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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Telecommunications Legislation
Amendment (Competition and
Consumer Safeguards) Bill 2010**

No. , 2010

(Broadband, Communications and the Digital Economy)

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

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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 2010*.

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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 later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	
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 later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	
6. Schedule 1, Part 4	The day after the end of the period of 3 months beginning on the day this Act	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	receives the Royal Assent.	
7. Schedule 1, Part 5	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
8. Schedule 1, Part 5A	The day after this Act receives the Royal Assent.	
9. Schedule 1, Part 6	The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.	
10. Schedule 1, Part 7	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	
11. Schedule 1, Part 8	The day after this Act receives the Royal Assent.	
12. Schedule 1, Part 9	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in Column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

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

12 Note: On 1 January 2011, the short title of the *Trade Practices Act 1974* was
13 changed to the *Competition and Consumer Act 2010* by the *Trade*
14 *Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*.

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*”.

1 ***Telecommunications Act 1997***

2 **6 Section 7**

3 Insert:

4 *designated part of the spectrum* has the meaning given by
5 section 577H.

6 **7 Section 7**

7 Insert:

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

10 **8 Section 7**

11 Insert:

12 *draft migration plan* means a draft migration plan under
13 Subdivision B of Division 2 of Part 33.

14 **9 Section 7**

15 Insert:

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

18 **10 Section 7**

19 Insert:

20 *final migration plan* means a final migration plan under
21 Subdivision B of Division 2 of Part 33.

22 **11 Section 7**

23 Insert:

24 *hybrid fibre-coaxial network* means a telecommunications
25 network:

- 26 (a) that is for use for the transmission of any broadcasting
27 service; and
28 (b) that is also capable of being used to supply an internet
29 carriage service; and

1 (c) the line component of which consists of optical fibre to
2 connecting nodes, supplemented by coaxial cable
3 connections from the nodes to the premises of end-users.

4 **12 Section 7**

5 Insert:

6 *internet carriage service* means a carriage service that enables
7 end-users to access the internet.

8 **13 Section 7**

9 Insert:

10 *radiocommunications device* has the same meaning as in the
11 *Radiocommunications Act 1992*.

12 **14 Section 7**

13 Insert:

14 *spectrum* has the same meaning as in the *Radiocommunications*
15 *Act 1992*.

16 **15 Section 7**

17 Insert:

18 *spectrum licence* has the same meaning as in the
19 *Radiocommunications Act 1992*.

20 **16 Section 7**

21 Insert:

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

24 **17 After subsection 69(5)**

25 Insert:

26 (5A) Subsection (1) does not apply to a condition set out in Part 1 of
27 Schedule 1 in so far as that condition relates to section 577AD,
28 577CD or 577ED.

29 Note: Sections 577AD, 577CD and 577ED deal with undertakings given by
30 Telstra.

1 **18 Before subsection 69(7)**

2 Insert:

3 (6B) Subsection (1) does not apply to the condition set out in clause 84
4 of Schedule 1.

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

7 **19 After subsection 70(2)**

8 Insert:

9 (2A) Subsection (1) does not apply to a condition set out in Part 1 of
10 Schedule 1 in so far as that condition relates to section 577AD,
11 577CD or 577ED.

12 Note: Sections 577AD, 577CD and 577ED deal with undertakings given by
13 Telstra.

14 **20 After paragraph 70(5)(a)**

15 Insert:

16 (aa) the condition set out in Part 1 of Schedule 1 in so far as that
17 condition relates to section 577AD, 577CD or 577ED;

18 **21 Before subsection 70(4)**

19 Insert:

20 (3B) Subsection (1) does not apply to the condition set out in clause 84
21 of Schedule 1.

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

24 **22 After paragraph 564(3)(a)**

25 Insert:

26 (aa) the carrier licence condition set out in Part 1 of Schedule 1 in
27 so far as that condition relates to section 577AD, 577CD or
28 577ED; or

29 **23 Subsection 564(3) (after note 1)**

30 Insert:

31 Note 1A: Sections 577AD, 577CD and 577ED deal with undertakings given by
32 Telstra.

1 **24 After paragraph 564(3)(b)**

2 Insert:

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

5 **25 Subsection 564(3) (after note 2)**

6 Insert:

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

9 **26 After paragraph 571(3)(a)**

10 Insert:

11 (aa) the carrier licence condition set out in Part 1 of Schedule 1 in
12 so far as that condition relates to section 577AD, 577CD or
13 577ED; or

14 **27 Subsection 571(3) (after note 1)**

15 Insert:

16 Note 1A: Sections 577AD, 577CD and 577ED deal with undertakings given by
17 Telstra.

18 **28 After paragraph 571(3)(b)**

19 Insert:

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

22 **29 Subsection 571(3) (after note 2)**

23 Insert:

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

26 **30 After Part 32**

27 Insert:

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

2 **Division 1—Introduction**

3 **577 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
- 6 • Telstra may give the following undertakings:
 - 7 (a) an undertaking about structural separation;
 - 8 (b) an undertaking about hybrid fibre-coaxial networks;
 - 9 (c) an undertaking about subscription television broadcasting licences.
 - 10
 - 11 • An undertaking comes into force when it is accepted by the ACCC.
 - 12
 - 13 • The Minister may, by legislative instrument, determine that the excluded spectrum regime applies to Telstra. If the Minister does so, Telstra will not be allowed to supply services using a designated part of the spectrum unless all 3 undertakings given by Telstra are in force.
 - 14
 - 15
 - 16
 - 17
 - 18 • 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.
 - 19
 - 20
 - 21
 - 22
 - 23
 - 24

1 **Division 2—Structural separation**

2 **Subdivision A—Undertaking about structural separation**

3 **577A Acceptance of undertaking about structural separation**

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

5 (a) at all times after the designated day:

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

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

15 (b) Telstra will, in connection with paragraph (a), take specified
16 action and/or refrain from taking specified action.

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

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

20 *Equivalence*

21 (2) For the purposes of paragraph (1)(b), a matter relating to
22 equivalence in relation to the supply by Telstra of regulated
23 services to:

24 (a) Telstra's wholesale customers; and

25 (b) Telstra's retail business units;

26 during the period:

27 (c) beginning when the undertaking comes into force; and

28 (d) ending at the start of the designated day;

29 is taken to be a matter that is in connection with paragraph (1)(a).

30 (3) The ACCC must not accept an undertaking under this section
31 unless the ACCC is satisfied that:

32 (a) the undertaking provides for equivalence in relation to the
33 supply by Telstra of regulated services to:

34 (i) Telstra's wholesale customers; and

- 1 (ii) Telstra's retail business units;
2 during the period:
3 (iii) beginning when the undertaking comes into force; and
4 (iv) ending at the start of the designated day; and
5 (b) the undertaking does so in an appropriate and effective
6 manner.
- 7 (4) In subsections (2) and (3), *equivalence, supply, regulated service*
8 and *retail business unit* have the same meaning as in Part 9 of
9 Schedule 1.

10 *Monitoring of compliance*

- 11 (5) The ACCC must not accept an undertaking under this section
12 unless the ACCC is satisfied that:
13 (a) the undertaking provides for:
14 (i) the ACCC to monitor Telstra's compliance with the
15 undertaking; and
16 (ii) Telstra to have systems, procedures and processes that
17 promote and facilitate the ACCC's monitoring of
18 Telstra's compliance with the undertaking; and
19 (b) the undertaking does so in an appropriate and effective
20 manner.

21 *Matters to which ACCC must have regard*

- 22 (6) In deciding whether to accept an undertaking under this section,
23 the ACCC must have regard to:
24 (a) the matters set out in an instrument in force under
25 subsection (7); and
26 (b) such other matters (if any) as the ACCC considers relevant.
- 27 (7) The Minister may, by writing, set out matters for the purposes of
28 paragraph (6)(a).
- 29 (8) The Minister must take all reasonable steps to ensure that an
30 instrument comes into force under subsection (7) as soon as
31 practicable after the commencement of this section.
- 32 (9) Telstra is not entitled to give an undertaking under this section
33 unless an instrument is in force under subsection (7).

- 1 (a) is frivolous or vexatious; or
2 (b) was not made in good faith.

3 *General provisions*

- 4 (16) An undertaking under this section must be expressed to be an
5 undertaking under this section.
- 6 (17) An undertaking under this section may not be withdrawn after it
7 has been accepted by the ACCC.
- 8 (18) If an undertaking under this section provides for the ACCC to
9 perform functions or exercise powers in relation to the undertaking,
10 the ACCC may perform those functions, and exercise those
11 powers, in accordance with the undertaking.
- 12 (19) Part 9 of Schedule 1 does not, by implication, limit the matters that
13 may be included in an undertaking under this section.

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

15 *Exemptions*

- 16 (20) The Minister may, by legislative instrument, exempt a specified
17 fixed-line carriage service from the scope of subsection (1) and the
18 associated provisions, either:
19 (a) unconditionally; or
20 (b) subject to such conditions or limitations as are specified in
21 the instrument.
- 22 (21) The Minister may, by legislative instrument, exempt a specified
23 telecommunications network from the scope of subsection (1) and
24 the associated provisions, either:
25 (a) unconditionally; or
26 (b) subject to such conditions or limitations as are specified in
27 the instrument.
- 28 (22) The Minister must cause a copy of an instrument under
29 subsection (7) or paragraph (10)(b) to be published on the
30 Department's website.
- 31 (23) An instrument under subsection (7) or paragraph (10)(b) is not a
32 legislative instrument.

1 (d) the ACCC decides to accept the undertaking;
2 the decision to accept the undertaking must be expressed to be
3 subject to the occurrence of those events within a specified period
4 after the undertaking is accepted.

5 (2) A nomination under subsection (1) must not specify an event by
6 reference to the timing of the event.

7 (3) The Minister may, by writing, specify events for the purposes of
8 subparagraph (1)(c)(ix).

9 (4) A period specified by the ACCC under subsection (1) must be:

10 (a) 6 months; or

11 (b) if another period is specified in an instrument under
12 subsection (5)—that period.

13 (5) The Minister may, by writing, specify a period for the purposes of
14 paragraph (4)(b).

15 *Notification requirement*

16 (6) If:

17 (a) a decision to accept an undertaking under section 577A is
18 expressed to be subject to the occurrence of one or more
19 specified events within a specified period; and

20 (b) such an event occurs within that period;

21 Telstra must notify the ACCC in writing of the occurrence of the
22 event as soon as practicable after the occurrence.

23 (6A) Subsection (6) does not apply to an event mentioned in
24 subparagraph (1)(a)(vi).

25 *If event does not occur*

26 (7) If:

27 (a) a decision to accept an undertaking under section 577A is
28 expressed to be subject to the occurrence of a single specified
29 event within a specified period; and

30 (b) the event does not occur within that period;

31 this Act (other than subclause 76(4) of Schedule 1) has effect as if
32 the undertaking had never been accepted by the ACCC.

33 (8) If:

Schedule 1 Amendments

Part 1 Amendments relating to Telstra

- 1 (a) a decision to accept an undertaking under section 577A is
2 expressed to be subject to the occurrence of 2 or more
3 specified events within a specified period; and
4 (b) one or more of those events do not occur within that period;
5 this Act (other than subclause 76(4) of Schedule 1) has effect as if
6 the undertaking had never been accepted by the ACCC.

7 *Publication requirement*

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

10 *Instruments are not legislative instruments*

- 11 (10) An instrument under subsection (3) or (5) is not a legislative
12 instrument.

13 **577AB When undertaking about structural separation comes into**
14 **force**

15 An undertaking under section 577A comes into force:

- 16 (a) if:
17 (i) the decision to accept the undertaking is expressed to be
18 subject to the occurrence of a single specified event
19 within a specified period; and
20 (ii) the event occurs within that period;
21 when the event occurs; or
22 (b) if:
23 (i) the decision to accept the undertaking is expressed to be
24 subject to the occurrence of 2 or more specified events
25 within a specified period; and
26 (ii) each of those events occur at the same time; and
27 (iii) that time occurs within that period;
28 at that time; or
29 (c) if:
30 (i) the decision to accept the undertaking is expressed to be
31 subject to the occurrence of 2 or more specified events
32 within a specified period; and
33 (ii) each of those events occur at different times; and
34 (iii) each of those times occur within that period;
-

- 1 at the last of those times; or
2 (d) if the decision to accept the undertaking is not expressed to
3 be subject to the occurrence of one or more specified events
4 within a specified period—when the undertaking is accepted
5 by the ACCC.

6 **577AC Publication requirements for undertaking about structural**
7 **separation**

- 8 (1) If a decision to accept an undertaking under section 577A is
9 expressed to be subject to the occurrence of one or more specified
10 events within a specified period, the ACCC must:
11 (a) as soon as practicable after making the decision, publish on
12 its website:
13 (i) the undertaking; and
14 (ii) the terms of the decision; and
15 (b) as soon as practicable after the ACCC becomes aware that
16 the undertaking has come into force, publish on its website a
17 notice announcing that the undertaking has come into force.
18 (2) If a decision to accept an undertaking under section 577A is not
19 expressed to be subject to the occurrence of one or more specified
20 events within a specified period, the ACCC must, as soon as
21 practicable after accepting the undertaking, publish the undertaking
22 on its website.

23 **577AD Compliance with undertaking about structural separation**

24 If an undertaking given by Telstra is in force under section 577A,
25 Telstra must comply with the undertaking.

26 **577B Variation of undertaking about structural separation**

- 27 (1) This section applies if an undertaking given by Telstra is in force
28 under section 577A.
29 (2) Telstra may give the ACCC a variation of the undertaking, in so far
30 as the undertaking:
31 (a) is covered by paragraph 577A(1)(b); and
32 (b) does not consist of provisions of a final migration plan.

33 Note: For variation of a final migration plan, see section 577BF.

Schedule 1 Amendments

Part 1 Amendments relating to Telstra

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

17 **577BA Authorised conduct—subsection 51(1) of the *Competition and***
18 ***Consumer Act 2010***

19 *Object*

- 20 (1) The object of this section is to promote the national interest in
21 structural reform of the telecommunications industry by
22 authorising, for the purposes of subsection 51(1) of the
23 *Competition and Consumer Act 2010*, certain conduct engaged in
24 by:
25 (a) Telstra; and
26 (b) NBN corporations; and
27 (c) certain other persons.

28 Note: If conduct is authorised for the purposes of subsection 51(1) of the
29 *Competition and Consumer Act 2010*, the conduct is disregarded in
30 deciding whether a person has contravened Part IV of that Act.

31 *Authorised conduct*

- 32 (2) The giving by Telstra of:
-

- 1 (a) an undertaking under section 577A; or
2 (b) a variation of an undertaking in force under section 577A; or
3 (c) a draft migration plan in accordance with an undertaking in
4 force under section 577A; or
5 (d) a variation of a final migration plan;
6 is authorised for the purposes of subsection 51(1) of the
7 *Competition and Consumer Act 2010*.

- 8 (3) If:
9 (a) Telstra enters into a contract, arrangement or understanding
10 with an NBN corporation; and
11 (b) when the contract, arrangement or understanding is entered
12 into, no undertaking is in force under section 577A; and
13 (c) the operative provisions of the contract, arrangement or
14 understanding are subject to a condition precedent, namely,
15 the coming into force of an undertaking under section 577A;
16 then:
17 (d) the entering into of the contract, arrangement or
18 understanding by Telstra is authorised for the purposes of
19 subsection 51(1) of the *Competition and Consumer Act 2010*;
20 and
21 (e) the entering into of the contract, arrangement or
22 understanding by the NBN corporation is authorised for the
23 purposes of subsection 51(1) of the *Competition and*
24 *Consumer Act 2010*; and
25 (f) if:
26 (i) the undertaking under section 577A comes into force;
27 and
28 (ii) if the contract, arrangement or understanding was in
29 writing—before the undertaking was accepted by the
30 ACCC, Telstra or the NBN corporation gave the ACCC
31 a copy of the contract, arrangement or understanding;
32 and
33 (iii) if the contract, arrangement or understanding was not in
34 writing—before the undertaking was accepted by the
35 ACCC, the contract, arrangement or understanding was
36 reduced to writing and Telstra or the NBN corporation
37 gave the ACCC a copy of the contract, arrangement or
38 understanding;

Schedule 1 Amendments

Part 1 Amendments relating to Telstra

- 1 then:
2 (iv) conduct engaged in by Telstra or the NBN corporation
3 after the undertaking comes into force in order to give
4 effect to a provision of the contract, arrangement or
5 understanding is authorised for the purposes of
6 subsection 51(1) of the *Competition and Consumer Act*
7 *2010*; and
8 (v) conduct engaged in by another NBN corporation after
9 the undertaking comes into force in order to facilitate
10 the first-mentioned NBN corporation giving effect to a
11 provision of the contract, arrangement or understanding
12 is authorised for the purposes of subsection 51(1) of the
13 *Competition and Consumer Act 2010*.
- 14 (4) If:
15 (a) Telstra enters into a contract, arrangement or understanding
16 with an NBN corporation; and
17 (b) the contract, arrangement or understanding contains a
18 migration provision; and
19 (c) when the contract, arrangement or understanding is entered
20 into, no undertaking is in force under section 577A;
21 then:
22 (d) the entering into of the contract, arrangement or
23 understanding by Telstra is authorised for the purposes of
24 subsection 51(1) of the *Competition and Consumer Act 2010*,
25 to the extent to which the contract, arrangement or
26 understanding contains the migration provision; and
27 (e) the entering into of the contract, arrangement or
28 understanding by the NBN corporation is authorised for the
29 purposes of subsection 51(1) of the *Competition and*
30 *Consumer Act 2010*, to the extent to which the contract,
31 arrangement or understanding contains the migration
32 provision.
- 33 (5) If:
34 (a) Telstra enters into a contract, arrangement or understanding
35 with an NBN corporation; and
36 (b) the contract, arrangement or understanding contains a
37 migration provision; and

- 1 (c) Telstra or the NBN corporation engages in conduct in order
2 to give effect to the migration provision; and
3 (d) when the conduct is engaged in, no undertaking is in force
4 under section 577A;
5 the conduct is authorised for the purposes of subsection 51(1) of
6 the *Competition and Consumer Act 2010* unless, before the conduct
7 was engaged in:
8 (e) the ACCC refused to accept the most recent undertaking
9 given by Telstra under section 577A; or
10 (f) as a result of subsection 577AA(7) or (8), this Act (other than
11 subclause 76(4) of Schedule 1) had effect as if the most
12 recent undertaking given by Telstra under section 577A had
13 never been accepted by the ACCC; or
14 (g) a final functional separation undertaking came into force.
- 15 (6) If Telstra is required to engage in conduct in order to comply with
16 an undertaking in force under section 577A, the conduct is
17 authorised for the purposes of subsection 51(1) of the *Competition*
18 *and Consumer Act 2010*.
- 19 (7) If:
20 (a) a person directly or indirectly acquires an asset from Telstra;
21 and
22 (b) the disposal of the asset by Telstra is required for the
23 compliance by Telstra with an undertaking in force under
24 section 577A; and
25 (c) the person is identified in the undertaking as the person by
26 whom the asset is to be directly or indirectly acquired;
27 the acquisition of the asset is authorised for the purposes of
28 subsection 51(1) of the *Competition and Consumer Act 2010*.
- 29 (8) If:
30 (a) Telstra enters into a contract, arrangement or understanding
31 with an NBN corporation; and
32 (b) Telstra enters into the contract, arrangement or understanding
33 in order to comply with an undertaking in force under
34 section 577A;
35 then:
36 (c) the entering into of the contract, arrangement or
37 understanding by Telstra; and
-

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1 (d) the entering into of the contract, arrangement or
2 understanding by the NBN corporation; and
3 (e) conduct engaged in by Telstra or the NBN corporation in
4 order to give effect to a provision of the contract,
5 arrangement or understanding; and
6 (f) conduct engaged in by another NBN corporation in order to
7 facilitate the first-mentioned NBN corporation giving effect
8 to a provision of the contract, arrangement or understanding;
9 is authorised for the purposes of subsection 51(1) of the
10 *Competition and Consumer Act 2010*.

11 (9) If:

12 (a) an undertaking given by Telstra is in force under
13 section 577A; and

14 (b) Telstra enters into a contract, arrangement or understanding
15 with an NBN corporation;

16 the Minister may, by legislative instrument, determine that
17 subsection (8) applies, and is taken to have always applied, as if
18 Telstra had entered into the contract, arrangement or understanding
19 in order to comply with the undertaking.

20 (10) If:

21 (a) a final migration plan is in force; and

22 (b) the final migration plan sets out a method for determining a
23 timetable for the taking of the action specified in the plan in
24 accordance with paragraph 577BC(2)(a); and

25 (c) Telstra or an NBN corporation engages in conduct for the
26 purposes of determining the timetable; and

27 (d) the conduct is consistent with the method;

28 the conduct is authorised for the purposes of subsection 51(1) of
29 the *Competition and Consumer Act 2010*.

30 *Migration provisions*

31 (11) If:

32 (a) Telstra enters into a contract, arrangement or understanding
33 with an NBN corporation; and

34 (b) the contract, arrangement or understanding contains one or
35 more provisions for:

- 1 (i) Telstra to cease to supply fixed-line carriage services to
2 customers using a telecommunications network over
3 which Telstra is in a position to exercise control; or
4 (ii) Telstra to cease to supply one or more types of
5 fixed-line carriage services to customers using a
6 telecommunications network over which Telstra is in a
7 position to exercise control; or
8 (iii) Telstra to cease to supply, in particular circumstances,
9 one or more types of fixed-line carriage services to
10 customers using a telecommunications network over
11 which Telstra is in a position to exercise control; or
12 (iv) Telstra to commence to supply fixed-line carriage
13 services to customers using the national broadband
14 network;

15 then:

- 16 (c) each of the provisions mentioned in paragraph (b) is a
17 **migration provision**; and
18 (d) if the contract, arrangement or understanding contains one or
19 more provisions for Telstra to supply services to an NBN
20 corporation in connection with any or all of the matters
21 mentioned in paragraph (b)—each of those provisions is a
22 **migration provision**; and
23 (e) if the contract, arrangement or understanding contains one or
24 more provisions for an NBN corporation to supply services to
25 Telstra in connection with any or all of the matters mentioned
26 in paragraph (b)—each of those provisions is a **migration**
27 **provision**; and
28 (f) if the contract, arrangement or understanding contains one or
29 more provisions for Telstra to give information to an NBN
30 corporation in connection with any or all of the matters
31 mentioned in paragraph (b)—each of those provisions is a
32 **migration provision**; and
33 (g) if the contract, arrangement or understanding contains one or
34 more provisions for an NBN corporation to give information
35 to Telstra in connection with any or all of the matters
36 mentioned in paragraph (b)—each of those provisions is a
37 **migration provision**.

1 *Definitions*

2 (12) In this section:

3 **asset** means:

- 4 (a) any legal or equitable estate or interest in real or personal
5 property, including a contingent or prospective one; and
6 (b) any right, privilege or immunity, including a contingent or
7 prospective one.

8 **enter into:**

- 9 (a) when used in relation to an arrangement—includes make; or
10 (b) when used in relation to an understanding—includes arrive at
11 or reach.

12 **fixed-line carriage service** means:

- 13 (a) a carriage service that is supplied using a line to premises
14 occupied or used by an end-user; or
15 (b) a service that facilitates the supply of a carriage service
16 covered by paragraph (a).

17 **give effect to**, in relation to a provision of a contract, arrangement
18 or understanding, has the same meaning as in the *Competition and
19 Consumer Act 2010*.

20 **migration provision** has the meaning given by subsection (11).

21 **national broadband network** means a telecommunications network
22 for the high-speed carriage of communications, where an NBN
23 corporation has been, is, or is to be, involved in the creation or
24 development of the network.

25 **NBN Co** means NBN Co Limited (ACN 136 533 741), as the
26 company exists from time to time (even if its name is later
27 changed).

28 **NBN corporation** means:

- 29 (a) NBN Co; or
30 (b) NBN Tasmania; or
31 (c) a company that is a related body corporate of NBN Co.

1 ***NBN Tasmania*** means NBN Tasmania Limited (ACN 138 338
2 271), as the company exists from time to time (even if its name is
3 later changed).

4 ***related body corporate*** has the same meaning as in the
5 *Corporations Act 2001*.

6 **Subdivision B—Migration plan**

7 **577BB Migration plan principles**

- 8 (1) The Minister may, by writing, determine that specified principles
9 are ***migration plan principles*** for the purposes of this Act.

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

12 *Consultation*

- 13 (2) Before making or varying a determination under subsection (1), the
14 Minister must:
15 (a) cause to be published on the Department's website a notice:
16 (i) setting out the draft determination or variation; and
17 (ii) inviting persons to make submissions to the Minister
18 about the draft determination or variation within 14 days
19 after the notice is published; and
20 (b) consider any submissions received within the 14-day period
21 mentioned in paragraph (a).

22 *Publication requirement*

- 23 (3) The Minister must cause a copy of a determination under
24 subsection (1) to be published on the Department's website.

25 *Determination is not a legislative instrument*

- 26 (4) A determination under subsection (1) is not a legislative
27 instrument.

1 **577BC Migration plan**

- 2 (1) The specified action first mentioned in paragraph 577A(1)(b) may
3 include giving the ACCC a draft migration plan after the relevant
4 undertaking has come into force.
- 5 (2) A draft or final migration plan must:
- 6 (a) specify the action to be taken by Telstra to:
- 7 (i) cease to supply fixed-line carriage services to customers
8 using a telecommunications network over which Telstra
9 is in a position to exercise control; and
- 10 (ii) commence to supply fixed-line carriage services to
11 customers using the national broadband network; and
- 12 (b) either:
- 13 (i) set out a timetable for the taking of that action; or
14 (ii) set out a method for determining a timetable for the
15 taking of that action.
- 16 (3) A draft or final migration plan may contain provisions dealing with
17 such other matters (if any) as are specified in a written instrument
18 made by the Minister.
- 19 (4) A draft or final migration plan must not contain provisions dealing
20 with such matters (if any) as are specified in a written instrument
21 made by the Minister.

22 *Migration plan principles*

- 23 (5) A draft migration plan must not be given to the ACCC unless a
24 determination is in force under subsection 577BB(1).

25 *Publication requirement*

- 26 (6) The Minister must cause a copy of an instrument under
27 subsection (3) or (4) to be published on the Department's website.

28 *Instrument is not a legislative instrument*

- 29 (7) An instrument under subsection (3) or (4) is not a legislative
30 instrument.

1 *Definitions*

2 (8) In this section:

3 ***fixed-line carriage service*** means:

- 4 (a) a carriage service that is supplied using a line to premises
5 occupied or used by an end-user; or
6 (b) a service that facilitates the supply of a carriage service
7 covered by paragraph (a).

8 ***national broadband network*** means a telecommunications network
9 for the high-speed carriage of communications, where an NBN
10 corporation has been, is, or is to be, involved in the creation or
11 development of the network.

12 ***NBN Co*** means NBN Co Limited (ACN 136 533 741), as the
13 company exists from time to time (even if its name is later
14 changed).

15 ***NBN corporation*** means:

- 16 (a) NBN Co; or
17 (b) NBN Tasmania; or
18 (c) a company that is a related body corporate of NBN Co.

19 ***NBN Tasmania*** means NBN Tasmania Limited (ACN 138 338
20 271), as the company exists from time to time (even if its name is
21 later changed).

22 ***related body corporate*** has the same meaning as in the
23 *Corporations Act 2001*.

