone service, and the provider does not offer priority assistance, the provider must:
    - (a) inform the prospective residential customer that the provider does not offer priority assistance in connection with the service; and
    - (b) inform the prospective residential customer of the names of one or more carriage service providers from whom the prospective residential customer can obtain priority assistance.

24 **17 Priority assistance industry code**

25 For the purposes of this Part, the *priority assistance industry code*  
26 is:

- 27 (a) the code that is:
-

- 1 (i) entitled *Priority Assistance for Life Threatening*  
2 *Medical Conditions*; and  
3 (ii) registered under Part 6; or  
4 (b) if that code is replaced by another code registered under  
5 Part 6—the replacement code.

6 **18 Compliance with the priority assistance industry code**

7 A carriage service provider must comply with the priority  
8 assistance industry code to the extent (if any) to which the code is  
9 applicable to the provider.

10 **19 Information for prospective residential customers of a carriage**  
11 **service provider who does not offer priority assistance**

12 *Scope*

- 13 (1) This clause applies to a carriage service provider if:  
14 (a) the provider receives an inquiry from a prospective  
15 residential customer about the supply of a standard telephone  
16 service; and  
17 (b) the provider does not offer priority assistance in connection  
18 with the service.

19 *Requirement*

- 20 (2) The provider must:  
21 (a) inform the prospective residential customer that the provider  
22 does not offer priority assistance in connection with the  
23 service; and  
24 (b) inform the prospective residential customer of the names of  
25 one or more carriage service providers from whom the  
26 prospective residential customer can obtain priority  
27 assistance in connection with a standard telephone service.

28 *Definition*

- 29 (3) In this clause:  
30 **priority assistance** has the same meaning as in the priority  
31 assistance industry code.

1       **20 Requirements for Telstra**

2                       This Part does not impose a requirement on Telstra if clause 19 of  
3                       the *Carrier Licence Conditions (Telstra Corporation Limited)*  
4                       *Declaration 1997* is in force.

5                       Note:        Clause 19 of the *Carrier Licence Conditions (Telstra Corporation*  
6   *Limited) Declaration 1997* is about Telstra's priority assistance  
7   obligations.

8

1 **Part 7—Infringement notices etc.**

2 **Division 1—Amendments**

3 ***Telecommunications Act 1997***

4 **192 Section 7**

5 Insert:

6 *authorised infringement notice officer* means:

- 7 (a) the Chair of the ACMA; or  
8 (b) a member of the staff of the ACMA appointed under  
9 section 572L.

10 **193 Section 7**

11 Insert:

12 *infringement notice* means an infringement notice under  
13 section 572E.

14 **194 Section 7**

15 Insert:

16 *penalty unit* has the meaning given by section 4AA of the *Crimes*  
17 *Act 1914*.

18 **195 After Part 31A**

19 Insert:

20 **Part 31B—Infringement notices for contraventions**  
21 **of civil penalty provisions**  
22

23 **572D Simplified outline**

24 The following is a simplified outline of this Part:

- 1  
2  
3
- This Part sets up a system of infringement notices for contraventions of civil penalty provisions as an alternative to the institution of court proceedings.

4 **572E When an infringement notice can be given**

- 5 (1) If an authorised infringement notice officer has reasonable grounds  
6 to believe that a person has contravened a particular civil penalty  
7 provision, the authorised infringement notice officer may give to  
8 the person an infringement notice relating to the contravention.

9 Note: See also section 572M (guidelines).

10 *Time limit*

- 11 (2) An infringement notice must be given within 12 months after the  
12 day on which the contravention is alleged to have taken place.

13 *Carrier licence conditions and service provider rules*

- 14 (3) If a person's conduct constitutes a contravention of:  
15 (a) section 68 or 101; and  
16 (b) one or more other civil penalty provisions;  
17 an infringement notice must not be given to the person in relation  
18 to the contravention of section 68 or 101, as the case may be.

- 19 (4) If:  
20 (a) a person's conduct constitutes a contravention of section 68  
21 or 101; and  
22 (b) the contravention consists of a breach of:  
23 (i) the carrier licence condition set out in Part 1 of  
24 Schedule 1 in so far as that condition relates to  
25 section 369; or  
26 (ii) a carrier licence condition set out in Part 3 or 4 of  
27 Schedule 1; or  
28 (iii) a carrier licence condition set out in Part 9 of  
29 Schedule 1; or  
30 (iv) the carrier licence condition set out in clause 84 of  
31 Schedule 1; or  
32 (v) the service provider rule set out in Part 1 of Schedule 2  
33 in so far as that rule relates to section 369; or