24 **577BD Approval of draft migration plan by the ACCC—plan given**
25 **after undertaking about structural separation comes into**
26 **force**

27 *Scope*

28 (1) This section applies if Telstra gives the ACCC a draft migration
29 plan (the ***original plan***) in accordance with an undertaking in force
30 under section 577A.

1 *Decision*

- 2 (2) The ACCC must:
- 3 (a) if the ACCC is satisfied that the original plan complies with
- 4 the migration plan principles—approve the original plan; or
- 5 (b) otherwise:
- 6 (i) refuse to approve the original plan; and
- 7 (ii) by written notice given to Telstra, direct Telstra to give
- 8 the ACCC, within 30 days after the notice is given, a
- 9 replacement draft migration plan that complies with the
- 10 migration plan principles.

11 Note: For migration plan principles, see section 577BB.

12 *Consultation*

- 13 (3) Before making a decision under subsection (2), the ACCC must:
- 14 (a) cause to be published on the ACCC’s website a notice:
- 15 (i) setting out the original plan; and
- 16 (ii) inviting persons to make submissions to the ACCC
- 17 about the original plan within 28 days after the notice is
- 18 published; and
- 19 (b) cause to be published on the ACCC’s website a copy of each
- 20 submission received within the 28-day period mentioned in
- 21 paragraph (a); and
- 22 (c) consider any submissions received within the 28-day period
- 23 mentioned in paragraph (a).

24 *Compliance with direction*

- 25 (4) Telstra must comply with a direction under subparagraph (2)(b)(ii).

26 Note: The ACCC will make a decision about the plan under

27 section 577BDB.

28 *Replacement plan to be treated as if it had been given in*

29 *accordance with the undertaking*

- 30 (5) A draft migration plan given by Telstra in compliance with a
- 31 direction under subparagraph (2)(b)(ii) is taken, for the purposes of
- 32 this Act (other than this section and section 577BDB), to be given
- 33 in accordance with the undertaking.

1 *Notification of decision*

- 2 (6) As soon as practicable after making a decision under
3 subsection (2), the ACCC must notify Telstra in writing of the
4 decision.

5 **577BDA Approval of draft migration plan by the ACCC—plan**
6 **given before undertaking about structural separation**
7 **comes into force**

- 8 (1) If:
- 9 (a) Telstra gives the ACCC an undertaking under section 577A;
10 and
 - 11 (b) the specified action first mentioned in paragraph 577A(1)(b)
12 consists of, or includes, giving the ACCC a draft migration
13 plan after the undertaking has come into force; and
 - 14 (c) the following conditions are satisfied:
 - 15 (i) Telstra has, in a document accompanying the
16 undertaking, nominated the event mentioned in
17 subparagraph 577AA(1)(c)(vi);
 - 18 (ii) the nomination meets the requirements of paragraph
19 577AA(1)(b) and subsection 577AA(2);
- 20 Telstra may give the ACCC a draft migration plan (the *original*
21 *plan*) during the period:
- 22 (d) beginning when Telstra gives the ACCC the undertaking; and
 - 23 (e) ending when the undertaking comes into force;
- 24 as if the undertaking had come into force.

25 *Decision*

- 26 (2) The ACCC must:
- 27 (a) if the ACCC is satisfied that the original plan complies with
28 the migration plan principles—approve the original plan; or
 - 29 (b) otherwise:
 - 30 (i) refuse to approve the original plan; and
 - 31 (ii) by written notice given to Telstra, request Telstra to
32 give the ACCC, within 30 days after the notice is given,
33 a replacement draft migration plan that complies with
34 the migration plan principles.

35 Note 1: For migration plan principles, see section 577BB.

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1 Note 2: If Telstra gives the ACCC a replacement draft migration plan in
2 response to the request, the ACCC will make a decision about the plan
3 under section 577BDC.

4 (3) The ACCC must not make a decision under subsection (2) before it
5 accepts the undertaking.

6 (4) After the undertaking comes into force, this Act (other than
7 section 577BD and this section) has effect as if the original plan
8 had been given to the ACCC in accordance with the undertaking.

9 *Consultation*

- 10 (5) Before making a decision under subsection (2), the ACCC must:
- 11 (a) cause to be published on the ACCC's website a notice:
- 12 (i) setting out the original plan; and
- 13 (ii) inviting persons to make submissions to the ACCC
14 about the original plan within 28 days after the notice is
15 published; and
- 16 (b) cause to be published on the ACCC's website a copy of each
17 submission received within the 28-day period mentioned in
18 paragraph (a); and
- 19 (c) consider any submissions received within the 28-day period
20 mentioned in paragraph (a).

21 *Replacement plan to be treated as if it had been given in*
22 *accordance with the undertaking*

23 (6) A draft migration plan given by Telstra in response to a request
24 under subparagraph (2)(b)(ii) is taken, for the purposes of this Act
25 (other than sections 577BD, 577BDB and 577BDC and this
26 section), to be given in accordance with the undertaking.

27 *Notification of decision*

28 (7) As soon as practicable after making a decision under
29 subsection (2), the ACCC must notify Telstra in writing of the
30 decision.

1 **577BDB Approval of draft migration plan by the ACCC—plan**
2 **given in compliance with a direction**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) Telstra has given the ACCC an undertaking under
 - 6 section 577A; and
 - 7 (b) Telstra gives the ACCC a draft migration plan (the *original*
 - 8 *plan*) in compliance with a direction under:
 - 9 (i) subparagraph 577BD(2)(b)(ii); or
 - 10 (ii) subparagraph (2)(b)(ii) of this section.

11 *Decision*

- 12 (2) The ACCC must:
- 13 (a) if the ACCC is satisfied that the original plan complies with
 - 14 the migration plan principles—approve the original plan; or
 - 15 (b) otherwise:
 - 16 (i) refuse to approve the original plan; and
 - 17 (ii) by written notice given to Telstra, direct Telstra to give
 - 18 the ACCC, within 30 days after the notice is given, a
 - 19 replacement draft migration plan that complies with the
 - 20 migration plan principles.

21 Note: For migration plan principles, see section 577BB.

22 *Consultation*

- 23 (3) Before making a decision under subsection (2), the ACCC must:
- 24 (a) cause to be published on the ACCC's website a notice:
 - 25 (i) setting out the original plan; and
 - 26 (ii) inviting persons to make submissions to the ACCC
 - 27 about the original plan within 28 days after the notice is
 - 28 published; and
 - 29 (b) cause to be published on the ACCC's website a copy of each
 - 30 submission received within the 28-day period mentioned in
 - 31 paragraph (a); and
 - 32 (c) consider any submissions received within the 28-day period
 - 33 mentioned in paragraph (a).

1 *Compliance with direction*

2 (4) Telstra must comply with a direction under subparagraph (2)(b)(ii).

3 Note: The ACCC will make a decision about the plan under subsection (2).

4 *Replacement plan to be treated as if it had been given in*
5 *accordance with the undertaking*

6 (5) A draft migration plan given by Telstra in compliance with a
7 direction under subparagraph (2)(b)(ii) is taken, for the purposes of
8 this Act (other than sections 577BD, 577BDA and 577BDC and
9 this section), to be given in accordance with the undertaking.

10 *Notification of decision*

11 (6) As soon as practicable after making a decision under
12 subsection (2), the ACCC must notify Telstra in writing of the
13 decision.

14 **577BDC Approval of draft migration plan by the ACCC—plan**
15 **given in response to a request**

16 *Scope*

17 (1) This section applies if:

18 (a) Telstra gives the ACCC an undertaking under section 577A;
19 and

20 (b) Telstra gives the ACCC a draft migration plan (the *original*
21 *plan*) in response to a request under:

22 (i) subparagraph 577BDA(2)(b)(ii); or

23 (ii) subparagraph (2)(b)(ii) of this section.

24 *Decision*

25 (2) The ACCC must:

26 (a) if the ACCC is satisfied that the original plan complies with
27 the migration plan principles—approve the original plan; or

28 (b) otherwise:

29 (i) refuse to approve the original plan; and

30 (ii) by written notice given to Telstra, request Telstra to
31 give the ACCC, within 30 days after the notice is given,

1 a replacement draft migration plan that complies with
2 the migration plan principles.

3 Note 1: For migration plan principles, see section 577BB.

4 Note 2: If Telstra gives the ACCC a replacement draft migration plan in
5 response to the request, the ACCC will make a decision about the plan
6 under this section.

7 *Consultation*

- 8 (3) Before making a decision under subsection (2), the ACCC must:
9 (a) cause to be published on the ACCC's website a notice:
10 (i) setting out the original plan; and
11 (ii) inviting persons to make submissions to the ACCC
12 about the original plan within 28 days after the notice is
13 published; and
14 (b) cause to be published on the ACCC's website a copy of each
15 submission received within the 28-day period mentioned in
16 paragraph (a); and
17 (c) consider any submissions received within the 28-day period
18 mentioned in paragraph (a).

19 *Plan to be treated as if it had been given in accordance with the*
20 *undertaking*

- 21 (4) A draft migration plan given by Telstra in response to a request
22 under subparagraph (2)(b)(ii) is taken, for the purposes of this Act
23 (other than sections 577BD, 577BDA and 577BDB and this
24 section), to be given in accordance with the undertaking.

25 *Notification of decision*

- 26 (5) As soon as practicable after making a decision under
27 subsection (2), the ACCC must notify Telstra in writing of the
28 decision.

29 **577BE Effect of approval of draft migration plan**

- 30 (1) If the ACCC approves a draft migration plan, the plan becomes a
31 final migration plan.
32 (2) If the ACCC approves a draft migration plan under subsection
33 577BD(2), the plan comes into force at the start of the day after

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- 1 notice of the decision to approve the plan is given to Telstra in
2 accordance with subsection 577BD(6).
- 3 (3) If the ACCC approves a draft migration plan under subsection
4 577BDA(2), 577BDB(2) or 577BDC(2), the plan comes into force
5 at the later of:
6 (a) the start of the day after notice of the decision to approve the
7 plan is given to Telstra in accordance with subsection
8 577BDA(7), 577BDB(6) or 577BDC(5), as the case requires;
9 or
10 (b) when the relevant undertaking under section 577A comes
11 into force.
- 12 (4) A final migration plan may not be withdrawn.
- 13 (5) When a final migration plan comes into force, the relevant
14 undertaking under section 577A has effect as if the provisions of
15 the plan were provisions of the undertaking.

16 *Publication requirement*

- 17 (6) As soon as practicable after a final migration plan comes into
18 force, the ACCC must publish a copy of the plan on the ACCC's
19 website.

20 *ACCC's functions and powers*

- 21 (7) If a final migration plan provides for the ACCC to perform
22 functions or exercise powers in relation to the plan, the ACCC may
23 perform those functions, and exercise those powers, in accordance
24 with the plan.

25 *Plan is not a legislative instrument*

- 26 (8) A final migration plan is not a legislative instrument.

27 **577BF Variation of final migration plan**

- 28 (1) This section applies if a final migration plan is in force.
29 (2) Telstra may give the ACCC a variation of the final migration plan.
30 (3) The ACCC must:
-

- 1 (a) if the ACCC is satisfied that the final migration plan as
2 varied complies with the migration plan principles—approve
3 the variation; or
4 (b) otherwise—refuse to approve the variation.

5 *Consultation*

- 6 (4) Before making a decision under subsection (3), the ACCC must:
7 (a) cause to be published on the ACCC’s website a notice:
8 (i) setting out the variation; and
9 (ii) inviting persons to make submissions to the ACCC
10 about the variation within 28 days after the notice is
11 published; and
12 (b) cause to be published on the ACCC’s website a copy of each
13 submission received within the 28-day period mentioned in
14 paragraph (a); and
15 (c) consider any submissions received within the 28-day period
16 mentioned in paragraph (a).
17 (5) Subsection (4) does not apply to a variation if the variation is of a
18 minor nature.

19 *When variation takes effect*

- 20 (6) The variation takes effect when it is approved by the ACCC.
21 (7) When the variation takes effect, the relevant undertaking under
22 section 577A has effect as if the provisions of the final migration
23 plan as varied were provisions of the undertaking.
24 (8) As soon as practicable after the variation takes effect, the ACCC
25 must publish a copy of the variation on the ACCC’s website.

26 **Division 3—Hybrid fibre-coaxial networks**

27 **577C Acceptance of undertaking about hybrid fibre-coaxial**
28 **networks**

- 29 (1) The ACCC may accept a written undertaking given by Telstra that:
30 (a) at all times after the end of the period specified in the
31 undertaking, Telstra will not be in a position to exercise
32 control of a hybrid fibre-coaxial network in Australia; and
-

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1 (b) Telstra will, in connection with paragraph (a), take specified
2 action and/or refrain from taking specified action.

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

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

7 (3) The undertaking must be expressed to be an undertaking under this
8 section.

9 (4) The undertaking may not be withdrawn after it has been accepted
10 by the ACCC.

11 (5) If the undertaking provides for the ACCC to perform functions or
12 exercise powers in relation to the undertaking, the ACCC may
13 perform those functions, and exercise those powers, in accordance
14 with the undertaking.

15 **577CA Acceptance of undertaking about hybrid fibre-coaxial**
16 **networks may be subject to the occurrence of events**

17 (1) If:

18 (a) Telstra has, in a document accompanying an undertaking
19 under section 577C, nominated one or more events; and

20 (b) the nomination is expressed to be a nomination under this
21 subsection; and

22 (c) each of those events is:

23 (i) the passage of a resolution covered by subparagraph
24 411(4)(a)(ii) of the *Corporations Act 2001*; or

25 (ii) an approval covered by paragraph 411(4)(b) of that Act;
26 or

27 (iii) the passage of a resolution, where Telstra's members
28 (within the meaning of that Act) were entitled to vote on
29 the resolution; or

30 (iv) an approval covered by Chapter 11 of the ASX Listing
31 Rules; or

32 (v) the granting of a waiver under rule 18.1 of the ASX
33 Listing Rules; or

34 (vi) the making of a declaration under subsection 577J(5); or

- 1 (vii) an event specified in an instrument in force under
2 subsection (3); and
3 (d) the ACCC decides to accept the undertaking;
4 the decision to accept the undertaking must be expressed to be
5 subject to the occurrence of those events within a specified period
6 after the undertaking is accepted.
- 7 (2) A nomination under subsection (1) must not specify an event by
8 reference to the timing of the event.
- 9 (3) The Minister may, by writing, specify events for the purposes of
10 subparagraph (1)(c)(vii).
- 11 (4) A period specified by the ACCC under subsection (1) must be:
12 (a) 6 months; or
13 (b) if another period is specified in an instrument under
14 subsection (5)—that period.
- 15 (5) The Minister may, by writing, specify a period for the purposes of
16 paragraph (4)(b).

17 *Notification requirement*

- 18 (6) If:
19 (a) a decision to accept an undertaking under section 577C is
20 expressed to be subject to the occurrence of one or more
21 specified events within a specified period; and
22 (b) such an event occurs within that period;
23 Telstra must notify the ACCC in writing of the occurrence of the
24 event as soon as practicable after the occurrence.

25 *If event does not occur*

- 26 (7) If:
27 (a) a decision to accept an undertaking under section 577C is
28 expressed to be subject to the occurrence of a single specified
29 event within a specified period; and
30 (b) the event does not occur within that period;
31 this Act has effect as if the undertaking had never been accepted by
32 the ACCC.
- 33 (8) If:

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- 1 (a) a decision to accept an undertaking under section 577C is
2 expressed to be subject to the occurrence of 2 or more
3 specified events within a specified period; and
4 (b) one or more of those events do not occur within that period;
5 this Act has effect as if the undertaking had never been accepted by
6 the ACCC.

7 *Publication requirement*

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

10 *Instruments are not legislative instruments*

- 11 (10) An instrument under subsection (3) or (5) is not a legislative
12 instrument.

13 **577CB When undertaking about hybrid fibre-coaxial networks**
14 **comes into force**

15 An undertaking under section 577C comes into force:

- 16 (a) if:
17 (i) the decision to accept the undertaking is expressed to be
18 subject to the occurrence of a single specified event
19 within a specified period; and
20 (ii) the event occurs within that period;
21 when the event occurs; or
22 (b) if:
23 (i) the decision to accept the undertaking is expressed to be
24 subject to the occurrence of 2 or more specified events
25 within a specified period; and
26 (ii) each of those events occur at the same time; and
27 (iii) that time occurs within that period;
28 at that time; or
29 (c) if:
30 (i) the decision to accept the undertaking is expressed to be
31 subject to the occurrence of 2 or more specified events
32 within a specified period; and
33 (ii) each of those events occur at different times; and
34 (iii) each of those times occur within that period;
-

- 1 at the last of those times; or
2 (d) if the decision to accept the undertaking is not expressed to
3 be subject to the occurrence of one or more specified events
4 within a specified period—when the undertaking is accepted
5 by the ACCC.

6 **577CC Publication requirements for undertaking about hybrid**
7 **fibre-coaxial networks**

- 8 (1) If a decision to accept an undertaking under section 577C is
9 expressed to be subject to the occurrence of one or more specified
10 events within a specified period, the ACCC must:
11 (a) as soon as practicable after making the decision, publish on
12 its website:
13 (i) the undertaking; and
14 (ii) the terms of the decision; and
15 (b) as soon as practicable after the ACCC becomes aware that
16 the undertaking has come into force, publish on its website a
17 notice announcing that the undertaking has come into force.
18 (2) If a decision to accept an undertaking under section 577C is not
19 expressed to be subject to the occurrence of one or more specified
20 events within a specified period, the ACCC must, as soon as
21 practicable after accepting the undertaking, publish the undertaking
22 on its website.

23 **577CD Compliance with undertaking about hybrid fibre-coaxial**
24 **networks**

25 If an undertaking given by Telstra is in force under section 577C,
26 Telstra must comply with the undertaking.

27 **577D Variation of undertaking about hybrid fibre-coaxial networks**

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

- 1 (b) reject the variation.
- 2 (4) The variation takes effect when it is accepted by the ACCC.
- 3 (5) As soon as practicable after the variation takes effect, the ACCC
4 must publish the variation on its website.

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

6 **577E Acceptance of undertaking about subscription television**
7 **broadcasting licences**

- 8 (1) The ACCC may accept a written undertaking given by Telstra that:
9 (a) at all times after the end of the period specified in the
10 undertaking, Telstra will not be in a position to exercise
11 control of a subscription television broadcasting licence; and
12 (b) Telstra will, in connection with paragraph (a), take specified
13 action and/or refrain from taking specified action.
- 14 Note: For when Telstra is in a position to exercise control of a subscription
15 television broadcasting licence, see subsection (7).
- 16 (2) The period specified in the undertaking as mentioned in
17 paragraph (1)(a) must not be longer than 12 months.
- 18 (3) The undertaking must be expressed to be an undertaking under this
19 section.
- 20 (4) The undertaking may not be withdrawn after it has been accepted
21 by the ACCC.
- 22 (5) If the undertaking provides for the ACCC to perform functions or
23 exercise powers in relation to the undertaking, the ACCC may
24 perform those functions, and exercise those powers, in accordance
25 with the undertaking.
- 26 (6) For the purposes of this section, the question of whether Telstra is
27 in a position to exercise control of a subscription television
28 broadcasting licence is to be determined under Schedule 1 to the
29 *Broadcasting Services Act 1992*.

1 **577EA Acceptance of undertaking about subscription television**
2 **broadcasting licences may be subject to the occurrence of**
3 **events**

4 (1) If:

- 5 (a) Telstra has, in a document accompanying an undertaking
6 under section 577E, nominated one or more events; and
7 (b) the nomination is expressed to be a nomination under this
8 subsection; and
9 (c) each of those events is:
10 (i) the passage of a resolution covered by subparagraph
11 411(4)(a)(ii) of the *Corporations Act 2001*; or
12 (ii) an approval covered by paragraph 411(4)(b) of that Act;
13 or
14 (iii) the passage of a resolution, where Telstra's members
15 (within the meaning of that Act) were entitled to vote on
16 the resolution; or
17 (iv) an approval covered by Chapter 11 of the ASX Listing
18 Rules; or
19 (v) the granting of a waiver under rule 18.1 of the ASX
20 Listing Rules; or
21 (vi) the making of a declaration under subsection 577J(3); or
22 (vii) an event specified in an instrument in force under
23 subsection (3); and
24 (d) the ACCC decides to accept the undertaking;
25 the decision to accept the undertaking must be expressed to be
26 subject to the occurrence of those events within a specified period
27 after the undertaking is accepted.

28 (2) A nomination under subsection (1) must not specify an event by
29 reference to the timing of the event.

30 (3) The Minister may, by writing, specify events for the purposes of
31 subparagraph (1)(c)(vii).

32 (4) A period specified by the ACCC under subsection (1) must be:

- 33 (a) 6 months; or
34 (b) if another period is specified in an instrument under
35 subsection (5)—that period.

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1 (5) The Minister may, by writing, specify a period for the purposes of
2 paragraph (4)(b).

3 *Notification requirement*

4 (6) If:

5 (a) a decision to accept an undertaking under section 577E is
6 expressed to be subject to the occurrence of one or more
7 specified events within a specified period; and

8 (b) such an event occurs within that period;

9 Telstra must notify the ACCC in writing of the occurrence of the
10 event as soon as practicable after the occurrence.

11 *If event does not occur*

12 (7) If:

13 (a) a decision to accept an undertaking under section 577E is
14 expressed to be subject to the occurrence of a single specified
15 event within a specified period; and

16 (b) the event does not occur within that period;

17 this Act has effect as if the undertaking had never been accepted by
18 the ACCC.

19 (8) If:

20 (a) a decision to accept an undertaking under section 577E is
21 expressed to be subject to the occurrence of 2 or more
22 specified events within a specified period; and

23 (b) one or more of those events do not occur within that period;

24 this Act has effect as if the undertaking had never been accepted by
25 the ACCC.

26 *Publication requirement*

27 (9) The Minister must cause a copy of an instrument under
28 subsection (3) or (5) to be published on the Department's website.

29 *Instruments are not legislative instruments*

30 (10) An instrument under subsection (3) or (5) is not a legislative
31 instrument.

1 **577EB When undertaking about subscription television**
2 **broadcasting licences comes into force**

3 An undertaking under section 577E comes into force:

4 (a) if:

5 (i) the decision to accept the undertaking is expressed to be
6 subject to the occurrence of a single specified event
7 within a specified period; and

8 (ii) the event occurs within that period;

9 when the event occurs; or

10 (b) if:

11 (i) the decision to accept the undertaking is expressed to be
12 subject to the occurrence of 2 or more specified events
13 within a specified period; and

14 (ii) each of those events occur at the same time; and

15 (iii) that time occurs within that period;

16 at that time; or

17 (c) if:

18 (i) the decision to accept the undertaking is expressed to be
19 subject to the occurrence of 2 or more specified events
20 within a specified period; and

21 (ii) each of those events occur at different times; and

22 (iii) each of those times occur within that period;

23 at the last of those times; or

24 (d) if the decision to accept the undertaking is not expressed to
25 be subject to the occurrence of one or more specified events
26 within a specified period—when the undertaking is accepted
27 by the ACCC.

28 **577EC Publication requirements for undertaking about subscription**
29 **television broadcasting licences**

30 (1) If a decision to accept an undertaking under section 577E is
31 expressed to be subject to the occurrence of one or more specified
32 events within a specified period, the ACCC must:

33 (a) as soon as practicable after making the decision, publish on
34 its website:

35 (i) the undertaking; and

36 (ii) the terms of the decision; and

1 (b) as soon as practicable after the ACCC becomes aware that
2 the undertaking has come into force, publish on its website a
3 notice announcing that the undertaking has come into force.

4 (2) If a decision to accept an undertaking under section 577E is not
5 expressed to be subject to the occurrence of one or more specified
6 events within a specified period, the ACCC must, as soon as
7 practicable after accepting the undertaking, publish the undertaking
8 on its website.

9 **577ED Compliance with undertaking about subscription television**
10 **broadcasting licences**

11 If an undertaking given by Telstra is in force under section 577E,
12 Telstra must comply with the undertaking.

13 **577F Variation of undertaking about subscription television**
14 **broadcasting licences**

15 (1) This section applies if an undertaking given by Telstra is in force
16 under section 577E.

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

19 (3) After considering the variation, the ACCC must decide to:
20 (a) accept the variation; or
21 (b) reject the variation.

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

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

25 **Division 5—Enforcement of undertakings**

26 **577G Enforcement of undertakings**

27 (1) If:
28 (a) an undertaking given by Telstra is in force under
29 section 577A, 577C or 577E; and

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

- 1 (5) The Federal Court may, by order, rescind, vary or discharge an
2 order made by it under this section or suspend the operation of
3 such an order.

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

5 **577GA Excluded spectrum regime**

- 6 (1) The Minister may, by legislative instrument, determine that the
7 excluded spectrum regime applies to Telstra.
- 8 (2) A determination under subsection (1) has effect for the purposes
9 of:
- 10 (a) this Division; and
11 (b) Part 10 of Schedule 1.

12 **577H Designated part of the spectrum**

- 13 (1) For the purposes of this Act, each of the following parts of the
14 spectrum is a *designated part of the spectrum*:
- 15 (a) frequencies higher than 520 MHz, up to and including 820
16 MHz;
- 17 (b) frequencies higher than 2.5 GHz, up to and including 2.69
18 GHz.
- 19 (2) Subsection (1) has effect subject to subsection (3).
- 20 (3) The Minister may, by legislative instrument, determine that a
21 specified part of the spectrum is not a *designated part of the*
22 *spectrum* for the purposes of this Act.
- 23 (4) The Minister may, by legislative instrument, determine that a
24 specified part of the spectrum is a *designated part of the spectrum*
25 for the purposes of this Act.

26 **577J Limits on allocation of certain spectrum licences to Telstra**

- 27 (1) If the excluded spectrum regime applies to Telstra, the ACMA
28 must not allocate a spectrum licence to Telstra if the licence relates
29 to a designated part of the spectrum.

30 Note: For excluded spectrum regime, see section 577GA.

- 1 (2) However, the rule in subsection (1) does not apply if:
- 2 (a) both:
- 3 (i) an undertaking given by Telstra is in force under
- 4 section 577A; and
- 5 (ii) the undertaking is covered by subsection (2A); 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 (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 (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 (2A) This subsection covers a section 577A undertaking if:
- 20 (a) the following conditions are satisfied:
- 21 (i) the undertaking requires Telstra to give the ACCC a
- 22 draft migration plan;
- 23 (ii) in accordance with the undertaking, Telstra has given
- 24 the ACCC a draft migration plan;
- 25 (iii) the ACCC has approved the draft migration plan under
- 26 section 577BD, 577BDA, 577BDB or 577BDC; or
- 27 (b) the undertaking does not require Telstra to give the ACCC a
- 28 draft migration plan.
- 29 (3) The Minister may declare, in writing, that Telstra is exempt from
- 30 the requirement to have an undertaking under section 577C.
- 31 (4) The Minister must not make a declaration under subsection (3)
- 32 unless the ACCC has made a decision to accept an undertaking
- 33 given by Telstra under section 577A, and:
- 34 (a) if the undertaking is in force—the Minister is satisfied that
- 35 the undertaking is sufficient to address concerns about the
- 36 degree of Telstra’s power in telecommunications markets; or

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1 (b) if the undertaking is not in force—the Minister is satisfied
2 that, subject to the undertaking coming into force, the
3 undertaking is sufficient to address concerns about the degree
4 of Telstra’s power in telecommunications markets.