- 1 (vi) the carrier licence condition set out in section 152AZ of  
2 the *Trade Practices Act 1974*; or  
3 (vii) the service provider rule set out in subsection 152BA(2)  
4 of the *Trade Practices Act 1974*; or  
5 (viii) the carrier licence condition set out in section 152BCO  
6 of the *Trade Practices Act 1974*; or  
7 (ix) the service provider rule set out in subsection  
8 152BCP(2) of the *Trade Practices Act 1974*; or  
9 (x) the carrier licence condition set out in section 152BDF  
10 of the *Trade Practices Act 1974*; or  
11 (xi) the service provider rule set out in subsection  
12 152BDG(2) of the *Trade Practices Act 1974*; or  
13 (xii) the carrier licence condition set out in section 152BEC  
14 of the *Trade Practices Act 1974*; or  
15 (xiii) the service provider rule set out in subsection  
16 152BED(2) of the *Trade Practices Act 1974*;

17 an infringement notice must not be given to the person in relation  
18 to the contravention of section 68 or 101, as the case may be.

19 (5) If:

- 20 (a) a person's conduct constitutes a contravention of section 68  
21 or 101; and  
22 (b) the contravention consists of a breach of:  
23 (i) a carrier licence condition set out in a provision of this  
24 Act other than Part 1 of Schedule 1; or  
25 (ii) a carrier licence condition set out in a provision of a  
26 declaration in force under section 63; or  
27 (iii) a service provider rule set out in a provision of this Act  
28 other than Part 1 of Schedule 2; or  
29 (iv) a service provider rule set out in a provision of a  
30 determination in force under section 99;

31 an infringement notice must not be given to the person in relation  
32 to the contravention of section 68 or 101, as the case may be,  
33 unless the provision mentioned in subparagraph (b)(i), (ii), (iii) or  
34 (iv), as the case may be:

- 35 (c) is a listed infringement notice provision; and  
36 (d) has been a listed infringement notice provision for at least 3  
37 months before the day on which the contravention is alleged  
38 to have taken place.

- 1 Note: For *listed infringement notice provision*, see subsection (7).
- 2 (6) If:
- 3 (a) a person's conduct constitutes a contravention of section 68
- 4 or 101; and
- 5 (b) the contravention consists of a breach of:
- 6 (i) the carrier licence condition set out in Part 1 of
- 7 Schedule 1; or
- 8 (ii) the service provider rule set out in Part 1 of Schedule 2;
- 9 and
- 10 (c) the contravention consists of a breach of another provision of
- 11 this Act;
- 12 an infringement notice must not be given to the person in relation
- 13 to the contravention of section 68 or 101, as the case may be,
- 14 unless:
- 15 (d) the other provision is a listed infringement notice provision;
- 16 and
- 17 (e) the other provision has been a listed infringement notice
- 18 provision for at least 3 months before the day on which the
- 19 contravention is alleged to have taken place.

20 Note: For *listed infringement notice provision*, see subsection (7).

21 *Listed infringement notice provision*

- 22 (7) The ACMA may, by legislative instrument, declare that:
- 23 (a) a specified provision of this Act; or
- 24 (b) a specified provision of a declaration in force under
- 25 section 63; or
- 26 (c) a specified provision of a determination in force under
- 27 section 99;
- 28 is a *listed infringement notice provision* for the purposes of this
- 29 section.

30 *Definition*

- 31 (8) In this section:
- 32 *this Act* includes:
- 33 (a) the *Telecommunications (Consumer Protection and Service*
- 34 *Standards) Act 1999* and regulations under that Act; and

- 1 (b) Chapter 5 of the *Telecommunications (Interception and*  
2 *Access) Act 1979.*

3 **572F Matters to be included in an infringement notice**

- 4 (1) An infringement notice must:  
5 (a) set out the name of the person to whom the notice is given;  
6 and  
7 (b) set out the name of the authorised infringement notice officer  
8 who gave the notice; and  
9 (c) set out brief details of the alleged contravention; and  
10 (d) contain a statement to the effect that the matter will not be  
11 dealt with by the Federal Court if the penalty specified in the  
12 notice is paid to the ACMA, on behalf of the  
13 Commonwealth, within:  
14 (i) 28 days after the notice is given; or  
15 (ii) if the ACMA allows a longer period—that longer  
16 period; and  
17 (e) give an explanation of how payment of the penalty is to be  
18 made; and  
19 (f) set out such other matters (if any) as are specified by the  
20 regulations.

21 Note: For the amount of penalty, see section 572G.

- 22 (2) For the purposes of paragraph (1)(c), the brief details must include  
23 the following information in relation to the alleged contravention:  
24 (a) the date of the alleged contravention;  
25 (b) the civil penalty provision that was allegedly contravened.

26 **572G Amount of penalty**

27 *Infringement notice given to a body corporate*

- 28 (1) The penalty to be specified in an infringement notice given to a  
29 body corporate must be a pecuniary penalty equal to:  
30 (a) if the alleged contravention is of a kind specified in a  
31 determination under subsection (2)—the number of penalty  
32 units specified in the determination in relation to that kind of  
33 contravention; or  
34 (b) otherwise—60 penalty units.