5 (4A) A declaration under subsection (3) comes into force:

6 (a) if paragraph (4)(a) applies—when the declaration is made; or

7 (b) if paragraph (4)(b) applies—when the undertaking comes
8 into force.

9 (4B) If:

10 (a) paragraph (4)(b) applies to a declaration; and

11 (b) as a result of subsection 577AA(7) or (8), this Act (other than
12 subclause 76(4) of Schedule 1) has effect as if the
13 undertaking had never been accepted by the ACCC;

14 this Act has effect as if the declaration had never been made by the
15 Minister.

16 (5) The Minister may declare, in writing, that Telstra is exempt from
17 the requirement to have an undertaking under section 577E.

18 (6) The Minister must not make a declaration under subsection (5)
19 unless the ACCC has made a decision to accept an undertaking
20 given by Telstra under section 577A, and:

21 (a) if the undertaking is in force—the Minister is satisfied that
22 the undertaking is sufficient to address concerns about the
23 degree of Telstra’s power in telecommunications markets; or

24 (b) if the undertaking is not in force—the Minister is satisfied
25 that, subject to the undertaking coming into force, the
26 undertaking is sufficient to address concerns about the degree
27 of Telstra’s power in telecommunications markets.

28 (6A) A declaration under subsection (5) comes into force:

29 (a) if paragraph (6)(a) applies—when the declaration is made; or

30 (b) if paragraph (6)(b) applies—when the undertaking comes
31 into force.

32 (6B) If:

33 (a) paragraph (6)(b) applies to a declaration; and

34 (b) as a result of subsection 577AA(7) or (8), this Act (other than
35 subclause 76(4) of Schedule 1) has effect as if the
36 undertaking had never been accepted by the ACCC;

1 this Act has effect as if the declaration had never been made by the
2 Minister.

3 (6C) A declaration made under subsection (3) or (5) cannot be revoked.

4 (7) A declaration made under subsection (3) or (5) is not a legislative
5 instrument.

6 (8) In this section:

7 *telecommunications market* has the same meaning as in Part XIB
8 of the *Competition and Consumer Act 2010*.

9 **577K Limits on use of certain spectrum licences by Telstra**

10 (1) If:

- 11 (a) the excluded spectrum regime applies to Telstra; and
12 (b) a spectrum licence relates to a designated part of the
13 spectrum;

14 the licensee of the spectrum licence must not authorise Telstra to
15 operate radiocommunications devices under the licence.

16 Note: For excluded spectrum regime, see section 577GA.

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

18 (a) both:

- 19 (i) an undertaking given by Telstra is in force under
20 section 577A; and
21 (ii) the undertaking is covered by subsection (2A); 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 577J(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 577J(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.

33 Note 3: Section 577E deals with undertakings about subscription television
34 broadcasting licences.

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- 1 (2A) This subsection covers a section 577A undertaking if:
2 (a) the following conditions are satisfied:
3 (i) the undertaking requires Telstra to give the ACCC a
4 draft migration plan;
5 (ii) in accordance with the undertaking, Telstra has given
6 the ACCC a draft migration plan;
7 (iii) the ACCC has approved the draft migration plan under
8 section 577BD, 577BDA, 577BDB or 577BDC; or
9 (b) the undertaking does not require Telstra to give the ACCC a
10 draft migration plan.
- 11 (3) A person must not:
12 (a) aid, abet, counsel or procure a contravention of
13 subsection (1); or
14 (b) induce, whether by threats or promises or otherwise, a
15 contravention of subsection (1); or
16 (c) be in any way, directly or indirectly, knowingly concerned in,
17 or party to, a contravention of subsection (1); or
18 (d) conspire with others to effect a contravention of
19 subsection (1).
- 20 (4) Subsections (1) and (3) are *civil penalty provisions*.
- 21 Note: Part 31 provides for pecuniary penalties for breaches of civil penalty
22 provisions.

23 **577L Limits on assignment of certain spectrum licences to Telstra**
24 **etc.**

- 25 (1) If:
26 (a) the excluded spectrum regime applies to Telstra; and
27 (b) a spectrum licence relates to a designated part of the
28 spectrum;
29 the licensee of the spectrum licence must not:
30 (c) assign the whole or a part of the licence to Telstra; or
31 (d) otherwise deal with Telstra in relation to the whole or a part
32 of the licence.
- 33 Note: For excluded spectrum regime, see section 577GA.
- 34 (2) However, the rule in subsection (1) does not apply if:
35 (a) both:
-

- 1 (i) an undertaking given by Telstra is in force under
2 section 577A; and
3 (ii) the undertaking is covered by subsection (2A); and
4 (b) either:
5 (i) an undertaking given by Telstra is in force under
6 section 577C; or
7 (ii) a declaration is in force under subsection 577J(3); and
8 (c) either:
9 (i) an undertaking given by Telstra is in force under
10 section 577E; or
11 (ii) a declaration is in force under subsection 577J(5).

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

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

15 Note 3: Section 577E deals with undertakings about subscription television
16 broadcasting licences.

- 17 (2A) This subsection covers a section 577A undertaking if:
18 (a) the following conditions are satisfied:
19 (i) the undertaking requires Telstra to give the ACCC a
20 draft migration plan;
21 (ii) in accordance with the undertaking, Telstra has given
22 the ACCC a draft migration plan;
23 (iii) the ACCC has approved the draft migration plan under
24 section 577BD, 577BDA, 577BDB or 577BDC; or
25 (b) the undertaking does not require Telstra to give the ACCC a
26 draft migration plan.
- 27 (3) A person must not:
28 (a) aid, abet, counsel or procure a contravention of
29 subsection (1); or
30 (b) induce, whether by threats or promises or otherwise, a
31 contravention of subsection (1); or
32 (c) be in any way, directly or indirectly, knowingly concerned in,
33 or party to, a contravention of subsection (1); or
34 (d) conspire with others to effect a contravention of
35 subsection (1).
- 36 (4) Subsections (1) and (3) are *civil penalty provisions*.

1 Note: Part 31 provides for pecuniary penalties for breaches of civil penalty
2 provisions.

3 **Division 7—Other provisions**

4 **577M Associate**

- 5 (1) For the purposes of this Part, an *associate* of Telstra in relation to
6 control of:
- 7 (a) a hybrid fibre-coaxial network; or
 - 8 (b) another telecommunications network; or
 - 9 (c) a company;
- 10 is:
- 11 (d) a partner of Telstra; or
 - 12 (e) if Telstra or another person who is an associate of Telstra
13 under another paragraph receives benefits or is capable of
14 benefiting under a trust—the trustee of the trust; or
 - 15 (f) a person (whether a company or not) who:
 - 16 (i) acts, or is accustomed to act; or
 - 17 (ii) under a contract or an arrangement or understanding
18 (whether formal or informal) is intended or expected to
19 act;in accordance with the directions, instructions or wishes of,
20 or in concert with:
 - 21 (iii) Telstra; or
 - 22 (iv) Telstra and another person who is an associate of
23 Telstra under another paragraph; or
 - 24 (g) another company if:
 - 25 (i) the other company is a related body corporate of Telstra
26 for the purposes of the *Corporations Act 2001*; or
 - 27 (ii) Telstra, or Telstra and another person who is an
28 associate of Telstra under another paragraph, are in a
29 position to exercise control of the other company.
- 30
- 31 (2) However, persons are not associates of each other if the ACCC is
32 satisfied that:
- 33 (a) they do not act together in any relevant dealings relating to
34 the network or company; and

- 1 (b) neither of them is in a position to exert influence over the
2 business dealings of the other in relation to the network or
3 company.

4 **577N Control**

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

9 **577P Control of a company**

- 10 (1) For the purposes of this Part, the question of whether a person is in
11 a position to exercise control of a company is to be determined
12 under Schedule 1 to the *Broadcasting Services Act 1992*.
- 13 (2) However, in determining that question:
- 14 (a) the definition of *associate* in subsection 6(1) of the
15 *Broadcasting Services Act 1992* does not apply; and
- 16 (b) the definition of *associate* in section 577M of this Act applies
17 instead.

18 **577Q When Telstra is in a position to exercise control of a network**

- 19 (1) For the purposes of this Part, Telstra is in a position to exercise
20 control of:
- 21 (a) a hybrid fibre-coaxial network; or
22 (b) another telecommunications network;
- 23 if:
- 24 (c) Telstra legally or beneficially owns the network (whether
25 alone or together with one or more other persons); or
26 (d) Telstra is in a position, either alone or together with an
27 associate of Telstra and whether directly or indirectly:
- 28 (i) to exercise control of the operation of all or part of the
29 network; or
30 (ii) to exercise control of the selection of the kinds of
31 services that are supplied using the network; or
32 (iii) to exercise control of the supply of services using the
33 network; or

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- 1 (e) a company other than Telstra legally or beneficially owns the
2 network (whether alone or together with one or more other
3 persons), and:
4 (i) Telstra is in a position, either alone or together with an
5 associate of Telstra, to exercise control of the company;
6 or
7 (ii) Telstra, either alone or together with an associate of
8 Telstra, is in a position to veto any action taken by the
9 board of directors of the company; or
10 (iii) Telstra, either alone or together with an associate of
11 Telstra, is in a position to appoint or secure the
12 appointment of, or veto the appointment of, at least half
13 of the board of directors of the company; or
14 (iv) Telstra, either alone or together with an associate of
15 Telstra, is in a position to exercise, in any other manner,
16 whether directly or indirectly, direction or restraint over
17 any substantial issue affecting the management or
18 affairs of the company; or
19 (v) the company or more than 50% of its directors act, or
20 are accustomed to act in accordance with the directions,
21 instructions or wishes of, or in concert with, Telstra or
22 of Telstra and an associate of Telstra acting together or
23 of the directors of Telstra; or
24 (vi) the company or more than 50% of its directors, under a
25 contract or an arrangement or understanding (whether
26 formal or informal) are intended or expected to act, in
27 accordance with the directions, instructions or wishes
28 of, or in concert with, Telstra or of Telstra and an
29 associate of Telstra acting together or of the directors of
30 Telstra.
- 31 (2) An employee is not, except through an association with another
32 person, to be regarded as being in a position to exercise control of a
33 network under subsection (1) purely because of being an employee.
- 34 (3) More than one person may be in a position to exercise control of a
35 network.

36 **31 At the end of Schedule 1**

37 Add:

1 **Part 9—Functional separation of Telstra**

2 **Division 1—Introduction**

3 **68 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
- 6
- 7
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- Telstra must prepare a draft functional separation undertaking.
 - A final functional separation undertaking is a draft functional separation undertaking that has been approved by the Minister.
 - Telstra must comply with a final functional separation undertaking.
 - However, Telstra is not required to prepare a draft functional separation undertaking if an undertaking about structural separation is in force under section 577A.

15 **69 Definitions**

16 In this Part:

17 *business unit* means a part of Telstra.

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

19 *eligible service* has the same meaning as in section 152AL of the
20 *Competition and Consumer Act 2010*.

21 *equivalence* means:

- 22 (a) equivalence in relation to terms and conditions relating to
23 price or a method of ascertaining price; and
24 (b) equivalence in relation to other terms and conditions.

25 *functional* includes organisational.

1 *functional separation principles* means the principles set out in
2 clause 74.

3 *functional separation requirements determination* means a
4 determination under clause 75.

5 *quarter* means a period of 3 months beginning on 1 January,
6 1 April, 1 July or 1 October.

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

8 *retail business unit* means a business unit by which Telstra deals
9 with its retail customers.

10 *supply*, in relation to a service, includes supply by Telstra of the
11 service to itself.

12 *wholesale/network business unit* means the business unit of
13 Telstra:

- 14 (a) that supplies the following:
- 15 (i) fault detection, handling and rectification;
 - 16 (ii) service activation and provisioning;
 - 17 (iii) declared network services;
- 18 to Telstra's retail business units, and Telstra's wholesale
19 customers, in relation to eligible services; and
- 20 (b) by which Telstra deals with its wholesale customers.

21 **70 Declared network services**

22 For the purposes of this Part, a *declared network service* is a
23 service specified in a legislative instrument made by the Minister
24 for the purposes of this clause.

25 **71 Regulated services**

26 (1) For the purposes of this Part, a *regulated service* is a declared
27 service within the meaning of Part XIC of the *Competition and
28 Consumer Act 2010*.

29 (2) Subclause (1) has effect subject to subclause (3).

- 1 (3) The Minister may, by legislative instrument, determine that a
2 specified service is not a *regulated service* for the purposes of this
3 Part.
- 4 (4) The Minister may, by legislative instrument, determine that a
5 specified eligible service is a *regulated service* for the purposes of
6 this Part.

7 **72 Notional contracts**

8 For the purposes of this Part:

- 9 (a) a notional contract (however described) between any of
10 Telstra's business units is to be treated as if it were an actual
11 contract; and
- 12 (b) any terms and conditions (whether or not relating to price or
13 a method of ascertaining price) in such a notional contract are
14 to be treated as if they were actual terms and conditions.

15 **Division 2—Functional separation undertaking**

16 **73 Contents of draft or final functional separation undertaking**

- 17 (1) A draft or final functional separation undertaking must:
- 18 (a) comply with the functional separation principles; and
- 19 (b) contain provisions requiring Telstra to establish and maintain
20 a committee to be known as the Oversight and Equivalence
21 Board; and
- 22 (c) contain provisions requiring Telstra to require the Oversight
23 and Equivalence Board:
- 24 (i) within a specified period after the end of each quarter
25 during which a final functional separation undertaking
26 is in force, to prepare a report about the extent (if any)
27 to which Telstra complied with the undertaking during
28 that quarter; and
- 29 (ii) to give a copy of the report to the ACCC and to
30 Telstra's board of directors; and
- 31 (d) comply with such requirements (if any) as are specified in a
32 functional separation requirements determination.

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

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1 Note 2: For the functional separation requirements determination, see
2 clause 75.

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

7 (3) If a final functional separation undertaking provides for the ACCC
8 to perform functions or exercise powers in relation to the
9 undertaking, the ACCC may perform those functions, and exercise
10 those powers, in accordance with the undertaking.

11 74 Functional separation principles

12 The *functional separation principles* are as follows:

13 (a) the principle that there should be equivalence in relation to
14 the supply by Telstra of regulated services to:

15 (i) Telstra's wholesale customers; and

16 (ii) Telstra's retail business units;

17 (b) the principle that Telstra should maintain:

18 (i) one or more retail business units; and

19 (ii) a wholesale/network business unit;

20 (c) the principle that Telstra should maintain arm's length
21 functional separation between:

22 (i) its wholesale/network business unit; and

23 (ii) its retail business units;

24 (d) the principle that Telstra should have systems, procedures
25 and practices that relate to:

26 (i) compliance with a final functional separation
27 undertaking; and

28 (ii) monitoring of, and reporting on, compliance with a final
29 functional separation undertaking; and

30 (iii) the development of performance measures relating to
31 compliance with a final functional separation
32 undertaking; and

33 (iv) independent audit, and other checks, of compliance with
34 a final functional separation undertaking;

35 (e) the principle that Telstra's wholesale/network business unit
36 should not consult Telstra's retail business units about:

- 1 (i) proposed services to be supplied by Telstra's
2 wholesale/network business unit; or
3 (ii) proposed developments in connection with services
4 supplied by Telstra's wholesale/network business unit;
5 unless Telstra's wholesale/network business unit also
6 consults Telstra's wholesale customers at the same time and
7 in the same manner.

8 **75 Functional separation requirements determination**

- 9 (1) The Minister may make a written determination (a *functional*
10 *separation requirements determination*) specifying requirements
11 to be complied with by a draft or final functional separation
12 undertaking.
13 (2) A functional separation requirements determination may deal with
14 the manner in which the functional separation principles are to be
15 implemented.
16 (3) A functional separation requirements determination may deal with
17 the manner in which a requirement set out in paragraph 73(1)(b) or
18 (c) is to be met.

19 Note: Clause 73 deals with the contents of a draft or final functional
20 separation undertaking.

- 21 (4) Subclauses (2) and (3) do not limit subclause (1).
22 (5) The Minister must ensure that a functional separation requirements
23 determination comes into force within 90 days after the
24 commencement of this clause.
25 (5A) Subclause (5) does not apply if, before the end of the period
26 applicable under subclause (5):
27 (a) the following conditions are satisfied:
28 (i) an undertaking given by Telstra is in force under
29 section 577A;
30 (ii) the undertaking requires Telstra to give the ACCC a
31 draft migration plan;
32 (iii) in accordance with the undertaking, Telstra has given
33 the ACCC a draft migration plan;
34 (iv) the ACCC has approved the draft migration plan under
35 section 577BD, 577BDA, 577BDB or 577BDC; or

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- 1 (b) both:
- 2 (i) an undertaking given by Telstra is in force under
- 3 section 577A; and
- 4 (ii) the undertaking does not require Telstra to give the
- 5 ACCC a draft migration plan.
- 6 Note: Section 577A deals with undertakings about structural separation.
- 7 (5B) The Minister may, by writing, extend or further extend the 90-day
- 8 period referred to in subclause (5) so long as the extension, or the
- 9 total of the extensions, does not exceed 18 months.
- 10 (5C) The Minister must not make an instrument under subclause (5B)
- 11 unless:
- 12 (a) Telstra satisfies the Minister that Telstra is preparing an
- 13 undertaking under section 577A; or
- 14 (b) both:
- 15 (i) Telstra has given the ACCC an undertaking under
- 16 section 577A; and
- 17 (ii) the ACCC has not decided whether to accept the
- 18 undertaking; or
- 19 (c) the following conditions are satisfied:
- 20 (i) Telstra has given the ACCC an undertaking under
- 21 section 577A;
- 22 (ii) the ACCC has decided to accept the undertaking;
- 23 (iii) that decision is expressed to be subject to the occurrence
- 24 of one or more specified events within a specified
- 25 period;
- 26 (iv) the undertaking is not in force;
- 27 (v) that period has not ended; or
- 28 (d) the following conditions are satisfied:
- 29 (i) an undertaking given by Telstra is in force under
- 30 section 577A;
- 31 (ii) the undertaking requires Telstra to give the ACCC a
- 32 draft migration plan;
- 33 (iii) Telstra satisfies the Minister that Telstra is preparing a
- 34 draft migration plan to be given to the ACCC in
- 35 accordance with the undertaking; or
- 36 (e) the following conditions are satisfied:

- 1 (i) an undertaking given by Telstra is in force under
2 section 577A;
3 (ii) the undertaking requires Telstra to give the ACCC a
4 draft migration plan;
5 (iii) Telstra has given the ACCC a draft migration plan in
6 accordance with the undertaking;
7 (iv) the ACCC has not decided whether to approve the draft
8 migration plan under section 577BD, 577BDA,
9 577BDB or 577BDC.

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

11 (5D) The Minister must cause a copy of an instrument under
12 subclause (5B) to be tabled in each House of the Parliament within
13 15 sitting days of that House after making the instrument.

14 (5E) If:

- 15 (a) before the end of the period applicable under subclause (5),
16 the ACCC accepts an undertaking given by Telstra under
17 section 577A; and
18 (b) the decision to accept the undertaking is expressed to be
19 subject to the occurrence of one of more specified events
20 within a specified period (the *post-acceptance period*) after
21 the undertaking is accepted; and
22 (c) the post-acceptance period ends after the end of the period
23 applicable under subclause (5); and
24 (d) the undertaking does not come into force before the end of
25 the post-acceptance period;

26 then:

- 27 (e) subclause (5) does not apply; and
28 (f) the Minister must ensure that a functional separation
29 requirements determination comes into force within 90 days
30 after the end of the post-acceptance period.

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

32 (5EA) If:

- 33 (a) before the end of the period applicable under subclause (5),
34 the ACCC accepts an undertaking given by Telstra under
35 section 577A; and
36 (b) the decision to accept the undertaking is expressed to be
37 subject to the occurrence of one of more specified events

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- 1 within a specified period (the *post-acceptance period*) after
2 the undertaking is accepted; and
3 (c) the post-acceptance period ends after the end of the period
4 applicable under subclause (5); and
5 (d) the undertaking comes into force before the end of the
6 post-acceptance period; and
7 (e) the undertaking requires Telstra to give the ACCC a draft
8 migration plan; and
9 (f) a final migration plan does not come into force before the end
10 of the post-acceptance period;

11 then:

- 12 (g) subclause (5) does not apply; and
13 (h) the Minister must ensure that a functional separation
14 requirements determination comes into force within 90 days
15 after the end of the post-acceptance period.

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

17 (5EB) Subclause (5) does not apply if:

- 18 (a) before the end of the period applicable under subclause (5),
19 the ACCC accepts an undertaking given by Telstra under
20 section 577A; and
21 (b) the decision to accept the undertaking is expressed to be
22 subject to the occurrence of one of more specified events
23 within a specified period (the *post-acceptance period*) after
24 the undertaking is accepted; and
25 (c) the post-acceptance period ends after the end of the period
26 applicable under subclause (5); and
27 (d) the undertaking comes into force before the end of the
28 post-acceptance period; and
29 (e) the undertaking does not require Telstra to give the ACCC a
30 draft migration plan.

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

32 (5EC) Subclause (5) does not apply if:

- 33 (a) before the end of the period applicable under subclause (5),
34 the ACCC accepts an undertaking given by Telstra under
35 section 577A; and
36 (b) the decision to accept the undertaking is expressed to be
37 subject to the occurrence of one of more specified events

- 1 within a specified period (the *post-acceptance period*) after
2 the undertaking is accepted; and
3 (c) the post-acceptance period ends after the end of the period
4 applicable under subclause (5); and
5 (d) the undertaking comes into force before the end of the
6 post-acceptance period; and
7 (e) the undertaking requires Telstra to give the ACCC a draft
8 migration plan; and
9 (f) a final migration plan has come into force before the end of
10 the post-acceptance period.

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

12 (5F) The Minister is not required to observe any requirements of
13 procedural fairness in relation to the making of an instrument under
14 subclause (5B).

15 (5G) The Minister does not have a duty to consider whether to make an
16 instrument under subclause (5B), whether at the request of a person
17 or in any other circumstances.

18 (6) A determination under subclause (1) is not a legislative instrument.

19 (7) An instrument under subclause (5B) is not a legislative instrument.

20 **76 Draft functional separation undertaking to be given to Minister**

21 (1) Telstra must give the Minister a draft functional separation
22 undertaking:

23 (a) within 90 days after the first functional separation
24 requirements determination comes into force; or

25 (b) if a longer period is specified in an instrument under
26 subclause (3)—within that longer period.

27 (2) However, subclause (1) does not apply if:

28 (a) the following conditions are satisfied:

29 (i) an undertaking given by Telstra is in force under
30 section 577A;

31 (ii) the undertaking requires Telstra to give the ACCC a
32 draft migration plan;

33 (iii) in accordance with the undertaking, Telstra has given
34 the ACCC a draft migration plan;

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- 1 (iv) the ACCC has approved the draft migration plan under
2 section 577BD, 577BDA, 577BDB or 577BDC; or
3 (b) both:
4 (i) an undertaking given by Telstra is in force under
5 section 577A; and
6 (ii) the undertaking does not require Telstra to give the
7 ACCC a draft migration plan.
8 Note: Section 577A deals with undertakings about structural separation.
- 9 (3) The Minister may, by writing, specify a period for the purposes of
10 paragraph (1)(b).
- 11 (4) The Minister must not specify a period under subclause (3) unless:
12 (a) Telstra satisfies the Minister that Telstra is preparing an
13 undertaking under section 577A; or
14 (b) both:
15 (i) Telstra has given the ACCC an undertaking under
16 section 577A; and
17 (ii) the ACCC has not decided whether to accept the
18 undertaking; or
19 (c) the following conditions are satisfied:
20 (i) Telstra has given the ACCC an undertaking under
21 section 577A;
22 (ii) the ACCC has decided to accept the undertaking;
23 (iii) that decision is expressed to be subject to the occurrence
24 of one or more specified events within a specified
25 period;
26 (iv) the undertaking is not in force;
27 (v) that period has not ended; or
28 (d) the following conditions are satisfied:
29 (i) an undertaking given by Telstra is in force under
30 section 577A;
31 (ii) the undertaking requires Telstra to give the ACCC a
32 draft migration plan;
33 (iii) Telstra satisfies the Minister that Telstra is preparing a
34 draft migration plan to be given to the ACCC in
35 accordance with the undertaking; or
36 (e) the following conditions are satisfied:
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- 1 (i) an undertaking given by Telstra is in force under
2 section 577A;
3 (ii) the undertaking requires Telstra to give the ACCC a
4 draft migration plan;
5 (iii) Telstra has given the ACCC a draft migration plan in
6 accordance with the undertaking;
7 (iv) the ACCC has not decided whether to approve the draft
8 migration plan under section 577BD, 577BDA,
9 577BDB or 577BDC.

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

- 11 (5) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a
12 power conferred on the Minister by subclause (3). However, the
13 Minister must not revoke a subclause (3) instrument.
- 14 (6) A period specified in a subclause (3) instrument may be a period
15 ascertained wholly or partly by reference to the occurrence of a
16 specified event.
- 17 (6A) The Minister is not required to observe any requirements of
18 procedural fairness in relation to the making of a subclause (3)
19 instrument.
- 20 (7) The Minister does not have a duty to consider whether to exercise
21 the power to make a subclause (3) instrument, whether he or she is
22 requested to do so by Telstra or by any other person, or in any
23 other circumstances.
- 24 (8) The Minister must cause a copy of an instrument under
25 subclause (3) to be published on the Department's website.
- 26 (9) An instrument under subclause (3) is not a legislative instrument.

27 **77 Approval of draft functional separation undertaking by Minister**

- 28 (1) This clause applies if Telstra gives the Minister a draft functional
29 separation undertaking (the *original undertaking*).
- 30 (2) The Minister must, by writing:
31 (a) approve the original undertaking; or
32 (b) both:
33 (i) vary the original undertaking; and

- 1 (ii) approve the original undertaking as varied; or
2 (c) both:
3 (i) determine that Telstra is taken to have given the
4 Minister another draft functional separation undertaking
5 (the *replacement undertaking*) in the terms specified in
6 the determination, instead of the original undertaking;
7 and
8 (ii) approve the replacement undertaking.

9 *Consultation*

- 10 (3) Before making a decision under subclause (2), the Minister must:
11 (a) cause to be published on the Department's website a notice:
12 (i) setting out the original undertaking; and
13 (ii) inviting persons to make submissions to the Minister
14 about the original undertaking within 14 days after the
15 notice is published; and
16 (b) give the ACCC a copy of the notice; and
17 (c) cause to be published on the Department's website a copy of
18 each submission received within the 14-day period
19 mentioned in paragraph (a); and
20 (d) consider any submissions received within the 14-day period
21 mentioned in paragraph (a); and
22 (e) ask the ACCC to give advice to the Minister, within 44 days
23 after the notice is published, about the original undertaking;
24 and
25 (f) have regard to any advice given by the ACCC.

26 *Consultation—variation of original undertaking*

- 27 (4) Before making a decision under paragraph (2)(b) to approve the
28 original undertaking as varied, the Minister must:
29 (a) give Telstra a notice:
30 (i) setting out the original undertaking as proposed to be
31 varied; and
32 (ii) inviting Telstra to make submissions to the Minister,
33 within 14 days after the notice is given, about the
34 original undertaking as proposed to be varied; and
35 (b) consider any submissions received from Telstra within the
36 14-day period mentioned in paragraph (a).

1 (2) A final functional separation undertaking comes into force on the
2 day after notice of the relevant decision is given to Telstra in
3 accordance with subclause 77(7).

4 (3) A final functional separation undertaking may not be withdrawn.

5 *Undertaking is not a legislative instrument*

6 (4) A final functional separation undertaking is not a legislative
7 instrument.

8 **80 Variation of final functional separation undertaking**

9 (1) This clause applies if a final functional separation undertaking is in
10 force.

11 *Variation*

12 (2) The Minister may, in writing, vary the final functional separation
13 undertaking:

14 (a) at the request of Telstra or another person; or

15 (b) on the Minister's own initiative.

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

20 *Consultation*

21 (4) Before varying a final functional separation undertaking, the
22 Minister must:

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

24 (i) setting out the proposed variation; and

25 (ii) inviting persons to make submissions to the Minister
26 about the proposed variation within 14 days after the
27 notice is published; and

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

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

- 1 (d) consider any submissions received within the 14-day period
2 mentioned in paragraph (a); and
3 (e) ask the ACCC to give advice to the Minister, within 44 days
4 after the notice is published, about the proposed variation;
5 and
6 (f) have regard to any advice given by the ACCC.

7 *Minor variation*

- 8 (5) Subclause (4) does not apply to a proposed variation if the
9 variation is of a minor nature.
- 10 (6) If the proposed variation:
11 (a) is of a minor nature; and
12 (b) is not made at the request of Telstra;
13 then, before making the proposed variation, the Minister must:
14 (c) give Telstra a notice:
15 (i) setting out the proposed variation; and
16 (ii) inviting Telstra to make submissions to the Minister
17 about the proposed variation within 14 days after the
18 notice is given; and
19 (d) consider any submissions received from Telstra within that
20 14-day period.

21 *Advice by the ACCC*

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

25 *Notification of variation*

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

29 *When variation comes into force*

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

1 *Variation is not a legislative instrument*

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

4 **81 Publication of final functional separation undertaking**

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

8 (2) As soon as practicable after a variation of a final functional
9 separation undertaking comes into force, Telstra must make a copy
10 of the varied final functional separation undertaking available on
11 Telstra's website.

12 **82 Compliance with final functional separation undertaking**

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

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

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

18 **Part 10—Control and use by Telstra of certain**
19 **spectrum licences**

20 **Division 1—Introduction**

21 **83 Simplified outline**

22 The following is a simplified outline of this Part:

- 23 • If the excluded spectrum regime applies to Telstra, and a
24 spectrum licence relates to a designated part of the spectrum,
25 Telstra must not be in a position to exercise control of the
26 licence unless the following undertakings given by Telstra
27 are in force:
- 28 (a) an undertaking about structural separation;

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- (b) an undertaking about hybrid fibre-coaxial networks;
- (c) an undertaking about subscription television broadcasting licences.
- 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.

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

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84 Control by Telstra of certain spectrum licences

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(1) If:

- (a) the excluded spectrum regime applies to Telstra; and
- (b) a spectrum licence relates to a designated part of the spectrum;

Telstra must not be in a position to exercise control of the licence.

Note 1: For excluded spectrum regime, see section 577GA.

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

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

- (a) both:
 - (i) an undertaking given by Telstra is in force under section 577A; and
 - (ii) the undertaking is covered by subclause (3); and
- (b) either:
 - (i) an undertaking given by Telstra is in force under section 577C; or
 - (ii) a declaration is in force under subsection 577J(3); and
- (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) This subclause covers a section 577A undertaking if:
10 (a) the following conditions are satisfied:
11 (i) the undertaking requires Telstra to give the ACCC a
12 draft migration plan;
13 (ii) in accordance with the undertaking, Telstra has given
14 the ACCC a draft migration plan;
15 (iii) the ACCC has approved the draft migration plan under
16 section 577BD, 577BDA, 577BDB or 577BDC; or
17 (b) the undertaking does not require Telstra to give the ACCC a
18 draft migration plan.

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

- 20 (1) If:
21 (a) the excluded spectrum regime applies to Telstra; and
22 (b) a spectrum licence relates to a designated part of the
23 spectrum;
24 Telstra must not supply a carriage service using a
25 radiocommunications device the operation of which is authorised
26 under the licence.
27 Note: For excluded spectrum regime, see section 577GA.
- 28 (2) However, the rule in subclause (1) does not apply if:
29 (a) both:
30 (i) an undertaking given by Telstra is in force under
31 section 577A; and
32 (ii) the undertaking is covered by subclause (3); and
33 (b) either:
34 (i) an undertaking given by Telstra is in force under
35 section 577C; or

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

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

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

9 Note 3: Section 577E deals with undertakings about subscription television
10 broadcasting licences.

- 11 (3) This subclause covers a section 577A undertaking if:
12 (a) the following conditions are satisfied:
13 (i) the undertaking requires Telstra to give the ACCC a
14 draft migration plan;
15 (ii) in accordance with the undertaking, Telstra has given
16 the ACCC a draft migration plan;
17 (iii) the ACCC has approved the draft migration plan under
18 section 577BD, 577BDA, 577BDB or 577BDC; or
19 (b) the undertaking does not require Telstra to give the ACCC a
20 draft migration plan.

21 **Division 3—Other provisions**

22 **86 Associate**

- 23 (1) In this Part, an *associate* of Telstra in relation to control of a
24 spectrum licence is:
25 (a) a partner of Telstra; or
26 (b) if Telstra or another person who is an associate of Telstra
27 under another paragraph receives benefits or is capable of
28 benefiting under a trust—the trustee of the trust; or
29 (c) a person (whether a company or not) who:
30 (i) acts, or is accustomed to act; or
31 (ii) under a contract or an arrangement or understanding
32 (whether formal or informal) is intended or expected to
33 act;
34 in accordance with the directions, instructions or wishes of,
35 or in concert with:

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- 1 (iii) Telstra; or
2 (iv) Telstra and another person who is an associate of
3 Telstra under another paragraph; or
4 (d) another company if:
5 (i) the other company is a related body corporate of Telstra
6 for the purposes of the *Corporations Act 2001*; or
7 (ii) Telstra, or Telstra and another person who is an
8 associate of Telstra under another paragraph, are in a
9 position to exercise control of the other company.
- 10 (2) However, persons are not associates of each other if the ACCC is
11 satisfied that:
12 (a) they do not act together in any relevant dealings relating to
13 the spectrum licence; and
14 (b) neither of them is in a position to exert influence over the
15 business dealings of the other in relation to the spectrum
16 licence.

17 **87 Control**

18 In this Part, *control* includes control as a result of, or by means of,
19 trusts, agreements, arrangements, understandings and practices,
20 whether or not having legal or equitable force and whether or not
21 based on legal or equitable rights.

22 **88 When Telstra is in a position to exercise control of a spectrum** 23 **licence**

- 24 (1) For the purposes of this Part, Telstra is in a position to exercise
25 control of a spectrum licence if:
26 (a) Telstra is the licensee; or
27 (b) Telstra, either alone or together with an associate of Telstra,
28 is in a position to exercise control of the spectrum licensee;
29 or
30 (c) Telstra, either alone or together with an associate of Telstra,
31 is in a position to exercise (whether directly or indirectly)
32 control of the selection of radiocommunications devices
33 authorised to operate under the licence; or
34 (d) Telstra, either alone or together with an associate of Telstra,
35 is in a position to exercise (whether directly or indirectly)

- 1 control of a significant proportion of the operations of
2 radiocommunications devices authorised to operate under the
3 licence; or
- 4 (e) Telstra, either alone or together with an associate of Telstra,
5 is in a position to:
- 6 (i) veto any action taken by the board of directors of the
7 licensee; or
- 8 (ii) appoint or secure the appointment of, or veto the
9 appointment of, at least half of the board of directors of
10 the licensee; or
- 11 (iii) exercise, in any other manner, whether directly or
12 indirectly, direction or restraint over any substantial
13 issue affecting the management or affairs of the
14 licensee; or
- 15 (f) the licensee or more than 50% of its directors:
- 16 (i) act, or are accustomed to act; or
- 17 (ii) under a contract or an arrangement or understanding
18 (whether formal or informal) are intended or expected to
19 act;
- 20 in accordance with the directions, instructions or wishes of,
21 or in concert with, Telstra or of Telstra and an associate of
22 Telstra acting together or of the directors of Telstra.
- 23 (2) An employee of a licensee is not, except through an association
24 with another person, to be regarded as being in a position to
25 exercise control of a spectrum licence under subclause (1) purely
26 because of being an employee.
- 27 (3) More than one person may be in a position to exercise control of a
28 spectrum licence.

29 ***Competition and Consumer Act 2010***

30 **32 Subsection 4(1)**

31 Insert:

32 *Telstra* has the same meaning as in the *Telstra Corporation Act*
33 *1991*.

34 **33 At the end of section 151AJ**

1 Add:

2 (9) Despite anything in subsection (2) or (3) of this section, a person
3 does not engage in anti-competitive conduct if, under
4 section 577BA of the *Telecommunications Act 1997*, the conduct is
5 authorised for the purposes of subsection 51(1) of this Act.

6 **34 Subsection 151BTA(13) (definition of *Telstra*)**

7 Repeal the definition.

8 **35 Section 151BUAAA**

9 Repeal the section.

10 **36 At the end of Part XIB**

11 Add:

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

13 **151CQ Voluntary undertakings given by Telstra**

14 *Scope*

15 (1) This section applies if an undertaking given by Telstra is in force
16 under section 577A, 577C or 577E of the *Telecommunications Act*
17 *1997*.

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

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

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

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

25 (2) If Telstra has engaged, or is required to engage, in conduct in order
26 to comply with the undertaking, then, in performing a function, or
27 exercising a power, under this Part in relation to Telstra, the
28 Commission must have regard to the conduct to the extent that the
29 conduct is relevant.

30 **37 Section 152AC**

1 Insert:

2 ***final migration plan*** has the same meaning as in the
3 *Telecommunications Act 1997*.

4 **38 At the end of subsection 152AR(4)**

5 Add:

- 6 ; (e) preventing Telstra from complying with an undertaking in
7 force under section 577A, 577C or 577E of the
8 *Telecommunications Act 1997*; or
9 (f) if a final migration plan is in force—requiring Telstra to
10 engage in conduct in connection with matters covered by the
11 final migration plan.

12 **39 At the end of Part XIC**

13 Add:

14 **152ER Voluntary undertakings given by Telstra**

15 *Scope*

- 16 (1) This section applies if an undertaking given by Telstra is in force
17 under section 577A, 577C or 577E of the *Telecommunications Act*
18 *1997*.

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

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

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

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

- 26 (2) If Telstra has engaged, or is required to engage, in conduct in order
27 to comply with the undertaking, then, in performing a function, or
28 exercising a power, under this Part in relation to Telstra, the
29 Commission must have regard to the conduct to the extent that the
30 conduct is relevant.

1 *Commission must not prevent Telstra from complying with the*
2 *undertaking*

3 (3) The Commission must not perform a function, or exercise a power,
4 under this Part so as to prevent Telstra from complying with the
5 undertaking.

6 **40 Transitional—continuity of special Telstra directions**

7 The repeal of section 151BUAAA of the *Competition and Consumer*
8 *Act 2010* effected by this Part does not affect the continuity of a special
9 Telstra direction (within the meaning of that section) that was in force
10 immediately before the commencement of this item.

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

14 ***Telecommunications Act 1997***

15 **41 Subsection 61(1)**

16 Omit “(1)”.

17 **42 Subsections 61(2), (3) and (4)**

18 Repeal the subsections.

19 **43 Section 61A**

20 Repeal the section.

21 **44 After subsection 69(6)**

22 Insert:

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

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

26 **45 Subsection 69A(1)**

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

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

1 **46 Section 69B**

2 Repeal the section.

3 **47 After subsection 70(3)**

4 Insert:

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

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

8 **48 Paragraph 70(5)(ba)**

9 Omit “Part 8”, substitute “Part 9”.

10 **49 Subsection 70(6)**

11 Repeal the subsection.

12 **50 Section 104**

13 After:

- 14
- 15
- 16
- | |
|---|
| <ul style="list-style-type: none">• The ACMA may be directed by the Minister to monitor, and report on, specified matters relating to the performance of carriers and carriage service providers. |
|---|

17 insert:

- 18
- 19
- 20
- | |
|--|
| <ul style="list-style-type: none">• The ACCC is to monitor, and report each year to the Minister on, the compliance by Telstra with a final functional separation undertaking. |
|--|

21 **51 At the end of Part 5**

22 Add:

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

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

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

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

6 **52 After paragraph 564(3)(b)**

7 Insert:

8 (ba) a carrier licence condition set out in Part 9 of Schedule 1; or

9 **53 Subsection 564(3) (after note 2)**

10 Insert:

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

12 **54 After paragraph 571(3)(b)**

13 Insert:

14 (ba) a carrier licence condition set out in Part 9 of Schedule 1; or

15 **55 Subsection 571(3) (after note 2)**

16 Insert:

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

18 **56 Part 8 of Schedule 1**

19 Repeal the Part.

20 ***Competition and Consumer Act 2010***

21 **57 Division 14 of Part XIB**

22 Repeal the Division, substitute:

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

2 **151CP Functional separation for Telstra**

3 *Scope*

- 4 (1) This section applies if a final functional separation undertaking
5 given by Telstra is in force under Part 9 of Schedule 1 to the
6 *Telecommunications Act 1997*.

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

- 8 (2) If Telstra has engaged, or is required to engage, in conduct in order
9 to comply with the undertaking, then, in performing a function, or
10 exercising a power, under this Part in relation to Telstra, the
11 Commission must have regard to the conduct to the extent that the
12 conduct is relevant.

13 *Commission must not prevent Telstra from complying with the*
14 *undertaking*

- 15 (3) The Commission must not perform a function, or exercise a power,
16 under this Part so as to prevent Telstra from complying with the
17 undertaking.

18 **58 After section 152EP**

19 Insert:

20 **152EPA Assistance to independent telecommunications adjudicator**

- 21 (1) For the purposes of this section, the *independent*
22 *telecommunications adjudicator* is a company that:
23 (a) is limited by guarantee; and
24 (b) is identified, in a final functional separation undertaking in
25 force under Part 9 of Schedule 1 to the *Telecommunications*
26 *Act 1997*, as the independent telecommunications adjudicator
27 for the purpose of this section.
- 28 (2) The Commission may assist the independent telecommunications
29 adjudicator.
- 30 (3) The assistance may include the following:

- 1 (a) the provision of information (including protected information
2 within the meaning of section 155AAA);
3 (b) the provision of advice;
4 (c) the making available of resources and facilities (including
5 secretariat services and clerical assistance).

6 **59 Section 152EQ**

7 Repeal the section, substitute:

8 **152EQ Functional separation for Telstra**

9 *Scope*

- 10 (1) This section applies if a final functional separation undertaking
11 given by Telstra is in force under Part 9 of Schedule 1 to the
12 *Telecommunications Act 1997*.

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

- 14 (2) If Telstra has engaged, or is required to engage, in conduct in order
15 to comply with the undertaking, then, in performing a function, or
16 exercising a power, under this Part in relation to Telstra, the
17 Commission must have regard to the conduct to the extent that the
18 conduct is relevant.

19 *Commission must not prevent Telstra from complying with the*
20 *undertaking*

- 21 (3) The Commission must not perform a function, or exercise a power,
22 under this Part so as to prevent Telstra from complying with the
23 undertaking.

24 **Division 3—Amendments commencing immediately after**
25 **an undertaking about structural separation**
26 **comes into force**

27 *Telecommunications Act 1997*

28 **60 Subsection 61(1)**

29 Omit "(1)".

1 **61 Subsections 61(2), (3) and (4)**

2 Repeal the subsections.

3 **62 Sections 61A, 69A and 69B**

4 Repeal the sections.

5 **63 Paragraph 70(5)(ba)**

6 Repeal the paragraph.

7 **64 Subsection 70(6)**

8 Repeal the subsection.

9 **65 Part 8 of Schedule 1**

10 Repeal the Part.

11 ***Competition and Consumer Act 2010***

12 **66 Division 14 of Part XIB**

13 Repeal the Division.

14 **67 Section 152EQ**

15 Repeal the section, substitute:

16 **152EQ Assistance to independent telecommunications adjudicator**

17 (1) For the purposes of this section, the *independent*
18 *telecommunications adjudicator* is a company that:

19 (a) is limited by guarantee; and

20 (b) is identified, in an undertaking in force under section 577A of
21 the *Telecommunications Act 1997*, as the independent
22 telecommunications adjudicator for the purpose of this
23 section.

24 (2) The Commission may assist the independent telecommunications
25 adjudicator.

26 (3) The assistance may include the following:

27 (a) the provision of information (including protected information
28 within the meaning of section 155AAA);

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- 1 (b) the provision of advice;
- 2 (c) the making available of resources and facilities (including
- 3 secretariat services and clerical assistance).
- 4

1 **Part 2—Telecommunications access regime**

2 **Division 1—Amendments**

3 *National Transmission Network Sale Act 1998*

4 **68 Section 3 (paragraphs (a) and (b) of the definition of**
5 ***telecommunications access regime*)**

6 After “Competition and Consumer Act”, insert “(as in force
7 immediately before the commencement of Division 1 of Part 2 of
8 Schedule 1 to the *Telecommunications Legislation Amendment*
9 *(Competition and Consumer Safeguards) Act 2010*)”.

10 **69 At the end of section 16**

11 Add:

- 12 (6) A reference in this section to the *Competition and Consumer Act*
13 is a reference to that Act as in force immediately before the
14 commencement of Division 1 of Part 2 of Schedule 1 to the
15 *Telecommunications Legislation Amendment (Competition and*
16 *Consumer Safeguards) Act 2010*.

17 *Telecommunications Act 1997*

18 **70 After section 62**

19 Insert:

20 **62A Condition of carrier licence set out in section 152BCO of the**
21 ***Competition and Consumer Act 2010***

22 A carrier licence is subject to the condition set out in
23 section 152BCO of the *Competition and Consumer Act 2010*.

24 Note: Section 152BCO of the *Competition and Consumer Act 2010* deals
25 with access determinations.

26 **62B Condition of carrier licence set out in section 152BDF of the**
27 ***Competition and Consumer Act 2010***

28 A carrier licence is subject to the condition set out in
29 section 152BDF of the *Competition and Consumer Act 2010*.

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1 Note: Section 152BDF of the *Competition and Consumer Act 2010* deals
2 with binding rules of conduct.

3 **62C Condition of carrier licence set out in section 152BEC of the**
4 ***Competition and Consumer Act 2010***

5 A carrier licence is subject to the condition set out in
6 section 152BEC of the *Competition and Consumer Act 2010*.

7 Note: Section 152BEC of the *Competition and Consumer Act 2010* deals
8 with access agreements.

9 **71 Subsection 69(6)**

10 Omit “or 4”, substitute “, 4 or 5”.

11 **72 Subsection 69(6) (note)**

12 Repeal the note, substitute:

13 Note: Parts 3, 4 and 5 of Schedule 1 deal with access to network information
14 and access to facilities.

15 **73 After subsection 69(7)**

16 Insert:

17 (7A) Subsection (1) does not apply to the condition set out in
18 section 152BCO of the *Competition and Consumer Act 2010*.

19 Note: Section 152BCO of the *Competition and Consumer Act 2010* deals
20 with access determinations.

21 (7B) Subsection (1) does not apply to the condition set out in
22 section 152BDF of the *Competition and Consumer Act 2010*.

23 Note: Section 152BDF of the *Competition and Consumer Act 2010* deals
24 with binding rules of conduct.

25 (7C) Subsection (1) does not apply to the condition set out in
26 section 152BEC of the *Competition and Consumer Act 2010*.

27 Note: Section 152BEC of the *Competition and Consumer Act 2010* deals
28 with access agreements.

29 **74 After section 69**

30 Insert:

1 **69AA Remedial directions—breach of conditions relating to access**

2 *Scope*

3 (1) This section applies if:

- 4 (a) a carrier has contravened, or is contravening, a condition of
5 the carrier licence held by the carrier; and
6 (b) the condition is set out in Part 3, 4 or 5 of Schedule 1.

7 Note: Parts 3, 4 and 5 of Schedule 1 deal with access to network information
8 and access to facilities.

9 *Direction*

10 (2) The ACCC may give the carrier a written direction requiring the
11 carrier to take specified action directed towards ensuring that the
12 carrier does not contravene the condition, or is unlikely to
13 contravene the condition, in the future.

14 (3) The following are examples of the kinds of direction that may be
15 given to a carrier under subsection (2):

- 16 (a) a direction that the carrier implement effective administrative
17 systems for monitoring compliance with the condition;
18 (b) a direction that the carrier implement a system designed to
19 give the carrier's employees, agents and contractors a
20 reasonable knowledge and understanding of the requirements
21 of the condition, in so far as those requirements affect the
22 employees, agents or contractors concerned.

23 (4) The ACCC must not give a direction under subsection (2) if the
24 direction would have the effect of:

- 25 (a) preventing Telstra from complying with an undertaking in
26 force under section 577A, 577C or 577E; or
27 (b) if a final migration plan is in force—requiring Telstra to
28 engage in conduct in connection with matters covered by the
29 final migration plan.

30 (5) A carrier must not contravene a direction under subsection (2).

31 (6) A direction under subsection (2) is not a legislative instrument.

32 **75 Subsection 70(3)**

33 Omit “or 4”, substitute “, 4 or 5”.

1 **76 Subsection 70(3) (note)**

2 Repeal the note, substitute:

3 Note: Parts 3, 4 and 5 of Schedule 1 deal with access to network information
4 and access to facilities.

5 **77 After subsection 70(4)**

6 Insert:

7 (4A) Subsection (1) does not apply to the condition set out in
8 section 152BCO of the *Competition and Consumer Act 2010*.

9 Note: Section 152BCO of the *Competition and Consumer Act 2010* deals
10 with access determinations.

11 (4B) Subsection (1) does not apply to the condition set out in
12 section 152BDF of the *Competition and Consumer Act 2010*.

13 Note: Section 152BDF of the *Competition and Consumer Act 2010* deals
14 with binding rules of conduct.

15 (4C) Subsection (1) does not apply to the condition set out in
16 section 152BEC of the *Competition and Consumer Act 2010*.

17 Note: Section 152BEC of the *Competition and Consumer Act 2010* deals
18 with access agreements.

19 **78 Paragraph 70(5)(b)**

20 Omit “or 4”, substitute “, 4 or 5”.

21 **79 At the end of subsection 70(5)**

22 Add:

23 ; (d) the condition set out in section 152BCO of the *Competition*
24 *and Consumer Act 2010*;

25 (e) the condition set out in section 152BDF of the *Competition*
26 *and Consumer Act 2010*;

27 (f) the condition set out in section 152BEC of the *Competition*
28 *and Consumer Act 2010*.

29 **80 At the end of section 98**

30 Add:

1 (3) In addition to the rules mentioned in subsection (1), the rule set out
2 in subsection 152BCP(2) of the *Competition and Consumer Act*
3 *2010* is a service provider rule for the purposes of this Act.

4 Note: Subsection 152BCP(2) of the *Competition and Consumer Act 2010*
5 provides that a carriage service provider must comply with any access
6 determinations that are applicable to the provider.

7 (4) In addition to the rules mentioned in subsection (1), the rule set out
8 in subsection 152BDG(2) of the *Competition and Consumer Act*
9 *2010* is a service provider rule for the purposes of this Act.

10 Note: Subsection 152BDG(2) of the *Competition and Consumer Act 2010*
11 provides that a carriage service provider must comply with any
12 binding rules of conduct that are applicable to the provider.

13 (5) In addition to the rules mentioned in subsection (1), the rule set out
14 in subsection 152BED(2) of the *Competition and Consumer Act*
15 *2010* is a service provider rule for the purposes of this Act.

16 Note: Subsection 152BED(2) of the *Competition and Consumer Act 2010*
17 deals with access agreements.

18 **81 After subsection 102(6)**

19 Insert:

20 (6A) Subsection (1) does not apply to the rule set out in subsection
21 152BCP(2) of the *Competition and Consumer Act 2010*.

22 Note: Subsection 152BCP(2) of the *Competition and Consumer Act 2010*
23 provides that a carriage service provider must comply with any access
24 determinations that are applicable to the provider.

25 (6B) Subsection (1) does not apply to the rule set out in subsection
26 152BDG(2) of the *Competition and Consumer Act 2010*.

27 Note: Subsection 152BDG(2) of the *Competition and Consumer Act 2010*
28 provides that a carriage service provider must comply with any
29 binding rules of conduct that are applicable to the provider.

30 (6C) Subsection (1) does not apply to the rule set out in subsection
31 152BED(2) of the *Competition and Consumer Act 2010*.

32 Note: Subsection 152BED(2) of the *Competition and Consumer Act 2010*
33 deals with access agreements.

34 **82 After subsection 103(3)**

35 Insert:

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1 (3A) Subsection (1) does not apply to the rule set out in subsection
2 152BCP(2) of the *Competition and Consumer Act 2010*.

3 Note: Subsection 152BCP(2) of the *Competition and Consumer Act 2010*
4 provides that a carriage service provider must comply with any access
5 determinations that are applicable to the provider.

6 (3B) Subsection (1) does not apply to the rule set out in subsection
7 152BDG(2) of the *Competition and Consumer Act 2010*.

8 Note: Subsection 152BDG(2) of the *Competition and Consumer Act 2010*
9 provides that a carriage service provider must comply with any
10 binding rules of conduct that are applicable to the provider.

11 (3C) Subsection (1) does not apply to the rule set out in subsection
12 152BED(2) of the *Competition and Consumer Act 2010*.

13 Note: Subsection 152BED(2) of the *Competition and Consumer Act 2010*
14 deals with access agreements.

15 **83 After subsection 103(4)**

16 Insert:

17 (4A) The ACCC may issue a formal warning if a person contravenes the
18 service provider rule set out in subsection 152BCP(2) of the
19 *Competition and Consumer Act 2010*.

20 (4B) The ACCC may issue a formal warning if a person contravenes the
21 service provider rule set out in subsection 152BDG(2) of the
22 *Competition and Consumer Act 2010*.

23 (4C) The ACCC may issue a formal warning if a person contravenes the
24 service provider rule set out in subsection 152BED(2) of the
25 *Competition and Consumer Act 2010*.

26 **84 After section 505**

27 Insert:

28 **505A ACCC may use material presented to a previous public**
29 **inquiry**

30 (1) This section applies if:

31 (a) the ACCC has held a public inquiry (the *original inquiry*)
32 under this Part; and

33 (b) any of the following subparagraphs applies:

- 1 (i) evidence or other material was presented to a hearing
2 for the purposes of the original inquiry;
3 (ii) a written submission was lodged with the ACCC for the
4 purposes of the original inquiry;
5 (iii) any other information obtained by the ACCC was used
6 by the ACCC for the purposes of the original inquiry;
7 and
8 (c) the ACCC holds another public inquiry under this Part.
- 9 (2) The ACCC may:
- 10 (a) in the case of evidence or other material presented to a
11 hearing—treat the whole or a part of the evidence or other
12 material as if it had also been presented to a hearing for the
13 purposes of the other public inquiry; or
14 (b) in the case of a written submission lodged with the ACCC—
15 treat the whole or a part of the written submission as if it had
16 also been lodged with the ACCC for the purposes of the other
17 public inquiry; or
18 (c) in the case of any other information obtained by the ACCC—
19 use the whole or a part of the information for the purposes of
20 the other public inquiry.
- 21 (3) This section does not, by implication, limit the information that
22 may be used by the ACCC for the purposes of a public inquiry
23 under this Part.