- 1 (2) For the purposes of paragraph (1)(a), the Minister may, by  
2 legislative instrument, make a determination that:  
3 (a) sets out one or more kinds of contraventions of section 68 or  
4 101; and  
5 (b) for each kind of contravention set out in the determination,  
6 specifies a particular number of penalty units.
- 7 (3) The number of penalty units specified in a determination for a  
8 particular kind of contravention must not exceed 18,000.

9 *Infringement notice given to a person other than a body corporate*

- 10 (4) The penalty to be specified in an infringement notice given to a  
11 person other than a body corporate must be a pecuniary penalty  
12 equal to 12 penalty units.

13 **572H Withdrawal of an infringement notice**

14 *Scope*

- 15 (1) This section applies if an infringement notice is given to a person.

16 *Withdrawal*

- 17 (2) An authorised infringement notice officer may, by written notice  
18 (the *withdrawal notice*) given to the person, withdraw the  
19 infringement notice.
- 20 (3) To be effective, the withdrawal notice must be given to the person  
21 within 28 days after the infringement notice was given.

22 *Refund of penalty if infringement notice withdrawn*

- 23 (4) If:  
24 (a) the penalty specified in the infringement notice is paid; and  
25 (b) the infringement notice is withdrawn after the penalty is paid;  
26 the Commonwealth is liable to refund the penalty.

27 **572J What happens if the penalty is paid**

28 *Scope*

- 29 (1) This section applies if:
-

- 1 (a) an infringement notice relating to an alleged contravention is  
2 given to a person; and  
3 (b) the penalty is paid in accordance with the infringement  
4 notice; and  
5 (c) the infringement notice is not withdrawn.

6 *What happens*

- 7 (2) Any liability of the person for the alleged contravention is  
8 discharged.  
9 (3) Proceedings under Part 31 may not be brought against the person  
10 for the alleged contravention.

11 **572K Effect of this Part on civil proceedings**

12 This Part does not:

- 13 (a) require an infringement notice to be given in relation to an  
14 alleged contravention; or  
15 (b) affect the liability of a person to have proceedings under  
16 Part 31 brought against the person for an alleged  
17 contravention if:  
18 (i) the person does not comply with an infringement notice  
19 relating to the contravention; or  
20 (ii) an infringement notice relating to the contravention is  
21 not given to the person; or  
22 (iii) an infringement notice relating to the contravention is  
23 given to the person and subsequently withdrawn; or  
24 (c) limit the Federal Court's discretion to determine the amount  
25 of a penalty to be imposed on a person who is found in  
26 proceedings under Part 31 to have contravened a civil penalty  
27 provision.

28 **572L Appointment of authorised infringement notice officer**

- 29 (1) The ACMA may, by writing, appoint a member of the staff of the  
30 ACMA as an authorised infringement notice officer for the  
31 purposes of this Part.  
32 (2) The ACMA must not appoint a person under subsection (1) unless  
33 the person:  
34 (a) is an SES employee or acting SES employee; or
-

1 (b) holds, or is acting in, an Executive Level 1 or 2 position or an  
2 equivalent position.

3 Note: *SES employee* is defined in section 17AA of the *Acts Interpretation*  
4 *Act 1901*.

5 **572M Guidelines relating to infringement notices**

6 (1) In exercising a power conferred on an authorised infringement  
7 notice officer by this Part, the officer must have regard to any  
8 relevant guidelines in force under subsection (2).

9 *Formulation of guidelines*

10 (2) The ACMA may, by legislative instrument, formulate guidelines  
11 for the purposes of subsection (1).

12 Note: For consultation requirements, see Part 3 of the *Legislative*  
13 *Instruments Act 2003*.

14 (3) The ACMA must ensure that guidelines are in force under  
15 subsection (2) at all times after the commencement of this section.

16 **572N Regulations**

17 The regulations may make further provision in relation to  
18 infringement notices.

19 **Division 2—Application**

20 **196 Application—infringement notices**

21 Section 572E of the *Telecommunications Act 1997* as amended by this  
22 Part applies in relation to an alleged contravention of a civil penalty  
23 provision that occurs after the commencement of this item.  
24

1 **Part 8—Civil penalty provisions**

2 ***Telecommunications Act 1997***

3 **197 Section 7 (definition of *civil penalty provision*)**

4 Repeal the definition, substitute:

5 ***civil penalty provision*** means:

6 (a) a provision of this Act that is declared by this Act to be a  
7 civil penalty provision; or

8 (b) a provision of the *Telecommunications (Consumer Protection*  
9 *and Service Standards) Act 1999* that is declared by that Act  
10 to be a civil penalty provision.