24 **505B ACCC may adopt a finding from a previous public inquiry**

25 If:

- 26 (a) the ACCC has held a public inquiry (the *original inquiry*)
27 under this Part; and
28 (b) the ACCC has prepared a report about the original inquiry
29 under section 505; and
30 (c) the ACCC holds another public inquiry under this Part;
31 the ACCC may, for the purposes of the other public inquiry, adopt
32 a finding set out in the report about the original inquiry.

33 **85 Paragraph 564(3)(b)**

34 Omit “or 4”, substitute “, 4 or 5”.

1 **86 At the end of subsection 564(3) (before the notes)**

2 Add:

- 3 ; or (f) the carrier licence condition set out in section 152BCO of the
4 *Competition and Consumer Act 2010*; or
5 (g) the service provider rule set out in subsection 152BCP(2) of
6 the *Competition and Consumer Act 2010*; or
7 (h) the carrier licence condition set out in section 152BDF of the
8 *Competition and Consumer Act 2010*; or
9 (i) the service provider rule set out in subsection 152BDG(2) of
10 the *Competition and Consumer Act 2010*; or
11 (j) the carrier licence condition set out in section 152BEC of the
12 *Competition and Consumer Act 2010*; or
13 (k) the service provider rule set out in subsection 152BED(2) of
14 the *Competition and Consumer Act 2010*.

15 **87 Subsection 564(3) (note 2)**

16 Repeal the note, substitute:

- 17 Note 2: Parts 3, 4 and 5 of Schedule 1 deal with access to network information
18 and access to facilities.

19 **88 At the end of subsection 564(3) (after the notes)**

20 Add:

- 21 Note 5: Section 152BCO of the *Competition and Consumer Act 2010* deals
22 with access determinations.
23 Note 6: Subsection 152BCP(2) of the *Competition and Consumer Act 2010*
24 provides that a carriage service provider must comply with any access
25 determinations that are applicable to the provider.
26 Note 7: Section 152BDF of the *Competition and Consumer Act 2010* deals
27 with binding rules of conduct.
28 Note 8: Subsection 152BDG(2) of the *Competition and Consumer Act 2010*
29 provides that a carriage service provider must comply with any
30 binding rules of conduct that are applicable to the provider.
31 Note 9: Section 152BEC of the *Competition and Consumer Act 2010* deals
32 with access agreements.
33 Note 10: Subsection 152BED(2) of the *Competition and Consumer Act 2010*
34 deals with access agreements.

35 **89 Paragraph 571(3)(b)**

36 Omit “or 4”, substitute “, 4 or 5”.

1 **90 At the end of subsection 571(3) (before the notes)**

2 Add:

- 3 ; or (f) the carrier licence condition set out in section 152BCO of the
4 *Competition and Consumer Act 2010*; or
5 (g) the service provider rule set out in subsection 152BCP(2) of
6 the *Competition and Consumer Act 2010*; or
7 (h) the carrier licence condition set out in section 152BDF of the
8 *Competition and Consumer Act 2010*; or
9 (i) the service provider rule set out in subsection 152BDG(2) of
10 the *Competition and Consumer Act 2010*; or
11 (j) the carrier licence condition set out in section 152BEC of the
12 *Competition and Consumer Act 2010*; or
13 (k) the service provider rule set out in subsection 152BED(2) of
14 the *Competition and Consumer Act 2010*.

15 **91 Subsection 571(3) (note 2)**

16 Repeal the note, substitute:

- 17 Note 2: Parts 3, 4 and 5 of Schedule 1 deal with access to network information
18 and access to facilities.

19 **92 At the end of subsection 571(3) (after the notes)**

20 Add:

- 21 Note 5: Section 152BCO of the *Competition and Consumer Act 2010* deals
22 with access determinations.
23 Note 6: Subsection 152BCP(2) of the *Competition and Consumer Act 2010*
24 provides that a carriage service provider must comply with any access
25 determinations that are applicable to the provider.
26 Note 7: Section 152BDF of the *Competition and Consumer Act 2010* deals
27 with binding rules of conduct.
28 Note 8: Subsection 152BDG(2) of the *Competition and Consumer Act 2010*
29 provides that a carriage service provider must comply with any
30 binding rules of conduct that are applicable to the provider.
31 Note 9: Section 152BEC of the *Competition and Consumer Act 2010* deals
32 with access agreements.
33 Note 10: Subsection 152BED(2) of the *Competition and Consumer Act 2010*
34 deals with access agreements.

35 **93 After subclause 17(2) of Schedule 1**

36 Insert:

- 1 (2A) Subclause (1) does not impose an obligation to the extent (if any)
2 to which the imposition of the obligation would have any of the
3 following effects:
- 4 (a) depriving any person of a right under a contract that was in
5 force at the time the request was made;
 - 6 (b) preventing Telstra from complying with an undertaking in
7 force under section 577A, 577C or 577E;
 - 8 (c) if a final migration plan is in force—requiring Telstra to
9 engage in conduct in connection with matters covered by the
10 final migration plan.
- 11 (2B) If, at the time the request was made:
- 12 (a) one or more provisions (the *contingent provisions*) of a
13 contract have not come into force because:
 - 14 (i) the contingent provisions are subject to a condition
15 precedent; and
 - 16 (ii) the condition precedent has not been satisfied; and
 - 17 (b) there is a possibility that the condition precedent could
18 become satisfied; and
 - 19 (c) assuming that the condition precedent had been satisfied:
 - 20 (i) the contingent provisions would come into force; and
 - 21 (ii) the person would have a right under the contingent
22 provisions;
- 23 paragraph (2A)(a) has effect, in relation to the contract, as if, at the
24 time the request was made:
- 25 (d) the contract was in force; and
 - 26 (e) the person had the right under the contract.

27 **94 After subclause 17(4) of Schedule 1**

28 Insert:

- 29 (4A) For the purposes of subclause (1), if:
- 30 (a) there is an agreement in force between Telstra and an NBN
31 corporation; and
 - 32 (b) the agreement relates to the NBN corporation's access to
33 facilities owned or operated by Telstra; and
 - 34 (c) apart from this clause, the agreement would result in the
35 NBN corporation being the operator of the facilities;

1 the NBN corporation is taken not to be the operator of the
2 facilities.

3 **95 At the end of clause 17 of Schedule 1**

4 Add:

5 (6) In this clause:

6 *NBN corporation* has the same meaning as in section 577BA.

7 **96 At the end of clause 18 of Schedule 1**

8 Add:

9 (6) An arbitrator must not make a determination under this clause if
10 the determination would have the effect of:

11 (a) preventing Telstra from complying with an undertaking in
12 force under section 577A, 577C or 577E; or

13 (b) if a final migration plan is in force—requiring Telstra to
14 engage in conduct in connection with matters covered by the
15 final migration plan.

16 (7) If:

17 (a) an agreement mentioned in paragraph (1)(a) is in force; and

18 (b) the agreement is in writing;

19 a determination under this clause has no effect to the extent to
20 which it is inconsistent with the agreement.

21 **97 Clause 31 of Schedule 1**

22 Insert:

23 *NBN corporation* has the same meaning as in section 577BA.

24 **98 Subclause 33(3) of Schedule 1**

25 Omit “the ACMA stating that, in the ACMA’s opinion,”, substitute “the
26 ACCC stating that, in the ACCC’s opinion,”.

27 **99 Subclause 33(4) of Schedule 1**

28 Omit “ACMA” (wherever occurring), substitute “ACCC”.

29 **100 After subclause 33(4) of Schedule 1**

30 Insert:

1 (4A) Before issuing a certificate under subclause (3), the ACCC may
2 consult the ACMA.

3 **101 Subclause 33(5) of Schedule 1**

4 Omit “ACMA” (wherever occurring), substitute “ACCC”.

5 **102 At the end of clause 33 of Schedule 1**

6 Add:

7 (6) Subclause (1) does not impose an obligation to the extent (if any)
8 to which the imposition of the obligation would have any of the
9 following effects:

- 10 (a) depriving any person of a right under a contract that was in
11 force at the time the request was made;
- 12 (b) preventing Telstra from complying with an undertaking in
13 force under section 577A, 577C or 577E;
- 14 (c) if a final migration plan is in force—requiring Telstra to
15 engage in conduct in connection with matters covered by the
16 final migration plan.

17 (7) If, at the time the request was made:

- 18 (a) one or more provisions (the *contingent provisions*) of a
19 contract have not come into force because:
- 20 (i) the contingent provisions are subject to a condition
21 precedent; and
- 22 (ii) the condition precedent has not been satisfied; and
- 23 (b) there is a possibility that the condition precedent could
24 become satisfied; and
- 25 (c) assuming that the condition precedent had been satisfied:
- 26 (i) the contingent provisions would come into force; and
27 (ii) the person would have a right under the contingent
28 provisions;

29 paragraph (6)(a) has effect, in relation to the contract, as if, at the
30 time the request was made:

- 31 (d) the contract was in force; and
32 (e) the person had the right under the contract.

33 (8) For the purposes of subclause (1), if:

- 34 (a) there is an agreement in force between Telstra and an NBN
35 corporation; and

- 1 (b) the agreement relates to the NBN corporation’s access to a
2 telecommunications transmission tower owned or operated
3 by Telstra; and
4 (c) apart from this clause, the agreement would result in the
5 NBN corporation being the operator of the
6 telecommunications transmission tower;
7 the NBN corporation is taken not to be the operator of the
8 telecommunications transmission tower.

9 **103 Subclause 34(3) of Schedule 1**

10 Omit “the ACMA stating that, in the ACMA’s opinion,”, substitute “the
11 ACCC stating that, in the ACCC’s opinion,”.

12 **104 Subclause 34(4) of Schedule 1**

13 Omit “ACMA” (wherever occurring), substitute “ACCC”.

14 **105 After subclause 34(4) of Schedule 1**

15 Insert:

16 (4A) Before issuing a certificate under subclause (3), the ACCC may
17 consult the ACMA.

18 **106 Subclause 34(5) of Schedule 1**

19 Omit “ACMA” (wherever occurring), substitute “ACCC”.

20 **107 At the end of clause 34 of Schedule 1**

21 Add:

- 22 (6) Subclause (1) does not impose an obligation to the extent (if any)
23 to which the imposition of the obligation would have any of the
24 following effects:
25 (a) depriving any person of a right under a contract that was in
26 force at the time the request was made;
27 (b) preventing Telstra from complying with an undertaking in
28 force under section 577A, 577C or 577E;
29 (c) if a final migration plan is in force—requiring Telstra to
30 engage in conduct in connection with matters covered by the
31 final migration plan.
32 (7) If, at the time the request was made:

- 1 (a) one or more provisions (the *contingent provisions*) of a
2 contract have not come into force because:
3 (i) the contingent provisions are subject to a condition
4 precedent; and
5 (ii) the condition precedent has not been satisfied; and
6 (b) there is a possibility that the condition precedent could
7 become satisfied; and
8 (c) assuming that the condition precedent had been satisfied:
9 (i) the contingent provisions would come into force; and
10 (ii) the person would have a right under the contingent
11 provisions;
12 paragraph (6)(a) has effect, in relation to the contract, as if, at the
13 time the request was made:
14 (d) the contract was in force; and
15 (e) the person had the right under the contract.
- 16 (8) For the purposes of subclause (1), if:
17 (a) there is an agreement in force between Telstra and an NBN
18 corporation; and
19 (b) the agreement relates to the NBN corporation's access to the
20 site of a telecommunications transmission tower, where:
21 (i) the site is owned, operated or controlled by Telstra; or
22 (ii) Telstra has a right (whether conditional or
23 unconditional) to use the site; and
24 (c) apart from this clause, the agreement would result in the
25 NBN corporation:
26 (i) being the occupier or controller of the site; or
27 (ii) having a right (whether conditional or unconditional) to
28 use the site;
29 the NBN corporation is taken:
30 (d) not to be the occupier or controller of the site; and
31 (e) not to have a right (whether conditional or unconditional) to
32 use the site.

33 **108 Subclause 35(3) of Schedule 1**

34 Omit "the ACMA stating that, in the ACMA's opinion," substitute "the
35 ACCC stating that, in the ACCC's opinion,".

36 **109 Subclause 35(4) of Schedule 1**

1 Omit “ACMA” (wherever occurring), substitute “ACCC”.

2 **110 After subclause 35(4) of Schedule 1**

3 Insert:

4 (4A) Before issuing a certificate under subclause (3), the ACCC may
5 consult the ACMA.

6 **111 Subclause 35(5) of Schedule 1**

7 Omit “ACMA” (wherever occurring), substitute “ACCC”.

8 **112 At the end of clause 35 of Schedule 1**

9 Add:

- 10 (6) Subclause (1) does not impose an obligation to the extent (if any)
11 to which the imposition of the obligation would have any of the
12 following effects:
- 13 (a) depriving any person of a right under a contract that was in
14 force at the time the request was made;
 - 15 (b) preventing Telstra from complying with an undertaking in
16 force under section 577A, 577C or 577E;
 - 17 (c) if a final migration plan is in force—requiring Telstra to
18 engage in conduct in connection with matters covered by the
19 final migration plan.
- 20 (7) If, at the time the request was made:
- 21 (a) one or more provisions (the *contingent provisions*) of a
22 contract have not come into force because:
 - 23 (i) the contingent provisions are subject to a condition
24 precedent; and
 - 25 (ii) the condition precedent has not been satisfied; and
 - 26 (b) there is a possibility that the condition precedent could
27 become satisfied; and
 - 28 (c) assuming that the condition precedent had been satisfied:
 - 29 (i) the contingent provisions would come into force; and
 - 30 (ii) the person would have a right under the contingent
31 provisions;
- 32 paragraph (6)(a) has effect, in relation to the contract, as if, at the
33 time the request was made:
- 34 (d) the contract was in force; and
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- 1 (e) the person had the right under the contract.
- 2 (8) For the purposes of subclause (1), if:
- 3 (a) there is an agreement in force between Telstra and an NBN
- 4 corporation; and
- 5 (b) the agreement relates to the NBN corporation's access to an
- 6 eligible underground facility owned or operated by Telstra;
- 7 and
- 8 (c) apart from this clause, the agreement would result in the
- 9 NBN corporation being the operator of the eligible
- 10 underground facility;
- 11 the NBN corporation is taken not to be the operator of the eligible
- 12 underground facility.

13 **113 At the end of clause 36 of Schedule 1**

14 Add:

- 15 (7) An arbitrator must not make a determination under this clause if
- 16 the determination would have the effect of:
- 17 (a) preventing Telstra from complying with an undertaking in
- 18 force under section 577A, 577C or 577E; or
- 19 (b) if a final migration plan is in force—requiring Telstra to
- 20 engage in conduct in connection with matters covered by the
- 21 final migration plan.
- 22 (8) If:
- 23 (a) an agreement mentioned in paragraph (1)(a), (2)(a) or (3)(a)
- 24 is in force; and
- 25 (b) the agreement is in writing;
- 26 a determination under this clause has no effect to the extent to
- 27 which it is inconsistent with the agreement.

28 ***Competition and Consumer Act 2010***

29 **114 Section 152AA**

30 Omit:

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

substitute:

- 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.

Note: Even though this section mentions binding rules of conduct, binding rules of conduct may only be made if the Commission considers that there is an urgent need to do so.

1 **115 Section 152AC**

2 Insert:

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

4 **116 Section 152AC**

5 Insert:

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

7 **117 Section 152AC (definition of *access undertaking*)**

8 Omit “an ordinary access undertaking or”.

9 **118 Section 152AC**

10 Insert:

11 *binding rules of conduct* means rules made under subsection
12 152BD(1).

13 **119 Section 152AC**

14 Insert:

15 *final access determination* means an access determination other
16 than an interim access determination.

17 **120 Section 152AC**

18 Insert:

19 *fixed principles provision* has the meaning given by
20 section 152BCD.

21 **121 Section 152AC**

22 Insert:

23 *fixed principles term or condition* has the meaning given by
24 section 152CBAA.

25 **122 Section 152AC**

26 Insert:

1 *interim access determination* means an access determination that
2 is expressed to be an interim access determination.

3 **123 Section 152AC (definition of *ordinary access***
4 ***undertaking*)**

5 Repeal the definition.

6 **124 Section 152AC (definition of *telecommunications access***
7 ***code*)**

8 Repeal the definition.

9 **125 Section 152AC**

10 Insert:

11 *variation agreement* has the meaning given by subsection
12 152BE(3).

13 **126 At the end of section 152AF**

14 Add:

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

20 **127 After section 152AH**

21 Insert:

22 **152AI When public inquiry commences**

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

27 **128 Subsection 152ALA(2)**

28 Repeal the subsection, substitute:

29 (2) In specifying an expiry date, the Commission must have regard to:

- 1 (a) the principle that the expiry date for a declaration should
2 occur in the period:
3 (i) beginning 3 years after the declaration was made; and
4 (ii) ending 5 years after the declaration was made;
5 unless, in the Commission's opinion, there are circumstances
6 that warrant the expiry date occurring in a shorter or longer
7 period; and
8 (b) such other matters (if any) as the Commission considers
9 relevant.

10 **129 After subsection 152ALA(6)**

11 Insert:

- 12 (6A) If the fresh declaration comes into force immediately after the
13 expiry of the expired declaration, the fresh declaration is taken to
14 be a declaration that *replaces* the expired declaration.

15 **130 Paragraph 152ALA(7)(a)**

16 Omit "12-month", substitute "18-month".

17 Note: The heading to subsection 152ALA(7) is altered by omitting "12-month" and
18 substituting "18-month".

19 **131 After subparagraph 152ALA(7)(a)(v)**

20 Insert:

- 21 (vi) whether to extend or further extend the expiry date of a
22 declaration by a period of not more than 12 months and
23 then to allow the declaration to expire without making a
24 new declaration under section 152AL; and

25 **132 Subsection 152AM(3)**

26 Repeal the subsection, substitute:

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

30 **133 Subsection 152AQ(3)**

31 Omit "may", substitute "is to".

32 **134 Subsections 152AQ(4), (5) and (6)**

1 Repeal the subsections, substitute:

2 (4) The Register is to be made available for inspection on the
3 Commission's website.

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

5 **135 Sections 152AQA and 152AQB**

6 Repeal the sections.

7 **136 Subsection 152AR(12) (definition of *pre-request right*)**

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

9 **137 Section 152AS**

10 Repeal the section.

11 **138 After subsection 152ASA(1)**

12 Insert:

13 (1A) A service or a proposed service must not be specified in a
14 determination under this section if, at the time when the
15 determination is made, the service or proposed service is a declared
16 service.

17 **139 After subsection 152ASA(2)**

18 Insert:

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

23 (2B) A determination under this section may:

24 (a) provide that the determination must not be revoked; or
25 (b) provide that the determination must be revoked except in
26 such circumstances as are specified in the determination.

27 **140 Subsection 152ASA(8)**

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

1 **141 After subsection 152ASA(11)**

2 Insert:

3 *Variation or revocation of determination*

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

7 (11B) A provision referred to in paragraph (2A)(a) or (b) or (2B)(a) or (b)
8 cannot be varied or removed.

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

12 **142 Subsection 152ASA(12)**

13 Repeal the subsection, substitute:

14 *Determination is not a legislative instrument*

15 (12) A determination made under subsection (1) is not a legislative
16 instrument.

17 **143 Subsection 152ASA(13) (note)**

18 Repeal the note.

19 **144 Section 152AT**

20 Repeal the section.

21 **145 After subsection 152ATA(3)**

22 Insert:

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

26 **146 After subsection 152ATA(4)**

27 Insert:

28 (4A) An order under paragraph (3)(a) may:

- 1 (a) provide that the order must not be varied; or
2 (b) provide that the order must not be varied except in such
3 circumstances as are specified in the order.

4 (4B) An order under paragraph (3)(a) may:

- 5 (a) provide that the order must not be revoked; or
6 (b) provide that the order must not be revoked except in such
7 circumstances as are specified in the order.

8 **147 After subsection 152ATA(6)**

9 Insert:

10 *Serial applications*

11 (7) If:

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

25 **148 Subsection 152ATA(10)**

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

29 **149 After subsection 152ATA(16)**

30 Insert:

31 (16A) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a
32 power conferred on the Commission by paragraph (3)(a), but it
33 applies with the following changes.

1 (16B) A provision referred to in paragraph (4A)(a) or (b) or (4B)(a) or (b)
2 cannot be varied or removed.

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

6 **150 Subsection 152ATA(18) (note)**

7 Repeal the note.

8 **151 Subsection 152AU(1)**

9 Omit “152AT(1) or”.

10 **152 Sections 152AV to 152AX**

11 Repeal the sections.

12 **153 Subsection 152AXA(1)**

13 Omit “(1)”.

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

15 **154 Paragraph 152AXA(1)(a)**

16 Omit “152AT or”.

17 **155 Subsection 152AXA(2)**

18 Repeal the subsection.

19 **156 Section 152AY**

20 Repeal the section, substitute:

21 **152AY Compliance with standard access obligations**

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

25 (2) The carrier or carriage service provider must comply with the
26 obligations:

27 (a) if an access agreement between:

28 (i) the carrier or carriage service provider, as the case
29 requires; and

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

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

30 Note 2: Even though subsection (2) mentions binding rules of conduct,
31 binding rules of conduct may only be made if the Commission
32 considers that there is an urgent need to do so.

33 Note 3: For transitional provisions, see Division 2 of Part 2 of Schedule 1 to
34 the *Telecommunications Legislation Amendment (Competition and*
35 *Consumer Safeguards) Act 2010*.

36 **157 Paragraph 152BBAA(1)(a)**

37 Omit “152AS or”.

38 **158 Paragraph 152BBAA(1)(b)**

1 Omit “152AT or”.

2 **159 Subsection 152BBC(5)**

3 Repeal the subsection.

4 **160 Division 4 of Part XIC**

5 Repeal the Division, substitute:

6 **Division 4—Access determinations**

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

8 **152BC Access determinations**

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

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

13 (3) An access determination may:

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

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

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

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

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

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

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

29 **152BCA Matters that the Commission must take into account**

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

30 **152BCB Restrictions on access determinations**

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

- 1 (b) repeated failures by the access seeker to comply with the
2 terms and conditions on which the same or similar access has
3 been provided (whether or not by the carrier or carriage
4 service provider).
- 5 (3) The Commission must not make an access determination that is
6 inconsistent with any of the standard access obligations that are, or
7 will be, applicable to a carrier or carriage service provider.
- 8 (3A) If a final migration plan is in force, the Commission must not make
9 an access determination that would have the effect of requiring
10 Telstra to engage in conduct in connection with matters covered by
11 the final migration plan.
- 12 (4) If the Commission makes an access determination that has the
13 effect of depriving a person (the *second person*) of a
14 pre-determination right to require the carrier or provider to provide
15 access to the declared service to the second person, the
16 determination must also require the access seeker:
- 17 (a) to pay to the second person such amount (if any) as the
18 Commission considers is fair compensation for the
19 deprivation; and
- 20 (b) to reimburse the carrier or provider and the Commonwealth
21 for any compensation that the carrier or provider or the
22 Commonwealth agrees, or is required by a court order, to pay
23 to the second person as compensation for the deprivation.
- 24 (5) An access determination is of no effect to the extent to which it
25 contravenes subsection (1), (3) or (3A).
- 26 (6) In this section:
- 27 *pre-determination right* means a right under a contract that was in
28 force:
- 29 (a) if the access determination is one of a series of 2 or more
30 successive access determinations—immediately before the
31 first access determination came into force; or
- 32 (b) otherwise—immediately before the access determination
33 came into force.
- 34 *protected contractual right* means a right under a contract that was
35 in force at the beginning of 13 September 1996.
-

1 **152BCC Access agreements prevail over inconsistent access**
2 **determinations**

3 If an access determination is applicable to the following parties:

- 4 (a) a carrier or carriage service provider;
- 5 (b) an access seeker;

6 the access determination has no effect to the extent to which it is
7 inconsistent with an access agreement that is applicable to those
8 parties.

9 **152BCCA Final migration plan prevails over inconsistent access**
10 **determinations**

11 If a final migration plan is in force, an access determination has no
12 effect to the extent to which it would have the effect of:

- 13 (a) preventing Telstra from complying with the final migration
14 plan; or
- 15 (b) requiring Telstra to engage in conduct in connection with
16 matters covered by the final migration plan.

17 **152BCD Fixed principles provisions**

- 18 (1) An access determination may include a provision that is specified
19 in the determination to be a fixed principles provision.
 - 20 (2) If a fixed principles provision is included in an access
21 determination, the determination must provide that a specified date
22 is the nominal termination date for the fixed principles provision.
23 The nominal termination date may be later than the expiry date for
24 the determination.
 - 25 (3) If:
 - 26 (a) an access determination (the ***replacement access***
27 ***determination***) is expressed to replace a previous access
28 determination; and
 - 29 (b) the previous access determination included a fixed principles
30 provision; and
 - 31 (c) the nominal termination date for the fixed principles
32 provision is later than the day on which the replacement
33 access determination comes into force;
- 34 then:

- 1 (d) the replacement access determination must include a
2 provision in the same terms as the fixed principles provision;
3 and
4 (e) the provision must be specified in the replacement access
5 determination to be a fixed principles provision; and
6 (f) the nominal termination date for the fixed principles
7 provision so included in the replacement access
8 determination must be the same as, or later than, the nominal
9 termination date for the fixed principles provision included in
10 the previous access determination; and
11 (g) if the previous access determination provided that the
12 previous access determination must not be varied so as to
13 alter or remove the fixed principles provision—the
14 replacement access determination must provide that the
15 replacement access determination must not be varied so as to
16 alter or remove the fixed principles provision; and
17 (h) if the previous access determination provided that the
18 previous access determination must not be varied so as to
19 alter or remove the fixed principles provision except in such
20 circumstances as are specified in the previous access
21 determination:
22 (i) the replacement access determination must provide that
23 the replacement access determination must not be varied
24 so as to alter or remove the fixed principles provision
25 except in such circumstances as are specified in the
26 replacement access determination; and
27 (ii) those circumstances must be the same as the
28 circumstances specified in the previous access
29 determination.

- 30 (4) If:
31 (a) a fixed principles provision is included in an access
32 determination; and
33 (b) the access determination ceases to be in force before the
34 nominal termination date for the fixed principles provision;
35 the fixed principles provision ceases to be in force when the access
36 determination ceases to be in force.

37 Note: Even though a fixed principles provision ceases to be in force when
38 the access determination ceases to be in force, subsection (3) requires
39 that a replacement access determination include a provision in the
40 same terms as the fixed principles provision.

- 1 (5) If a fixed principles provision is included in an access
2 determination, the access determination must:
3 (a) provide that the access determination must not be varied so
4 as to alter or remove the fixed principles provision; or
5 (b) provide that the access determination must not be varied so
6 as to alter or remove the fixed principles provision except in
7 such circumstances as are specified in the access
8 determination.

9 **152BCE Access determinations may be set out in the same document**

10 Two or more access determinations may be set out in the same
11 document.

12 **152BCF Duration of access determination**

- 13 (1) An access determination relating to access to a declared service:
14 (a) comes into force on the day specified in the determination as
15 the day on which the determination is to come into force; and
16 (b) unless sooner revoked, ceases to be in force on the expiry
17 date for the determination.
- 18 (2) The specified day may be earlier than the day on which the
19 determination was made.
- 20 (2A) The specified day must not be earlier than the date of
21 commencement of this section.
- 22 (3) If the declared service is covered by a declaration under
23 section 152AL, and the declaration is not a fresh declaration that
24 replaces a previous declaration, the specified day must not be
25 earlier than the day on which the declaration came into force.
- 26 (3A) If the declared service is covered by subsection 152AL(7), the
27 specified day must not be earlier than the day on which the service
28 became a declared service under that subsection.
- 29 (4) If:
30 (a) an access determination is expressed to replace a previous
31 access determination relating to access to the declared
32 service; and

1 (b) the previous access determination is not an interim access
2 determination;
3 the specified day must be the first day after the expiry of the
4 previous access determination.

5 (4A) If:

6 (a) an access determination is expressed to replace a previous
7 access determination relating to access to the declared
8 service; and

9 (b) the previous access determination is an interim access
10 determination; and

11 (c) the declared service is covered by a declaration under
12 section 152AL;

13 the specified day must not be earlier than the day on which the
14 declaration came into force.

15 *Expiry date*

16 (5) An access determination must specify an expiry date for the
17 determination.

18 (6) In specifying an expiry date for an access determination, the
19 Commission must have regard to:

20 (a) in a case where the declared service is covered by a
21 declaration under section 152AL—the principle that the
22 expiry date for the determination should be the same as the
23 expiry date for the declaration (as that declaration stood at
24 the time when the access determination was made) unless, in
25 the Commission’s opinion, there are circumstances that
26 warrant the specification of another date as the expiry date
27 for the access determination; and

28 (b) such other matters (if any) as the Commission considers
29 relevant.

30 (7) If an access determination expires, this Part does not prevent the
31 Commission from making a fresh access determination under
32 section 152BC in the same terms as the expired access
33 determination.

34 *Automatic revocation of access determination*

35 (8) If:

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

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

- 20 (9A) If:
21 (a) an interim access determination relating to access to a
22 declared service is in force; and
23 (b) a final access determination relating to access to the declared
24 service comes into force;
25 the interim access determination is taken to be revoked at the time
26 when the final access determination comes into force.

27 *Extension of access determination*

- 28 (10) If:
29 (a) an access determination (the ***original access determination***)
30 relating to access to a declared service is in force; and
31 (b) the Commission has commenced to hold a public inquiry
32 under Part 25 of the *Telecommunications Act 1997* about a
33 proposal to make another access determination in relation to
34 access to the service; and

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- 1 (c) the Commission considers that it will make the other access
2 determination, but will not be in a position to do so before the
3 expiry date for the original access determination;
4 the Commission may, by writing, declare that the expiry date for
5 the original access determination is taken to be the day
6 immediately before the day on which the other access
7 determination comes into force.
- 8 (11) The Commission must publish a declaration under subsection (10)
9 on the Commission's website.
- 10 (12) If:
- 11 (a) after holding a public inquiry under subsection 152ALA(7) in
12 relation to a section 152AL declaration, the Commission:
- 13 (i) extends or further extends the expiry date for the
14 declaration by a period of not more than 12 months; and
15 (ii) decides to allow the declaration to expire after the end
16 of that period; and
- 17 (b) an access determination is in force in relation to access to the
18 declared service;
- 19 the Commission may, by writing, extend the expiry date for the
20 access determination by the same period.
- 21 (13) The Commission must publish an instrument under subsection (12)
22 on the Commission's website.
- 23 (14) The Commission is not required to observe any requirements of
24 procedural fairness in relation to a decision under subsection (10)
25 or (12).
- 26 (15) A declaration under subsection (10) is not a legislative instrument.
- 27 (16) An instrument under subsection (12) is not a legislative instrument.

152BCG Interim access determinations

- 28
- 29 (1) If:
- 30 (a) the Commission makes a declaration under section 152AL
31 after the commencement of this section; and
32 (b) the declaration is not a fresh declaration that replaces a
33 previous declaration; and
-

- 1 (c) the Commission has commenced to hold a public inquiry
2 under Part 25 of the *Telecommunications Act 1997* about a
3 proposal to make an access determination in relation to
4 access to the declared service; and
5 (d) either:
6 (i) the Commission considers that it is unlikely that a final
7 access determination in relation to access to the service
8 will be made within 6 months after the commencement
9 of the public inquiry; or
10 (ii) the Commission considers that there is an urgent need to
11 make an access determination in relation to access to the
12 service before the completion of the public inquiry;
13 the Commission must make an interim access determination in
14 relation to access to the service.
- 15 (2) If:
16 (a) a declaration is in force under section 152AL; and
17 (b) no access determination has previously been made in relation
18 to access to the declared service;
19 the Commission may make an interim access determination in
20 relation to access to the service.
- 21 (3) The day specified in an interim access determination as the day on
22 which the determination is to come into force must not be earlier
23 than the day on which the declaration mentioned in
24 paragraph (1)(a) or (2)(a), as the case may be, came into force.
- 25 (4) The Commission is not required to observe any requirements of
26 procedural fairness in relation to the making of an interim access
27 determination.
- 28 (5) The Commission must not make an interim access determination
29 otherwise than in accordance with this section.

30 **152BCGA Stay of access determinations**

- 31 (1) Paragraphs 15(1)(a) and (b) and 15A(1)(a) and (b) of the
32 *Administrative Decisions (Judicial Review) Act 1977* do not apply
33 to a decision of the Commission to make an access determination.
- 34 (2) If a person applies to the Federal Court under subsection 39B(1) of
35 the *Judiciary Act 1903* for a writ or injunction in relation to a

1 decision of the Commission to make an access determination, the
2 Court must not make any orders staying or otherwise affecting the
3 operation or implementation of the decision pending the
4 finalisation of the application.

5 **Subdivision B—Public inquiries about proposals to make access**
6 **determinations**

7 **152BCH Access determination to be made after public inquiry**

- 8 (1) The Commission must not make an access determination unless:
9 (a) the Commission has held a public inquiry under Part 25 of
10 the *Telecommunications Act 1997* about a proposal to make
11 the determination; and
12 (b) the Commission has prepared a report about the inquiry
13 under section 505 of the *Telecommunications Act 1997*; and
14 (c) the report was published during the 180-day period ending
15 when the determination was made.
- 16 (2) Subsection (1) does not apply to an interim access determination.
- 17 (3) Subsection (1) has effect subject to section 152BCI.

18 **152BCI When public inquiry must be held**

- 19 (1) If:
20 (a) the Commission makes a declaration under section 152AL
21 after the commencement of this section; and
22 (b) no access determination has previously been made in relation
23 to access to the declared service;
24 the Commission must, within 30 days after the declaration is made,
25 commence to hold a public inquiry under Part 25 of the
26 *Telecommunications Act 1997* about a proposal to make an access
27 determination relating to access to the declared service.
- 28 (2) If:
29 (a) a declaration is in force under section 152AL immediately
30 after the commencement of this section; and
31 (b) no access determination has previously been made in relation
32 to access to the declared service;

1 the Commission must, during the 12-month period beginning at the
2 commencement of this section, commence to hold a public inquiry
3 under Part 25 of the *Telecommunications Act 1997* about a
4 proposal to make an access determination relating to access to the
5 declared service.

6 (3) If:
7 (a) a declaration is in force under section 152AL; and
8 (b) an access determination has previously been made in relation
9 to access to the declared service;

10 the Commission must, during the period:

11 (c) beginning 18 months before the expiry date for the access
12 determination; and
13 (d) ending 6 months before the expiry date for the access
14 determination;

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

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

19 (5) If:
20 (a) a declaration (the **current declaration**) is in force under
21 section 152AL; and
22 (b) an access determination has previously been made in relation
23 to access to the declared service; and
24 (c) the expiry date of the current declaration is extended or
25 further extended for a period of not more than 12 months;
26 and

27 (d) the Commission decides to allow the current declaration to
28 expire without making a new declaration under
29 section 152AL;

30 the Commission is not required to hold a public inquiry under
31 Part 25 of the *Telecommunications Act 1997* about a proposal to
32 make an access determination relating to access to the declared
33 service.

34 (6) If:
35 (a) a declaration is in force under section 152AL; and
36 (b) an access determination (the **current determination**) is in
37 force in relation to access to the declared service; and

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- 1 (c) the Commission commences to hold a public inquiry under
2 subsection 152ALA(7) in relation to the declaration;
3 then:
4 (d) the Commission may defer holding a public inquiry under
5 Part 25 of the *Telecommunications Act 1997* about a proposal
6 to make an access determination relating to access to the
7 declared service until the Commission decides whether to
8 extend or further extend the expiry date for the declaration;
9 and
10 (e) if the Commission decides to extend or further extend the
11 expiry date for the declaration—the Commission must
12 commence to hold such a public inquiry before the expiry
13 date for the current access determination; and
14 (f) if the Commission decides not to extend or further extend the
15 expiry date for the declaration—the Commission is not
16 required to hold such a public inquiry.

17 (7) If:

- 18 (a) a declaration is in force under section 152AL; and
19 (b) an access determination has previously been made in relation
20 to access to the declared service; and
21 (c) after holding a public inquiry under subsection 152ALA(7) in
22 relation to the declaration, the Commission decides to allow
23 the declaration to expire without making a new declaration
24 under section 152AL;

25 the Commission is not required to hold a public inquiry under
26 Part 25 of the *Telecommunications Act 1997* about a proposal to
27 make an access determination relating to access to the declared
28 service.

29 Note: If a service is a declared service under subsection 152AL(7) (which
30 deals with special access undertakings), there is no need for the
31 Commission to make a declaration of the service under
32 section 152AL.

33 (8) Despite anything else in this section, if:

- 34 (a) the Commission makes binding rules of conduct that relate to
35 access to a declared service; and
36 (b) no access determination is in force in relation to access to the
37 declared service;

38 the Commission must, within 30 days after the binding rules of
39 conduct are made, commence to hold a public inquiry under

1 Part 25 of the *Telecommunications Act 1997* about a proposal to
2 make an access determination relating to access to the declared
3 service.

4 **152BCJ Combined inquiries about proposals to make access**
5 **determinations**

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

21 **152BCK Time limit for making an access determination**

- 22 (1) This section applies if the Commission commences to hold a public
23 inquiry under Part 25 of the *Telecommunications Act 1997* about a
24 proposal to make an access determination.
- 25 (2) The Commission must make a final access determination within 6
26 months after that commencement.
- 27 *Extension of decision-making period*
- 28 (3) The Commission may, by written notice published on its website,
29 extend or further extend the 6-month period referred to in
30 subsection (2), so long as:
- 31 (a) the extension or further extension is for a period of not more
32 than 6 months; and

- 1 (b) the notice includes a statement explaining why the
2 Commission has been unable to make a final access
3 determination within that 6-month period or that 6-month
4 period as previously extended, as the case may be.

5 Note: The Commission may be required to make an interim access
6 determination—see section 152BCG.

7 **Subdivision C—Variation or revocation of access**
8 **determinations**

9 **152BCN Variation or revocation of access determinations**

- 10 (1) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a
11 power conferred on the Commission by section 152BC, but it
12 applies with the following changes.
- 13 (2) The Commission is not required to hold a public inquiry under
14 Part 25 the *Telecommunications Act 1997* about a proposal to vary
15 an access determination if:
16 (a) the variation is of a minor nature; or
17 (b) each:
18 (i) carrier or carriage service provider; and
19 (ii) access seeker;
20 whose interests are likely to be affected by the variation has
21 consented in writing to the variation.
- 22 (3) The Commission is not required to hold a public inquiry under
23 Part 25 of the *Telecommunications Act 1997* about a proposal to
24 revoke an access determination if the Commission is satisfied that
25 each:
26 (a) carrier or service provider; and
27 (b) access seeker;
28 whose interests are likely to be affected by the revocation has
29 consented in writing to the revocation.
- 30 (4) If a fixed principles provision is included in an access
31 determination:
32 (a) a provision referred to in paragraph 152BCD(5)(a) or (b)
33 cannot be varied or removed; and

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

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.

- 1 (6) If the Commission does so, the Commission must include in the
2 Register an annotation to that effect.

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

4 **Subdivision A—Commission may make binding rules of**
5 **conduct**

6 **152BD Binding rules of conduct**

- 7 (1) The Commission may make written rules that:
8 (a) specify any or all of the terms and conditions on which a
9 carrier or carriage service provider is to comply with any or
10 all of the standard access obligations applicable to the carrier
11 or provider in relation to a specified declared service; or
12 (b) require a carrier or carriage service provider to comply with
13 any or all of the standard access obligations applicable to the
14 carrier or provider in relation to a specified declared service
15 in a manner specified in the rules;

16 if the Commission considers that there is an urgent need to do so.

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

- 19 (2) Rules under subsection (1) are to be known as ***binding rules of***
20 ***conduct***.
- 21 (3) Binding rules of conduct may be of general application or may be
22 limited as provided in the rules.
- 23 (4) In particular, binding rules of conduct may be limited to:
24 (a) particular carriers or carriage service providers; or
25 (b) particular classes of carriers or carriage service providers; or
26 (c) particular access seekers; or
27 (d) particular classes of access seekers.
- 28 (5) Subsection (4) does not, by implication, limit subsection 33(3A) of
29 the *Acts Interpretation Act 1901*.
- 30 (6) The Commission is not required to observe any requirements of
31 procedural fairness in relation to the making of binding rules of
32 conduct.

- 1 (7) The Commission does not have a duty to consider whether to make
2 binding rules of conduct, whether at the request of a person or in
3 any other circumstances.
- 4 (8) Binding rules of conduct may provide for the Commission to
5 perform functions, and exercise powers, under the rules.
- 6 (9) An instrument under subsection (1) is not a legislative instrument.

7 **152BDAA Matters that the Commission must take into account**

- 8 (1) The Commission must take the following matters into account in
9 making binding rules of conduct:
- 10 (a) whether the binding rules of conduct will promote the
11 long-term interests of end-users of carriage services or of
12 services supplied by means of carriage services;
- 13 (b) the legitimate business interests of a carrier or carriage
14 service provider who supplies, or is capable of supplying, the
15 declared service, and the carrier's or provider's investment in
16 facilities used to supply the declared service;
- 17 (c) the interests of all persons who have rights to use the
18 declared service;
- 19 (d) the direct costs of providing access to the declared service;
- 20 (e) the value to a person of extensions, or enhancement of
21 capability, whose cost is borne by someone else;
- 22 (f) the operational and technical requirements necessary for the
23 safe and reliable operation of a carriage service, a
24 telecommunications network or a facility;
- 25 (g) the economically efficient operation of a carriage service, a
26 telecommunications network or a facility.
- 27 (2) If a carrier or carriage service provider who supplies, or is capable
28 of supplying, the declared service supplies one or more other
29 eligible services, then, in making binding rules of conduct that are
30 applicable to the carrier or provider, as the case may be, the
31 Commission may take into account:
- 32 (a) the characteristics of those other eligible services; and
33 (b) the costs associated with those other eligible services; and
34 (c) the revenues associated with those other eligible services;
35 and
36 (d) the demand for those other eligible services.
-

- 1 (3) The Commission may take into account any other matters that it
2 thinks are relevant.
- 3 (4) The Commission is not required by subsection (1) or (2) to take a
4 matter into account if it is not reasonably practicable for the
5 Commission to do so, having regard to the urgent need to make the
6 binding rules of conduct.
- 7 (5) For the purposes of taking a particular matter into account under
8 this section, the Commission is not required to obtain information,
9 or further information, that is not already in the possession of the
10 Commission if it is not reasonably practicable for the Commission
11 to do so, having regard to the urgent need to make the binding rules
12 of conduct.
- 13 (6) In this section:
14 *eligible service* has the same meaning as in section 152AL.

15 **152BDA Restrictions on binding rules of conduct**

- 16 (1) The Commission must not make binding rules of conduct that
17 would have any of the following effects:
- 18 (a) preventing a service provider who already has access to the
19 declared service from obtaining a sufficient amount of the
20 service to be able to meet the service provider's reasonably
21 anticipated requirements, measured at the time when the
22 access seeker made a request in relation to the service under
23 section 152AR;
- 24 (b) preventing a carrier or carriage service provider from
25 obtaining a sufficient amount of the service to be able to meet
26 the carrier's or provider's reasonably anticipated
27 requirements, measured at the time when the access seeker
28 made a request in relation to the service under
29 section 152AR;
- 30 (c) preventing a person from obtaining, by the exercise of a
31 pre-rules right, a sufficient level of access to the declared
32 service to be able to meet the person's actual requirements;
- 33 (d) depriving any person of a protected contractual right;
- 34 (e) resulting in an access seeker becoming the owner (or one of
35 the owners) of any part of a facility without the consent of
36 the owner of the facility;

Schedule 1 Amendments

Part 2 Telecommunications access regime

- 1 (f) requiring a person (other than an access seeker) to bear an
2 unreasonable amount of the costs of:
- 3 (i) extending or enhancing the capability of a facility; or
4 (ii) maintaining extensions to or enhancements of the
5 capability of a facility;
- 6 (g) requiring a carrier or carriage service provider to provide an
7 access seeker with access to a declared service if there are
8 reasonable grounds to believe that:
- 9 (i) the access seeker would fail, to a material extent, to
10 comply with the terms and conditions on which the
11 carrier or provider provides, or is reasonably likely to
12 provide, that access; or
- 13 (ii) the access seeker would fail, in connection with that
14 access, to protect the integrity of a telecommunications
15 network or to protect the safety of individuals working
16 on, or using services supplied by means of, a
17 telecommunications network or a facility.
- 18 (2) Examples of grounds for believing as mentioned in
19 subparagraph (1)(g)(i) include:
- 20 (a) evidence that the access seeker is not creditworthy; and
21 (b) repeated failures by the access seeker to comply with the
22 terms and conditions on which the same or similar access has
23 been provided (whether or not by the carrier or carriage
24 service provider).
- 25 (3) The Commission must not make binding rules of conduct that are
26 inconsistent with any of the standard access obligations that are, or
27 will be, applicable to a carrier or carriage service provider.
- 28 (3A) If a final migration plan is in force, the Commission must not make
29 binding rules of conduct that would have the effect of requiring
30 Telstra to engage in conduct in connection with matters covered by
31 the final migration plan.
- 32 (4) If the Commission makes binding rules of conduct that have the
33 effect of depriving a person (the *second person*) of a pre-rules right
34 to require the carrier or provider to provide access to the declared
35 service to the second person, the rules must also require the access
36 seeker:

- 1 (a) to pay to the second person such amount (if any) as the
2 Commission considers is fair compensation for the
3 deprivation; and
4 (b) to reimburse the carrier or provider and the Commonwealth
5 for any compensation that the carrier or provider or the
6 Commonwealth agrees, or is required by a court order, to pay
7 to the second person as compensation for the deprivation.

8 (5) Binding rules of conduct are of no effect to the extent to which
9 they contravene subsection (1), (3) or (3A).

10 (6) In this section:

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

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

15 **152BDB Access agreements prevail over inconsistent binding rules**
16 **of conduct**

17 If binding rules of conduct are applicable to the following parties:

- 18 (a) a carrier or carriage service provider;
19 (b) an access seeker;

20 the binding rules of conduct have no effect to the extent to which
21 they are inconsistent with an access agreement that is applicable to
22 those parties.

23 **152BDC Duration of binding rules of conduct**

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

1 **152BDCA Final migration plan prevails over inconsistent binding**
2 **rules of conduct**

3 If a final migration plan is in force, binding rules of conduct have
4 no effect to the extent to which they would have the effect of:

- 5 (a) preventing Telstra from complying with the final migration
6 plan; or
7 (b) requiring Telstra to engage in conduct in connection with
8 matters covered by the final migration plan.

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 (other than a fixed
19 principles provision) is inconsistent with binding rules of conduct,
20 the provision has no effect to the extent of the inconsistency.

21 **152BDEA Stay of binding rules of conduct**

- 22 (1) Paragraphs 15(1)(a) and (b) and 15A(1)(a) and (b) of the
23 *Administrative Decisions (Judicial Review) Act 1977* do not apply
24 to a decision of the Commission to make binding rules of conduct.
- 25 (2) If a person applies to the Federal Court under subsection 39B(1) of
26 the *Judiciary Act 1903* for a writ or injunction in relation to a
27 decision of the Commission to make binding rules of conduct, the
28 Court must not make any orders staying or otherwise affecting the
29 operation or implementation of the decision pending the
30 finalisation of the application.

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

2 **152BDF Carrier licence condition**

3 A carrier licence held by a carrier is subject to a condition that the
4 carrier must comply with any binding rules of conduct that are
5 applicable to the carrier.

6 **152BDG 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 binding rules of
11 conduct that are applicable to the provider.

12 **Subdivision C—Private enforcement of binding rules of**
13 **conduct**

14 **152BDH Private enforcement of binding rules of conduct**

- 15 (1) If the Federal Court is satisfied, on the application of:
16 (a) an access seeker; or
17 (b) a carrier; or
18 (c) a carriage service provider;
19 that a person has engaged, is engaging, or is proposing to engage in
20 conduct that constitutes a contravention of binding rules of
21 conduct, the Court may make any or all of the following orders:
22 (d) an order granting an injunction on such terms as the Court
23 thinks appropriate:
24 (i) restraining the person from engaging in the conduct; or
25 (ii) if the conduct involves refusing or failing to do
26 something—requiring the person to do that thing;
27 (e) an order directing the person to compensate the applicant for
28 loss or damage suffered as a result of the contravention;
29 (f) any other order that the Court thinks appropriate.
- 30 (2) The revocation or expiry of binding rules of conduct does not
31 affect any remedy under subsection (1) in respect of a

1 contravention of the rules that occurred when the rules were in
2 force.

3 (3) If the Federal Court has power under subsection (1) to grant an
4 injunction restraining a person from engaging in particular
5 conduct, or requiring a person to do anything, the Court may make
6 any other orders (including granting an injunction) that it thinks
7 appropriate against any other person who was involved in the
8 contravention concerned.

9 (4) A reference in this section to a person involved in the
10 contravention is a reference to a person who has:
11 (a) aided, abetted, counselled or procured the contravention; or
12 (b) induced the contravention, whether through threats or
13 promises or otherwise; or
14 (c) been in any way (directly or indirectly) knowingly concerned
15 in or a party to the contravention; or
16 (d) conspired with others to effect the contravention.

17 **152BDI Consent injunctions**

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

22 **152BDJ Interim injunctions**

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

25 **152BDK Factors relevant to granting a restraining injunction**

26 The power of the Federal Court to grant an injunction under
27 section 152BDH restraining a person from engaging in conduct
28 may be exercised whether or not:
29 (a) it appears to the Court that the person intends to engage
30 again, or to continue to engage, in conduct of that kind; or
31 (b) the person has previously engaged in conduct of that kind; or

- 1 (c) there is an imminent danger of substantial damage to any
2 person if the first-mentioned person engages in conduct of
3 that kind.

4 **152BDL Factors relevant to granting a mandatory injunction**

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

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

14 **152BDM Discharge or variation of injunction or other order**

15 The Federal Court may discharge or vary an injunction or order
16 granted under this Subdivision.

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

18 **152BDN Register of Binding Rules of Conduct**

- 19 (1) The Commission is to maintain a register, to be known as the
20 Register of Binding Rules of Conduct, in which the Commission
21 includes all binding rules of conduct in force.
- 22 (2) The Register is to be maintained by electronic means.
- 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 (5) If the Commission is satisfied that:
- 27 (a) publication of a particular provision of binding rules of
28 conduct could reasonably be expected to prejudice
29 substantially the commercial interests of a person; and
30 (b) the prejudice outweighs the public interest in the publication
31 of the provision;

1 the Commission may remove the provision from the version of the
2 rules that is included in the Register.

3 (6) If the Commission does so, the Commission must include in the
4 Register an annotation to that effect.

5 **Division 4B—Access agreements**

6 **152BE Access agreements**

7 (1) For the purposes of this Part, an *access agreement* is an agreement,
8 where:

- 9 (a) the agreement is in writing; and
10 (b) the agreement is legally enforceable; and
11 (c) the agreement relates to access to a declared service; and
12 (d) the parties to the agreement are:
13 (i) an access seeker; and
14 (ii) the carrier or carriage service provider who supplies, or
15 proposes to supply, the declared service; and
16 (e) any of the following subparagraphs applies:
17 (i) the agreement embodies any or all of the terms and
18 conditions on which the carrier or carriage service
19 provider is to comply with any or all of the standard
20 access obligations applicable to the carrier or provider;
21 (ii) if an access determination imposes requirements on a
22 carrier or carriage service provider in relation to access
23 to the declared service, as mentioned in paragraph
24 152BC(3)(e)—the agreement embodies any or all of the
25 terms and conditions on which the carrier or carriage
26 service provider is to comply with any or all of those
27 requirements;
28 (iii) the agreement embodies any other terms and conditions
29 of the access seeker's access to the declared service;
30 (iv) the agreement requires the carrier or carriage service
31 provider to comply with any or all of the standard
32 access obligations applicable to the carrier or provider
33 in a manner specified in the agreement;
34 (v) the agreement requires the carrier or carriage service
35 provider to extend or enhance the capability of a facility
36 by means of which the declared service is supplied;
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- 1 (vi) the agreement imposes other requirements on the carrier
2 or carriage service provider in relation to access to the
3 declared service;
- 4 (vii) the agreement specifies the terms and conditions on
5 which the carrier or carriage service provider is to
6 comply with any or all of those other requirements;
- 7 (viii) the agreement requires the access seeker to accept, and
8 pay for, access to the declared service;
- 9 (ix) the agreement provides that any or all of the obligations
10 referred to in section 152AR are not applicable to the
11 carrier or carriage service provider, either
12 unconditionally or subject to such conditions or
13 limitations as are specified in the agreement;
- 14 (x) the agreement restricts or limits the application to the
15 carrier or carriage service provider of any or all of the
16 obligations referred to in section 152AR;
- 17 (xi) the agreement deals with any other matter relating to
18 access to the declared service.
- 19 (1A) Paragraph (1)(b) does not apply to the agreement to the extent (if
20 any) to which the agreement is covered by subparagraph (1)(e)(ix)
21 or (x).
- 22 (2) If:
- 23 (a) an agreement relates to access to an eligible service (within
24 the meaning of section 152AL); and
- 25 (b) at the time the agreement was entered into to, the eligible
26 service was a not a declared service; and
- 27 (c) at a later time (the *declaration time*), the eligible service
28 becomes a declared service; and
- 29 (d) if the agreement had been entered into immediately after the
30 declaration time, the agreement would have been an access
31 agreement;
- 32 the agreement becomes an *access agreement* immediately after the
33 declaration time.
- 34 (3) If:
- 35 (a) an access agreement is varied by another agreement (the
36 *variation agreement*); and
- 37 (b) the variation agreement is in writing; and

- 1 (c) the variation agreement is legally enforceable;
2 a reference in this Part to the *access agreement* is a reference to the
3 access agreement as varied by the variation agreement.
- 4 (4) It is immaterial whether an access agreement or variation
5 agreement was entered into before or after the commencement of
6 this section.
- 7 (5) An access agreement is not a legislative instrument.
- 8 (6) A variation agreement is not a legislative instrument.

9 **152BEA Lodgment of access agreements with the Commission**

- 10 (1) If:
- 11 (a) an access agreement is covered by subsection 152BE(1); and
12 (b) the agreement was entered into after the commencement of
13 this 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 day on which the agreement was entered into, give
17 the Commission:
- 18 (c) a copy of the agreement; and
19 (d) a written statement setting out such information (if any)
20 about the agreement as is specified in an instrument in force
21 under subsection (4).
- 22 (2) If:
- 23 (a) under subsection 152BE(2), an agreement becomes an access
24 agreement after the commencement of this section; and
25 (b) the agreement was entered into after the commencement of
26 this 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 day on which the agreement became an access
30 agreement, give the Commission:
- 31 (c) a copy of the agreement; and
32 (d) a written statement setting out such information (if any)
33 about the agreement as is specified in an instrument in force
34 under subsection (5).

- 1 (3) If a variation agreement is entered into after the commencement of
2 this section, the carrier or carriage service provider who supplies,
3 or proposes to supply, the service to which the relevant access
4 agreement relates must, within 28 days after the day on which the
5 variation agreement was entered into, give the Commission:
6 (a) a copy of the variation agreement; and
7 (b) a written statement setting out such information (if any)
8 about the variation agreement as is specified in an instrument
9 in force under subsection (6).
- 10 (4) The Commission may, by writing, specify information for the
11 purposes of paragraph (1)(d).
- 12 (5) The Commission may, by writing, specify information for the
13 purposes of paragraph (2)(d).
- 14 (6) The Commission may, by writing, specify information for the
15 purposes of paragraph (3)(b).
- 16 (7) The Commission may, by writing, require information in a
17 statement given to the Commission under subsection (1), (2) or (3)
18 to be verified by statutory declaration.
- 19 (8) The Commission must publish an instrument under subsection (4),
20 (5), (6) or (7) on the Commission's website.
- 21 (9) The Commission may, before the end of the 28-day period referred
22 to in subsection (1), (2) or (3), extend that period.
- 23 (10) An instrument under subsection (4), (5), (6) or (7) is not a
24 legislative instrument.
- 25 (11) This section does not limit section 155.

26 **152BEB Notification of termination of access agreement**

- 27 (1) This section applies if:
28 (a) a copy of an access agreement has been given to the
29 Commission under section 152BEA; and
30 (b) the agreement is terminated, rescinded or cancelled before
31 the expiry of the agreement.
- 32 (2) The carrier or carriage service provider who supplied, or proposed
33 to supply, the service to which the agreement relates must, within
-

1 28 days after the termination, rescission or cancellation, as the case
2 may be, notify the Commission, in writing, of the termination,
3 rescission or cancellation.

4 **152BEC Carrier licence condition**

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

7 **152BED Service provider rule**

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

11 (2) A carriage service provider must comply with sections 152BEA
12 and 152BEB.

13 **161 Subdivision A of Division 5 of Part XIC**

14 Repeal the Subdivision.

15 **162 Subsection 152CBA(1)**

16 Omit “an active”, substitute “a”.

17 **163 Before subsection 152CBA(4)**

18 Insert:

19 (3B) The undertaking may also state, in the event that the person
20 supplies the service (whether to itself or to other persons), the
21 person:

22 (a) will engage in specified conduct in relation to access to the
23 service; and

24 (b) will do so on such terms and conditions as are specified in
25 the undertaking.

26 **164 Subsection 152CBA(10)**

27 Repeal the subsection, substitute:

28 (10) If the undertaking expires, this Part does not prevent the person
29 from giving a fresh special access undertaking in the same terms as
30 the expired undertaking.

1 **165 Before subsection 152CBA(11)**

2 Insert:

3 *Commission may perform functions or exercise powers*

- 4 (10A) If the undertaking provides for the Commission to perform
5 functions or exercise powers in relation to the undertaking, the
6 Commission may perform those functions, and exercise those
7 powers, in accordance with the undertaking.

8 **166 After section 152CBA**

9 Insert:

10 **152CBAA Fixed principles terms and conditions**

- 11 (1) A special access undertaking may provide that a term or condition
12 specified in the undertaking is a ***fixed principles term or condition***
13 for a period that, under the undertaking, is expressed to be the
14 ***notional fixed period*** for the fixed principles term or condition.
- 15 (2) If the undertaking does so, the undertaking may also provide that
16 one or more specified circumstances are ***qualifying circumstances***
17 in relation to the fixed principles term or condition.
- 18 (3) The notional fixed period for a fixed principles term or condition
19 must:
- 20 (a) begin when the undertaking comes into operation; and
 - 21 (b) end:
 - 22 (i) at the expiry time of the undertaking; or
 - 23 (ii) if an earlier time is ascertained in accordance with the
24 undertaking—at that earlier time; or
 - 25 (iii) if a later time is ascertained in accordance with the
26 undertaking—at that later time.
- 27 (4) If:
- 28 (a) a fixed principles term or condition is specified in a special
29 access undertaking; and
 - 30 (b) the undertaking ceases to be in operation before the end of
31 the notional fixed period for the fixed principles term or
32 condition;

1 the fixed principles term or condition ceases to be in operation
2 when the undertaking ceases to be in operation.

3 Note: Even though the fixed principles term or condition ceases to be in
4 operation when the undertaking ceases to be in operation,
5 subsection (5) ensures that a fresh undertaking can include an identical
6 fixed principles term or condition.

7 *Consequences—acceptance of other undertaking*

8 (5) If:

- 9 (a) a special access undertaking (the **original undertaking**) given
10 by a person in relation to a particular service contained a
11 fixed principles term or condition (the **original fixed**
12 **principles term or condition**); and
13 (b) the original undertaking was accepted by the Commission;
14 and
15 (c) during the notional fixed period for the original fixed
16 principles term or condition, the person gives the
17 Commission another special access undertaking (the **other**
18 **undertaking**) in relation to the service; and
19 (d) the other undertaking contains a fixed principles term or
20 condition (the **corresponding fixed principles term or**
21 **condition**) that is identical to the original fixed principles
22 term or condition; and
23 (e) the notional fixed period for the corresponding fixed
24 principles term or condition ends at or before the end of the
25 notional fixed period for the original fixed principles term or
26 condition; and
27 (f) if there are qualifying circumstances in relation to the
28 original fixed principles term or condition:
29 (i) there are qualifying circumstances in relation to the
30 corresponding fixed principles term or condition; and
31 (ii) those qualifying circumstances are identical to the
32 qualifying circumstances in relation to the original fixed
33 principles term or condition; and
34 (g) if there are qualifying circumstances in relation to the
35 original fixed principles term or condition—none of those
36 circumstances exist;
37 then:
38 (h) the Commission must not reject the other undertaking for a
39 reason that concerns:
-

- 1 (i) the corresponding fixed principles term or condition; or
2 (ii) the notional fixed period for the corresponding fixed
3 principles term or condition; or
4 (iii) if there are qualifying circumstances in relation to the
5 corresponding fixed principles term or condition—the
6 specification of those circumstances; and
7 (i) paragraphs 152CBD(2)(a), (b), (c) and (ca) do not apply to:
8 (i) the corresponding fixed principles term or condition; or
9 (ii) the notional fixed period for the corresponding fixed
10 principles term or condition; or
11 (iii) if there are qualifying circumstances in relation to the
12 corresponding fixed principles term or condition—those
13 circumstances; and
14 (j) if the corresponding fixed principles term or condition is the
15 only term or condition contained in the other undertaking—
16 paragraph 152CBD(2)(d) does not apply to the other
17 undertaking; and
18 (k) if the corresponding fixed principles term or condition is not
19 the only term or condition contained in the other
20 undertaking—subparagraph 152CBD(2)(d)(ii) does not
21 require the Commission to consider any submissions to the
22 extent to which they relate to:
23 (i) the corresponding fixed principles term or condition; or
24 (ii) the notional fixed period for the corresponding fixed
25 principles term or condition; or
26 (iii) if there are qualifying circumstances in relation to the
27 corresponding fixed principles term or condition—those
28 circumstances.

29 *Consequences—variation of undertaking*

- 30 (6) If:
31 (a) a special access undertaking given by a person in relation to a
32 particular service contains a fixed principles term or
33 condition (the ***original fixed principles term or condition***);
34 and
35 (b) the undertaking has been accepted by the Commission; and
36 (c) during the notional fixed period for the original fixed
37 principles term or condition, the person gives the
38 Commission a variation of the undertaking; and
-

- 1 (d) the varied undertaking contains a fixed principles term or
2 condition (the *corresponding fixed principles term or*
3 *condition*) that is identical to the original fixed principles
4 term or condition; and
5 (e) the notional fixed period for the corresponding fixed
6 principles term or condition is identical to the notional fixed
7 period for the original fixed principles term or condition; and
8 (f) if there are qualifying circumstances in relation to the
9 original fixed principles term or condition:
10 (i) there are qualifying circumstances in relation to the
11 corresponding fixed principles term or condition; and
12 (ii) those qualifying circumstances are identical to the
13 qualifying circumstances in relation to the original fixed
14 principles term or condition; and
15 (g) if there are qualifying circumstances in relation to the
16 original fixed principles term or condition—none of those
17 circumstances exist;
18 the Commission must not reject the variation for a reason that
19 concerns:
20 (h) the corresponding fixed principles term or condition; or
21 (i) the notional fixed period for the corresponding fixed
22 principles term or condition; or
23 (j) if there are qualifying circumstances in relation to the
24 corresponding fixed principles term or condition—the
25 specification of those circumstances.

26 **167 Before paragraph 152CBC(6)(a)**

27 Insert:

- 28 (aa) if:
29 (i) the Commission has given a notice under
30 section 152CBDA in relation to the undertaking; and
31 (ii) no varied undertaking was given to the Commission in
32 response to the notice;
33 a day in the period specified in the notice; and
34 (ab) if:
35 (i) the Commission has given a notice under
36 section 152CBDA in relation to the undertaking; and
37 (ii) a varied undertaking was given to the Commission in
38 response to the notice; and

- 1 (iii) the Commission did not publish the varied undertaking
2 under paragraph 152CBD(2)(d);
3 a day in the period:
4 (iv) beginning on the day in which the notice was given; and
5 (v) ending when the varied undertaking was given to the
6 Commission in response to the notice; and
7 (ac) if:
8 (i) the Commission has given a notice under
9 section 152CBDA in relation to the undertaking; and
10 (ii) a varied undertaking was given to the Commission in
11 response to the notice; and
12 (iii) the varied undertaking was published under paragraph
13 152CBD(2)(d);
14 a day in the period:
15 (iv) beginning on the day on which the notice was given;
16 and
17 (v) ending at the end of the time specified by the
18 Commission when it published the varied undertaking;
19 and

20 **168 Paragraph 152CBC(6)(a)**

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

22 **169 After section 152CBC**

23 Insert:

24 **152BCA Serial undertakings**

25 If:

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

1 the Commission may refuse to consider the other special access
2 undertaking.

3 **170 After paragraph 152CBD(2)(c)**

4 Insert:

- 5 (ca) if subsection 152CBA(3B) applies—the Commission is
6 satisfied that:
- 7 (i) the conduct referred to in paragraph 152CBA(3B)(a)
8 will promote the long-term interests of end-users of
9 carriage services or of services supplied by means of
10 carriage services; and
 - 11 (ii) the terms and conditions referred to in paragraph
12 152CBA(3B)(b) are reasonable; and

13 **171 At the end of section 152CBD**

14 Add:

- 15 (3) Subsection (2) has effect subject to subsection 152CBAA(5) (fixed
16 principles terms and conditions).
- 17 (4) If the undertaking provides that a term or condition specified in the
18 undertaking is a **fixed principles term or condition** for a period
19 that, under the undertaking, is expressed to be the **notional fixed**
20 **period** for the fixed principles term or condition, the Commission
21 must refuse to accept the undertaking if the Commission considers
22 that:
- 23 (a) the fixed principles term or condition should not be a fixed
24 principles term or condition; or
 - 25 (b) that notional fixed period should not be the notional fixed
26 period for the fixed principles term or condition; or
 - 27 (c) if the undertaking provides that one or more specified
28 circumstances are qualifying circumstances in relation to the
29 fixed principles term or condition—any of the qualifying
30 circumstances should not be qualifying circumstances in
31 relation to the fixed principles term or condition; or
 - 32 (d) if the undertaking does not provide that particular
33 circumstances are qualifying circumstances in relation to the
34 fixed principles term or condition—those circumstances
35 should be qualifying circumstances in relation to the fixed
36 principles term or condition.

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

12 **172 After section 152CBD**

13 Insert:

14 **152CBDA Variation of special access undertaking**

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

32 **173 After subsection 152CBG(4)**

33 Insert:

1 (4A) Subsection (4) has effect subject to subsection 152CBAA(6) (fixed
2 principles terms and conditions).

3 **174 After section 152CBI**

4 Insert:

5 **152CBIA Special access undertakings prevail over inconsistent**
6 **access determinations**

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

9 **152CBIB Special access undertakings prevail over inconsistent**
10 **binding rules of conduct**

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

14 **152CBIC Access agreements prevail over special access**
15 **undertakings**

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

18 **175 Subsection 152CC(2)**

19 Omit “may”, substitute “is to”.

20 **176 Subsections 152CC(3), (4) and (5)**

21 Repeal the subsections, substitute:

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

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

25 **177 Sections 152CE, 152CF, 152CG and 152CGA**

26 Repeal the sections.

27 **178 Section 152CGB**

28 Repeal the section.

1 **179 Subsection 152CH(1) (notes 1A, 1B, 2 and 3)**

2 Repeal the notes.

3 **180 Subsection 152CH(1) (note 5)**

4 Repeal the note, substitute:

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

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

11 **181 Subsection 152CH(1) (note 6)**

12 Repeal the note.

13 **182 Subsection 152CI(2)**

14 Repeal the subsection, substitute:

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

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

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

23 **183 Subsection 152CJ(2)**

24 Omit “may”, substitute “is to”.

25 **184 Subsections 152CJ(3), (4) and (5)**

26 Repeal the subsections, substitute:

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

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

30 **185 Division 8 of Part XIC**

31 Repeal the Division.

1 **186 Division 9 of Part XIC**

2 Repeal the Division.

3 **187 Paragraph 152EF(1)(b)**

4 Repeal the paragraph, substitute:

5 (b) a requirement imposed by an access determination; or

6 (ba) a requirement imposed by binding rules of conduct;

7 **188 Subparagraph 152ELA(3)(a)(i)**

8 Omit “152AT(1) or”.

9 **189 Subparagraph 152ELA(3)(a)(ii)**

10 Omit “or” (last occurring).

11 **190 Subparagraph 152ELA(3)(a)(iii)**

12 Repeal the subparagraph.

13 **191 Paragraph 152ELA(3)(b)**

14 Repeal the paragraph.

15 **192 Paragraph 152ELA(3)(c)**

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

17 **193 Paragraph 152ELA(3)(d)**

18 Repeal the paragraph.

19 **194 Subsections 152ELA(6) and (7)**

20 Repeal the subsections, substitute:

21 (6) Subsection (5) does not limit subsection (1).

22 **195 Before section 152EM**

23 Insert:

24 **152ELD Compensation for acquisition of property**

25 (1) If the operation of this Part would result in an acquisition of
26 property from a person otherwise than on just terms, the

- 1 Commonwealth is liable to pay a reasonable amount of
2 compensation to the person.
- 3 (2) If the Commonwealth and the person do not agree on the amount
4 of the compensation, the person may institute proceedings in a
5 court of competent jurisdiction for the recovery from the
6 Commonwealth of such reasonable amount of compensation as the
7 court determines.
- 8 (3) In this section:
- 9 *acquisition of property* has the same meaning as in paragraph
10 51(xxxi) of the Constitution.
- 11 *just terms* has the same meaning as in paragraph 51(xxxi) of the
12 Constitution.
- 13 *this Part* includes Division 2 of Part 2 of Schedule 1 to the
14 *Telecommunications Legislation Amendment (Competition and*
15 *Consumer Safeguards) Act 2010.*

16 **196 Subsection 155AAA(21) (subparagraph (c)(i) of the**
17 **definition of *protected information*)**

18 Omit “152BT, 152BZ.”

19 **197 Subsection 171B(1)**

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

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

25 **Division 2—Transitional provisions**

26 **198 Definitions**

27 In this Division:

28 *access agreement* has the same meaning as in Part XIC of the
29 *Competition and Consumer Act 2010* as amended by this Part.

30 *access determination* has the same meaning as in Part XIC of the
31 *Competition and Consumer Act 2010* as amended by this Part.

1 *binding rules of conduct* has the same meaning as in Part XIC of the
2 *Competition and Consumer Act 2010* as amended by this Part.

3 **199 Transitional—certificates under subclause 33(3) of**
4 **Schedule 1 to the *Telecommunications Act 1997***

- 5 (1) This item applies to a certificate if:
6 (a) the certificate was issued under subclause 33(3) of
7 Schedule 1 to the *Telecommunications Act 1997* before the
8 commencement of this item; and
9 (b) the certificate was in force immediately before that
10 commencement.
- 11 (2) The certificate has effect, after the commencement of this item, as if it
12 had been issued by the ACCC under subclause 33(3) of Schedule 1 to
13 the *Telecommunications Act 1997* as amended by this Part.

14 **200 Transitional—certificates under subclause 34(3) of**
15 **Schedule 1 to the *Telecommunications Act 1997***

- 16 (1) This item applies to a certificate if:
17 (a) the certificate was issued under subclause 34(3) of
18 Schedule 1 to the *Telecommunications Act 1997* before the
19 commencement of this item; and
20 (b) the certificate was in force immediately before that
21 commencement.
- 22 (2) The certificate has effect, after the commencement of this item, as if it
23 had been issued by the ACCC under subclause 34(3) of Schedule 1 to
24 the *Telecommunications Act 1997* as amended by this Part.

25 **201 Transitional—certificates under subclause 35(3) of**
26 **Schedule 1 to the *Telecommunications Act 1997***

- 27 (1) This item applies to a certificate if:
28 (a) the certificate was issued under subclause 35(3) of
29 Schedule 1 to the *Telecommunications Act 1997* before the
30 commencement of this item; and
31 (b) the certificate was in force immediately before that
32 commencement.

- 1 (2) The certificate has effect, after the commencement of this item, as if it
2 had been issued by the ACCC under subclause 35(3) of Schedule 1 to
3 the *Telecommunications Act 1997* as amended by this Part.

4 **202 Transitional—ordinary class exemptions from standard**
5 **access obligations**

- 6 (1) This item applies to a determination that:
7 (a) was made under section 152AS of the *Competition and*
8 *Consumer Act 2010*; and
9 (b) was in force immediately before the commencement of this
10 item.

- 11 (2) Despite:
12 (a) the repeal of section 152AS of the *Competition and*
13 *Consumer Act 2010* effected by this Part; and
14 (b) the amendment of paragraph 152BBAA(1)(a) of that Act
15 made by this Part;

16 that section and that paragraph continue to apply, in relation to the
17 determination, as if that repeal had not happened and that amendment
18 had not been made. This subitem has effect subject to the following
19 subitem.

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

23 **203 Transitional—ordinary individual exemptions from**
24 **standard access obligations**

- 25 (1) This item applies to a determination that:
26 (a) was made under section 152AT of the *Competition and*
27 *Consumer Act 2010*; and
28 (b) was in force immediately before the commencement of this
29 item.

- 30 (2) Despite:
31 (a) the repeal of section 152AT of the *Competition and*
32 *Consumer Act 2010* effected by this Part; and
33 (b) the amendment of paragraph 152BBAA(1)(b) of that Act
34 made by this Part;

1 that section and that paragraph continue to apply, in relation to the
2 determination, as if that repeal had not happened and that amendment
3 had not been made. This subitem has effect subject to the following
4 subitem.

5 (3) The determination ceases to have effect, to the extent to which it relates
6 to a particular declared service, when the first access determination
7 relating to access to the declared service comes into force.

8 **204 Transitional—ordinary access undertakings given to the**
9 **Commission before 15 September 2009**

10 (1) This item applies to an ordinary access undertaking that:

- 11 (a) was given by a carrier or carriage service provider to the
12 Commission under section 152BS of the *Competition and*
13 *Consumer Act 2010* before 15 September 2009; and
14 (b) was accepted by the Commission under section 152BU of
15 that Act before the commencement of this item; and
16 (c) was in operation immediately before the commencement of
17 this item.

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

- 20 (a) the repeal of Subdivision A of Division 5 of Part XIC of the
21 *Competition and Consumer Act 2010*;
22 (b) the amendment of the definition of *access undertaking* in
23 section 152AC of that Act;
24 (c) the repeal of the definition of *ordinary access undertaking* in
25 section 152AC of that Act;
26 (d) the amendment of subparagraph (c)(i) of the definition of
27 *protected information* in subsection 155AAA(21) of that
28 Act;

29 that Subdivision and those definitions continue to apply, in relation to
30 the undertaking, as if those repeals had not happened and those
31 amendments had not been made. This subitem has effect subject to the
32 following subitems.

33 (3) The undertaking cannot be varied so as to extend its duration.

34 (4) If the undertaking adopts a set of model terms and conditions set out in
35 the telecommunications access code, then, despite the repeal of

1 sections 152BJ and 152BK of the *Competition and Consumer Act 2010*,
2 those sections continue to apply, in relation to the undertaking, as if
3 those repeals had not happened.

4 (5) If the undertaking is inconsistent with an access agreement, the
5 undertaking has no effect to the extent of the inconsistency.

6 **205 Transitional—ordinary access undertakings given to the**
7 **Commission on or after 15 September 2009**

8 (1) This item applies to an ordinary access undertaking that:

- 9 (a) was given to the Commission under section 152BS of the
10 *Competition and Consumer Act 2010* on or after
11 15 September 2009; and
12 (b) was accepted by the Commission under section 152BU of
13 that Act before the commencement of this item; and
14 (c) was in operation immediately before the commencement of
15 this item.

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

- 18 (a) the repeal of Subdivision A of Division 5 of Part XIC of the
19 *Competition and Consumer Act 2010*;
20 (b) the amendment of the definition of ***access undertaking*** in
21 section 152AC of that Act;
22 (c) the repeal of the definition of ***ordinary access undertaking*** in
23 section 152AC of that Act;
24 (d) the amendment of subparagraph (c)(i) of the definition of
25 ***protected information*** in subsection 155AAA(21) of that
26 Act;

27 that Subdivision and those definitions continue to apply, in relation to
28 the undertaking, as if those repeals had not happened and those
29 amendments had not been made. This subitem has effect subject to the
30 following subitems.

31 (3) The undertaking cannot be varied so as to extend its duration.

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

1 (5) If the undertaking adopts a set of model terms and conditions set out in
2 the telecommunications access code, then, despite the repeal of
3 sections 152BJ and 152BK of the *Competition and Consumer Act 2010*,
4 those sections continue to apply, in relation to the undertaking, as if
5 those repeals had not happened.

6 (6) If the undertaking is inconsistent with an access agreement, the
7 undertaking has no effect to the extent of the inconsistency.

8 **206 Transitional—continuity of special access undertakings**

9 The amendment of subsection 152CBA(1) of the *Competition and*
10 *Consumer Act 2010* made by this Part does not affect the continuity of a
11 special access undertaking that was in operation immediately before the
12 commencement of this item.

13 **207 Transitional—arbitration of access disputes**

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

- 16 (a) the repeal of Division 8 of Part XIC of the *Competition and*
17 *Consumer Act 2010*;
18 (b) the amendment of the definition of *pre-request right* in
19 subsection 152AR(12) of that Act;
20 (c) the repeal of subsection 152BBC(5) of that Act;
21 (d) the repeal of section 152CGB of that Act;
22 (e) the amendments of section 152ELA of that Act;
23 (f) the amendment of subsection 171B(1) of that Act;

24 that Division, that definition, and those sections and subsections
25 continue to apply as if those repeals had not happened and those
26 amendments had not been made. This subitem has effect subject to the
27 following subitems.

28 (2) If:

- 29 (a) a declared service is supplied, or proposed to be supplied, by
30 a carrier or a carriage service provider; and
31 (b) one or more standard access obligations apply, or will apply,
32 to the carrier or provider in relation to the declared service;
33 and

- 1 (c) an access seeker is unable to agree with the carrier or
2 provider about one or more aspects of access to the declared
3 service;
- 4 then:
- 5 (d) if the declared service was a declared service immediately
6 before the commencement of this item—a person is not
7 entitled to notify an access dispute to the Commission under
8 section 152CM of the *Competition and Consumer Act 2010*
9 at any time after the first final access determination relating
10 to access to the declared service has come into force; or
- 11 (e) otherwise—a person is not entitled to notify an access dispute
12 to the Commission under section 152CM of the *Competition*
13 *and Consumer Act 2010*.
- 14 (3) If:
- 15 (a) a declared service is supplied, or proposed to be supplied, by
16 a carrier or a carriage service provider; and
- 17 (b) one or more standard access obligations apply, or will apply,
18 to the carrier or provider in relation to the declared service;
19 and
- 20 (c) an access seeker is unable to agree with the carrier or
21 provider about the terms and conditions on which the carrier
22 or provider is to comply with those obligations;
- 23 then:
- 24 (d) if the declared service was a declared service immediately
25 before the commencement of this item—a person is not
26 entitled to notify an access dispute to the Commission under
27 section 152CM of the *Competition and Consumer Act 2010*
28 at any time after the first final access determination relating
29 to access to the declared service has come into force; or
- 30 (e) otherwise—a person is not entitled to notify an access dispute
31 to the Commission under section 152CM of the *Competition*
32 *and Consumer Act 2010*.
- 33 (3A) If:
- 34 (a) a declared service is supplied, or proposed to be supplied, by
35 Telstra; and
- 36 (b) one or more standard access obligations apply, or will apply,
37 to Telstra in relation to the declared service; and

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- 1 (c) an access agreement relating to access to the declared
2 service:
3 (i) is in force between an NBN corporation (within the
4 meaning of section 577BA of the *Telecommunications*
5 *Act 1997*) and Telstra; and
6 (ii) is specified in an undertaking in force under
7 section 577A of the *Telecommunications Act 1997*; and
8 (d) the access agreement was entered into before the first final
9 access determination relating to access to the declared service
10 has come into force;

11 neither Telstra nor the NBN corporation is entitled to notify an access
12 dispute to the Commission under section 152CM of the *Competition*
13 *and Consumer Act 2010* in relation to the declared service.

- 14 (4) A final determination made by the Commission under Division 8 of
15 Part XIC of the *Competition and Consumer Act 2010* after the
16 commencement of this item must specify an expiry date for the
17 determination. Unless sooner revoked, the determination ceases to be in
18 force on the expiry date for the determination.

- 19 (5) If:
20 (a) an access agreement relating to access to a declared service is
21 entered into before the first final access determination
22 relating to access to the declared service has come into force;
23 and
24 (b) the access agreement is inconsistent with a determination
25 under Division 8 of Part XIC of the *Competition and*
26 *Consumer Act 2010*;
27 the access agreement has no effect to the extent of the
28 inconsistency.

- 29 (6) If a determination under Division 8 of Part XIC of the *Competition and*
30 *Consumer Act 2010*:
31 (a) does not have an expiry date; and
32 (b) is inconsistent with a final access determination;
33 the first-mentioned determination has no effect to the extent of the
34 inconsistency.

- 35 (7) If:
-

- 1 (a) a final access determination is inconsistent with a
2 determination under Division 8 of Part XIC of the
3 *Competition and Consumer Act 2010*; and
4 (b) the determination under Division 8 of Part XIC of the
5 *Competition and Consumer Act 2010* has an expiry date;
6 the final access determination has no effect to the extent of the
7 inconsistency.
- 8 (8) If an interim access determination is inconsistent with a determination
9 under Division 8 of Part XIC of the *Competition and Consumer Act*
10 *2010*, the interim access determination has no effect to the extent of the
11 inconsistency.
- 12 (9) If a determination under Division 8 of Part XIC of the *Competition and*
13 *Consumer Act 2010*:
14 (a) does not have an expiry date; and
15 (b) is inconsistent with binding rules of conduct;
16 the determination has no effect to the extent of the inconsistency.
- 17 (10) If:
18 (a) binding rules of conduct are inconsistent with a
19 determination under Division 8 of Part XIC of the
20 *Competition and Consumer Act 2010*; and
21 (b) the determination under Division 8 of Part XIC of the
22 *Competition and Consumer Act 2010* has an expiry date;
23 the binding rules of conduct have no effect to the extent of the
24 inconsistency.
- 25 (11) If a determination under Division 8 of Part XIC of the *Competition and*
26 *Consumer Act 2010* relating to access to a declared service is
27 inconsistent with an access agreement that was entered into after the
28 first final access determination relating to access to the declared service
29 has come into force, the first-mentioned determination has no effect to
30 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 *Competition and Consumer Act 2010*
33 (without making a determination under that Division) if the
34 Commission 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 **208 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 *Competition and*
15 *Consumer Act 2010* is in force, and the determination
16 specifies any or all of the terms and conditions on which
17 the carrier or carriage service provider is to comply with
18 any of the standard 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

- 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 *Competition and*
10 *Consumer Act 2010* specifies terms and conditions
11 about that matter;
12 on such terms and conditions relating to that matter as are set
13 out in the determination; or
14 (e) if:
15 (i) none of the above paragraphs applies to terms and
16 conditions about a particular matter; and
17 (ii) an access determination specifies terms and conditions
18 about that matter;
19 on such terms and conditions relating to that matter as are set
20 out in the access determination.

21 Note 1: Subitems 204(5), 205(6) and 207(5) to (11) of this Schedule, and sections 152BCC,
22 152BDB, 152BDE, 152CBIA, 152CBIB, 152CBIC and 152CGB of the *Competition*
23 *and Consumer Act 2010*, which deal with inconsistency, should be read and applied
24 before this item is read and applied.

25 Note 2: Even though subitem (2) mentions binding rules of conduct, binding rules of conduct
26 may only be made if the Commission considers that there is an urgent need to do so.

- 27 (3) Section 152AY of the *Competition and Consumer Act 2010* as amended
28 by this Part does not apply in relation to compliance by the carrier or
29 carriage service provider with the standard access obligations.

30 **209 Transitional—hindering the fulfilment of an obligation** 31 **imposed by an arbitration determination**

32 In addition to its effect apart from this item, section 152EF of the
33 *Competition and Consumer Act 2010* as amended by this Part also has
34 the effect it would have if the reference in paragraph (1)(a) of that
35 section to a standard access obligation included a reference to an
36 obligation imposed by a determination made by the Commission under
37 Division 8 of Part XIC of the *Competition and Consumer Act 2010*.

1 **210 Transitional—regulations**

2 The Governor-General may make regulations in relation to transitional
3 matters arising out of the amendments made by this Part.
4

1 **Part 3—Anti-competitive conduct**

2 **Division 1—Amendments**

3 *Competition and Consumer Act 2010*

4 **211 At the end of section 151AF (before the note)**

5 Add:
6 ; (d) content services.

7 **212 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 **213 Application—competition notices**

17 The amendment of section 151AKA of the *Competition and Consumer*
18 *Act 2010* made by this Part applies in relation to Part A competition
19 notices 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 **214 Subsection 5(2)**

5 Insert:

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

8 **215 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 **216 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 **217 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 **218 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 **219 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 **220 Subsection 9(4)**

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

1 **221 Subsection 9(5)**

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

3 **222 Subsection 9(6)**

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

5 **223 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 **224 Subsection 12C(1)**

14 Omit “take all reasonable steps to”.

15 **225 After Subdivision B of Division 5 of Part 2**

16 Insert:

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

18 **12EB Performance standards**

19 *Determination*

- 20 (1) The Minister may make a written determination setting out
21 standards to be complied with by a primary universal service
22 provider in relation to any or all of the following matters:
- 23 (a) the terms and conditions of the supply of a standard
24 telephone service to a customer, other than price-related
25 terms and conditions;
 - 26 (b) the reliability of a standard telephone service supplied to a
27 customer;
 - 28 (c) the supply of a temporary standard telephone service to a
29 customer;

- 1 (d) the maximum period within which a primary universal
2 service provider must supply a standard telephone service
3 following the making of a request by a prospective customer;
4 (e) the maximum period within which a primary universal
5 service provider must rectify a fault or service difficulty
6 relating to a standard telephone service following the making
7 of a report by a customer about the fault or service difficulty;
8 (f) any other matter concerning the supply, or proposed supply,
9 of a standard telephone service to a customer or prospective
10 customer.

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

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

15 *Compliance*

16 (4) A primary universal service provider must comply with a standard
17 in force under subsection (1).

18 *Determination prevails over inconsistent instruments*

- 19 (5) 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 *Service supplied in fulfilment of the universal service obligation*

27 (6) This section does not apply to a standard telephone service unless
28 the service is supplied, or proposed to be supplied, in fulfilment of
29 the universal service obligation.

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

32 *Determination is a legislative instrument*

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

1 **12EC Performance benchmarks**

2 *Determination*

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

27 *Determination prevails over inconsistent instruments*

- 28 (4) Each of the following instruments:
29 (a) an approved policy statement for a primary universal service
30 provider;
31 (b) an approved standard marketing plan for a primary universal
32 service provider;
33 has no effect to the extent to which the instrument is inconsistent
34 with a determination in force under subsection (1).

1 *Determination is a legislative instrument*

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

3 *Performance benchmarks*

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

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

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

11 *Provider must meet or exceed minimum benchmarks*

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

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

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

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

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

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

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

1 **Subdivision BB—Payphone requirements**

2 **12ED 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 characteristics of a payphone carriage service;
8 (b) the supply, installation or maintenance of a payphone;
9 (c) the supply of a payphone carriage service;
10 (d) the reliability of a payphone;
11 (e) the reliability of a payphone carriage service;
12 (f) the maximum period within which a primary universal
13 service provider must rectify a fault or service difficulty
14 relating to a payphone following the making of a report about
15 a fault or service difficulty;
16 (g) the maximum period within which a primary universal
17 service provider must rectify a fault or service difficulty
18 relating to a payphone carriage service following the making
19 of a report about a fault or service difficulty;
20 (h) the handling of requests for the removal of a payphone;
21 (i) any other matter concerning:
22 (i) the supply, installation or maintenance of a payphone;
23 or
24 (ii) the supply of a payphone carriage service.
- 25 (2) A determination under subsection (1) may be of general
26 application or may be limited as provided in the determination.
- 27 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of
28 the *Acts Interpretation Act 1901*.

29 *Compliance*

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

1 *Determination prevails over inconsistent instruments*

- 2 (5) 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 (6) A determination under subsection (1) is a legislative instrument.

11 **12EE Performance benchmarks**

12 *Determination*

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

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

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

5 *Determination prevails over inconsistent instruments*

6 (4) Each of the following instruments:

7 (a) an approved policy statement for a primary universal service
8 provider;

9 (b) an approved standard marketing plan for a primary universal
10 service provider;

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

13 *Determination is a legislative instrument*

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

15 *Performance benchmarks*

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

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

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

23 *Provider must meet or exceed minimum benchmarks*

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

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

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

Schedule 1 Amendments
Part 4 Universal service regime

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

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

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

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

10 **12EF Rules about the location 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 places or areas in which payphones are to be located.

14 *Compliance*

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

17 (3) If a primary universal service provider complies with a
18 determination under subsection (1), the provider is taken to have
19 complied with an obligation under paragraph 9(1)(b) or subsection
20 9(2A), to the extent to which the obligation relates to the location
21 of payphones.

22 *Determination prevails over inconsistent instruments*

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

30 *Determination is a legislative instrument*

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

1 **12EG Rules about the process for public consultation on the location**
2 **or removal of payphones**

- 3 (1) The Minister may make a determination setting out rules to be
4 complied with by a primary universal service provider in relation
5 to the process for public consultation on the location or removal of
6 payphones.
- 7 (2) The Minister must ensure that a determination under subsection (1)
8 provides that, if:
9 (a) a primary universal service provider makes a decision to
10 remove a payphone from a particular location; and
11 (b) that payphone is the only payphone at that location;
12 then:
13 (c) the provider must undertake a process for public consultation
14 on the removal of that payphone; and
15 (d) if, in accordance with that process, a person makes a
16 submission to the provider—the provider must notify the
17 person, in writing, of the outcome of that process.

18 *Compliance*

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

21 *Determination prevails over inconsistent instruments*

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

29 *Determination is a legislative instrument*

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

1 **12EH Rules about the process for resolution of complaints about the**
2 **location or removal of payphones**

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

7 *Compliance*

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

10 *Determination prevails over inconsistent instruments*

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

18 *Determination is a legislative instrument*

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

20 **12EI Directions by the ACMA about the removal of payphones**

21 *Scope*

- 22 (1) This section applies if:
23 (a) a primary universal service provider has made a decision to
24 remove a payphone from a particular location; and
25 (b) a person notifies the ACMA, in writing, that the person
26 objects to the removal; and
27 (c) the ACMA is satisfied that:
28 (i) the removal would breach, or has breached, a
29 determination under subsection 12EF(1); or
30 (ii) the provider has breached a determination under
31 subsection 12EG(1) in relation to the removal.

- 1 *Direction*
- 2 (2) If the payphone has not been removed, the ACMA may, by written
3 notice given to the provider, direct the provider not to remove the
4 payphone from that location.
- 5 (3) If the payphone has been removed, the ACMA may, by written
6 notice given to the provider, direct the provider:
7 (a) to supply and install a payphone at that location; and
8 (b) to do so within the period specified in the notice.
- 9 (4) A period specified under paragraph (3)(b) must not be shorter than
10 30 days after the notice is given.
- 11 (5) A direction under subsection (2) or (3) must not be inconsistent
12 with a determination under subsection 12EF(1).

13 *Compliance*

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

16 *Direction is not a legislative instrument*

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

19 **226 Subsection 150(3)**

20 Repeal the subsection.
21

1 **Part 5—Customer service guarantee**

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

4 **227 Before section 113**

5 Insert:

6 **Division 1—Introduction**

7 **228 Section 113**

8 Before:

- 9
- 10
- 11
- The Telecommunications Industry Ombudsman may issue an evidentiary certificate in relation to a contravention of a performance standard.

12 insert:

- 13
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- The Minister may make performance standards to be complied with by carriage service providers in relation to the supply of wholesale carriage services.
 - The Minister may set minimum benchmarks in relation to compliance by carriage service providers with performance standards.

19 **229 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 **230 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 **231 Subsections 115(5) and (6)**

17 Repeal the subsections, substitute:

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

19 **232 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 if an instrument under section 117B is
4 applicable to a carriage service provider (the *first provider*).

5 *Provider must meet or exceed minimum benchmark*

- 6 (2) The first provider must meet or exceed a minimum benchmark set
7 by the instrument.

8 *Contravention caused by another provider*

- 9 (3) For the purposes of determining whether the first provider has met
10 or exceeded a minimum benchmark set by the instrument, if:
11 (a) the first provider has contravened a standard in force under
12 section 115; and
13 (b) the contravention is wholly or partly attributable to one or
14 more acts or omissions of another carriage service provider;
15 the first provider is taken not to have contravened the standard.

16 **Division 3—Wholesale performance standards and**
17 **benchmarks**

18 **117D Performance standards**

- 19 (1) The Minister may, by legislative instrument, make standards to be
20 complied with by carriage service providers in relation to a matter
21 that:
22 (a) concerns the supply, or proposed supply, of wholesale
23 carriage services to a wholesale customer; and
24 (b) is capable of affecting the capacity or ability of a wholesale
25 customer to comply with a standard in force under
26 section 115 in relation to a matter concerning the supply, or
27 proposed supply, of a carriage service by the wholesale
28 customer.
- 29 (2) A standard under this section may be of general application or may
30 be limited as provided in the standard.

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

3 **117E Performance benchmarks**

- 4 (1) The Minister may, by legislative instrument, set minimum
5 benchmarks in relation to compliance by carriage service providers
6 with a standard in force under section 117D.
- 7 (2) An instrument under this section may be of general application or
8 may be limited as provided in the instrument.
- 9 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of
10 the *Acts Interpretation Act 1901*.

11 **117F Compliance with performance benchmarks**

12 *Scope*

- 13 (1) This section applies if an instrument under section 117E is
14 applicable to a carriage service provider (the *first provider*).

15 *Provider must meet or exceed minimum benchmark*

- 16 (2) The first provider must meet or exceed a minimum benchmark set
17 by the instrument.

18 *Contravention caused by another provider*

- 19 (3) For the purposes of determining whether the first provider has met
20 or exceeded a minimum benchmark set by the instrument, if:
21 (a) the first provider has contravened a standard in force under
22 section 117D; and
23 (b) the contravention is wholly or partly attributable to one or
24 more acts or omissions of another carriage service provider;
25 the first provider is taken not to have contravened the standard.

26 **Division 4—Other provisions**

27 **233 At the end of subsection 118(1)**

28 Add “or 117D”.

1 **234 At the end of paragraph 118(3)(a)**

2 Add “or 117D”.

3 **235 Subsection 120(4)**

4 Repeal the subsection, substitute:

5 (4) A waiver must be in the form specified in the instrument.

6 (5) The form must include a statement that summarises the
7 consequences of the waiver.

8 (6) A waiver must not be set out in a standard form of agreement
9 formulated by a carriage service provider for the purposes of
10 section 479 of the *Telecommunications Act 1997*.

11 (7) A customer is not entitled to waive, in whole or in part, the
12 customer’s protection and rights under this Part in relation to a
13 particular standard telephone service supplied, or proposed to be
14 supplied, by the carriage service provider concerned if the service
15 is supplied, or proposed to be supplied, in fulfilment of the
16 universal service obligation.

17 (8) An instrument under subsection (1) is a legislative instrument.

18 **236 After section 120**

19 Insert:

20 **120A Carriage service may be supplied on condition that the**
21 **customer waives the customer service guarantee**

22 This Act does not prevent, and is taken never to have prevented, a
23 carriage service provider from supplying, or proposing to supply, a
24 particular carriage service to a customer on condition that the
25 customer waives, in accordance with section 120, the customer’s
26 protection and rights under this Part in relation to the carriage
27 service.

28 **237 Section 122**

29 After “115”, insert “or 117D”.

30 **238 After section 122**

1 **Part 5A—Record-keeping rules**

2 ***Telecommunications Act 1997***

3 **241 After subsection 529(2)**

4 Insert:

5 (2A) The rules may also require those carriers or carriage service
6 providers to prepare reports consisting of information contained in
7 those records.

8 (2B) The rules may also require those carriers or carriage service
9 providers to give any or all of the reports to the ACMA.

10 (2C) The rules may specify the manner and form in which reports are to
11 be prepared.

12 (2D) The rules may provide for:

13 (a) the preparation of reports as and when required by the
14 ACMA; or

15 (b) the preparation of periodic reports relating to such regular
16 intervals as are specified in the rules.

17 (2E) The rules may require or permit a report prepared in accordance
18 with the rules to be given to the ACMA, in accordance with
19 specified software requirements and specified authentication
20 requirements:

21 (a) on a specified kind of data processing device; or

22 (b) by way of a specified kind of electronic transmission.

23 (2F) Subsections (2) to (2E) do not limit subsection (1).

24 **242 Paragraphs 529(4)(a) and (b)**

25 Repeal the paragraphs, substitute:

26 (a) the performance by the ACMA of any of the ACMA's
27 telecommunications functions; or

28 (b) the exercise by the ACMA of any of the ACMA's
29 telecommunications powers.

30 **243 At the end of section 529**

31 Add:

1 (5) This section does not limit section 521 (which is about the general
2 information-gathering powers of the ACMA).

3 **244 Transitional—record-keeping rules**

4 The amendments made by this Part do not affect the continuity of the
5 record-keeping rules.
6

1 **Part 6—Priority assistance**

2 *Telecommunications Act 1997*

3 **245 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:

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- 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 **246 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 **247 Section 7**

11 Insert:

12 *infringement notice* means an infringement notice under
13 section 572E.

14 **248 Section 7**

15 Insert:

16 *penalty unit* has the meaning given by section 4AA of the *Crimes*
17 *Act 1914*.

18 **249 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 (ia) the carrier licence condition set out in Part 1 of
27 Schedule 1 in so far as that condition relates to
28 section 577AD, 577CD or 577ED; or
29 (ii) a carrier licence condition set out in Part 3, 4 or 5 of
30 Schedule 1; or
31 (iii) a carrier licence condition set out in Part 9 of
32 Schedule 1; or

- 1 (iv) the carrier licence condition set out in clause 84 of
2 Schedule 1; or
3 (v) the service provider rule set out in Part 1 of Schedule 2
4 in so far as that rule relates to section 369; or
5 (vi) the carrier licence condition set out in section 152AZ of
6 the *Competition and Consumer Act 2010*; or
7 (vii) the service provider rule set out in subsection 152BA(2)
8 of the *Competition and Consumer Act 2010*; or
9 (viii) the carrier licence condition set out in section 152BCO
10 of the *Competition and Consumer Act 2010*; or
11 (ix) the service provider rule set out in subsection
12 152BCP(2) of the *Competition and Consumer Act 2010*;
13 or
14 (x) the carrier licence condition set out in section 152BDF
15 of the *Competition and Consumer Act 2010*; or
16 (xi) the service provider rule set out in subsection
17 152BDG(2) of the *Competition and Consumer Act*
18 *2010*; or
19 (xii) the carrier licence condition set out in section 152BEC
20 of the *Competition and Consumer Act 2010*; or
21 (xiii) the service provider rule set out in subsection
22 152BED(2) of the *Competition and Consumer Act 2010*;

23 an infringement notice must not be given to the person in relation
24 to the contravention of section 68 or 101, as the case may be.

25 (5) If:

- 26 (a) a person's conduct constitutes a contravention of section 68
27 or 101; and
28 (b) the contravention consists of a breach of:
29 (i) a carrier licence condition set out in a provision of this
30 Act other than Part 1 of Schedule 1; or
31 (ii) a carrier licence condition set out in a provision of a
32 declaration in force under section 63; or
33 (iii) a service provider rule set out in a provision of this Act
34 other than Part 1 of Schedule 2; or
35 (iv) a service provider rule set out in a provision of a
36 determination in force under section 99;

37 an infringement notice must not be given to the person in relation
38 to the contravention of section 68 or 101, as the case may be,

- 1 unless the provision mentioned in subparagraph (b)(i), (ii), (iii) or
2 (iv), as the case may be:
3 (c) is a listed infringement notice provision; and
4 (d) has been a listed infringement notice provision for at least 3
5 months before the day on which the contravention is alleged
6 to have taken place.

7 Note: For *listed infringement notice provision*, see subsection (7).

- 8 (6) If:
9 (a) a person's conduct constitutes a contravention of section 68
10 or 101; and
11 (b) the contravention consists of a breach of:
12 (i) the carrier licence condition set out in Part 1 of
13 Schedule 1; or
14 (ii) the service provider rule set out in Part 1 of Schedule 2;
15 and
16 (c) the contravention consists of a breach of another provision of
17 this Act;
18 an infringement notice must not be given to the person in relation
19 to the contravention of section 68 or 101, as the case may be,
20 unless:
21 (d) the other provision is a listed infringement notice provision;
22 and
23 (e) the other provision has been a listed infringement notice
24 provision for at least 3 months before the day on which the
25 contravention is alleged to have taken place.

26 Note: For *listed infringement notice provision*, see subsection (7).

27 *Listed infringement notice provision*

- 28 (7) The ACMA may, by legislative instrument, declare that:
29 (a) a specified provision of this Act; or
30 (b) a specified provision of a declaration in force under
31 section 63; or
32 (c) a specified provision of a determination in force under
33 section 99;
34 is a *listed infringement notice provision* for the purposes of this
35 section.

1 *Consultation*

- 2 (8) Before making or varying a declaration under subsection (7), the
3 ACMA must:
- 4 (a) cause to be published on the ACMA's website a notice:
 - 5 (i) setting out the draft declaration or variation; and
 - 6 (ii) inviting persons to make submissions to the ACMA
7 about the draft declaration or variation within 14 days
8 after the notice is published; and
 - 9 (b) consider any submissions received within the 14-day period
10 mentioned in paragraph (a).

11 *Definition*

- 12 (9) In this section:
- 13 *this Act* includes:
- 14 (a) the *Telecommunications (Consumer Protection and Service*
15 *Standards) Act 1999* and regulations under that Act; and
 - 16 (b) Chapter 5 of the *Telecommunications (Interception and*
17 *Access) Act 1979*.

18 **572F Matters to be included in an infringement notice**

- 19 (1) An infringement notice must:
- 20 (a) set out the name of the person to whom the notice is given;
21 and
 - 22 (b) set out the name of the authorised infringement notice officer
23 who gave the notice; and
 - 24 (c) set out brief details of the alleged contravention; and
 - 25 (d) contain a statement to the effect that the matter will not be
26 dealt with by the Federal Court if the penalty specified in the
27 notice is paid to the ACMA, on behalf of the
28 Commonwealth, within:
 - 29 (i) 28 days after the notice is given; or
 - 30 (ii) if the ACMA allows a longer period—that longer
31 period; and
 - 32 (e) give an explanation of how payment of the penalty is to be
33 made; and

- 1 (f) set out such other matters (if any) as are specified by the
2 regulations.

3 Note: For the amount of penalty, see section 572G.

- 4 (2) For the purposes of paragraph (1)(c), the brief details must include
5 the following information in relation to the alleged contravention:
6 (a) the date of the alleged contravention;
7 (b) the civil penalty provision that was allegedly contravened.

8 **572G Amount of penalty**

9 *Infringement notice given to a body corporate*

- 10 (1) The penalty to be specified in an infringement notice given to a
11 body corporate must be a pecuniary penalty equal to:
12 (a) if the alleged contravention is of a kind specified in a
13 determination under subsection (2)—the number of penalty
14 units specified in the determination in relation to that kind of
15 contravention; or
16 (b) otherwise—60 penalty units.
- 17 (2) For the purposes of paragraph (1)(a), the Minister may, by
18 legislative instrument, make a determination that:
19 (a) sets out one or more kinds of contraventions of section 68 or
20 101; and
21 (b) for each kind of contravention set out in the determination,
22 specifies a particular number of penalty units.
- 23 (3) The number of penalty units specified in a determination for a
24 particular kind of contravention must not exceed 18,000.

25 *Infringement notice given to a person other than a body corporate*

- 26 (4) The penalty to be specified in an infringement notice given to a
27 person other than a body corporate must be a pecuniary penalty
28 equal to 12 penalty units.

29 **572H Withdrawal of an infringement notice**

30 *Scope*

- 31 (1) This section applies if an infringement notice is given to a person.
-

1 *Withdrawal*

- 2 (2) An authorised infringement notice officer may, by written notice
3 (the *withdrawal notice*) given to the person, withdraw the
4 infringement notice.
- 5 (3) To be effective, the withdrawal notice must be given to the person
6 within 28 days after the infringement notice was given.

7 *Refund of penalty if infringement notice withdrawn*

- 8 (4) If:
9 (a) the penalty specified in the infringement notice is paid; and
10 (b) the infringement notice is withdrawn after the penalty is paid;
11 the Commonwealth is liable to refund the penalty.

12 **572J What happens if the penalty is paid**

13 *Scope*

- 14 (1) This section applies if:
15 (a) an infringement notice relating to an alleged contravention is
16 given to a person; and
17 (b) the penalty is paid in accordance with the infringement
18 notice; and
19 (c) the infringement notice is not withdrawn.

20 *What happens*

- 21 (2) Any liability of the person for the alleged contravention is
22 discharged.
- 23 (3) Proceedings under Part 31 may not be brought against the person
24 for the alleged contravention.

25 **572K Effect of this Part on civil proceedings**

26 This Part does not:

- 27 (a) require an infringement notice to be given in relation to an
28 alleged contravention; or

- 1 (b) affect the liability of a person to have proceedings under
2 Part 31 brought against the person for an alleged
3 contravention if:
4 (i) the person does not comply with an infringement notice
5 relating to the contravention; or
6 (ii) an infringement notice relating to the contravention is
7 not given to the person; or
8 (iii) an infringement notice relating to the contravention is
9 given to the person and subsequently withdrawn; or
10 (c) limit the Federal Court's discretion to determine the amount
11 of a penalty to be imposed on a person who is found in
12 proceedings under Part 31 to have contravened a civil penalty
13 provision.

14 **572L Appointment of authorised infringement notice officer**

- 15 (1) The ACMA may, by writing, appoint a member of the staff of the
16 ACMA as an authorised infringement notice officer for the
17 purposes of this Part.
18 (2) The ACMA must not appoint a person under subsection (1) unless
19 the person:
20 (a) is an SES employee or acting SES employee; or
21 (b) holds, or is acting in, an Executive Level 1 or 2 position or an
22 equivalent position.

23 Note: *SES employee* is defined in the *Acts Interpretation Act 1901*.

24 **572M Guidelines relating to infringement notices**

- 25 (1) In exercising a power conferred on an authorised infringement
26 notice officer by this Part, the officer must have regard to any
27 relevant guidelines in force under subsection (2).

28 *Formulation of guidelines*

- 29 (2) The ACMA may, by legislative instrument, formulate guidelines
30 for the purposes of subsection (1).

31 Note: For consultation requirements, see Part 3 of the *Legislative*
32 *Instruments Act 2003*.

1 (3) An authorised infringement notice officer must not give an
2 infringement notice to a person unless guidelines are in force under
3 subsection (2).

4 **572N Regulations**

5 The regulations may make further provision in relation to
6 infringement notices.

7 **Division 2—Application**

8 **250 Application—infringement notices**

9 Section 572E of the *Telecommunications Act 1997* as amended by this
10 Part applies in relation to an alleged contravention of a civil penalty
11 provision that occurs after the commencement of this item.
12

1 **Part 8—Civil penalty provisions**

2 ***Telecommunications Act 1997***

3 **251 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.
11

1 **Part 9—Industry standards**

2 ***Telecommunications Act 1997***

3 **252 Subsection 112(2)**

4 After “124, 125”, insert “, 125AA”.

5 **253 After section 125**

6 Insert:

7 **125AA ACMA must determine an industry standard if directed by**
8 **the Minister**

9 (1) The ACMA may, by legislative instrument, determine a standard
10 that:

- 11 (a) applies to participants in a particular section of the
12 telecommunications industry; and
13 (b) deals with one or more matters relating to the
14 telecommunications activities of those participants.

15 Note 1: For examples of matters that may be dealt with by industry standards,
16 see section 113.

17 Note 2: For variation and revocation, see subsection 33(3) of the *Acts*
18 *Interpretation Act 1901*.

19 (2) A standard under subsection (1) is to be known as an ***industry***
20 ***standard***.

21 (3) If the ACMA is satisfied that a body or association represents that
22 section of the telecommunications industry, the ACMA must
23 consult the body or association before determining a standard
24 under subsection (1).

25 (4) The Minister may, in writing, direct the ACMA to determine a
26 standard under subsection (1) that:

- 27 (a) applies to participants in a specified section of the
28 telecommunications industry; and
29 (b) deals with one or more specified matters relating to the
30 telecommunications activities of those participants.

Schedule 1 Amendments
Part 9 Industry standards

- 1 (5) The ACMA must not determine a standard under subsection (1)
2 unless it does so in accordance with a direction under
3 subsection (4).