



Telecommunications Legislation Amendment (Competition and Consumer) Act 2020

No. 47, 2020

**An Act to amend legislation relating to
telecommunications, and for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	3
4	Transitional—election to be bound by deemed standard functional separation undertaking.....	3
5	Modelling of Regional Broadband Scheme.....	3
Schedule 1—Layer 2 bitstream services		7
Part 1—Amendments		7
<i>Competition and Consumer Act 2010</i>		7
<i>Telecommunications Act 1997</i>		9
Part 2—Transitional provisions		11
Schedule 2—Local access lines		12
<i>Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014</i>		12
<i>Competition and Consumer Act 2010</i>		13
<i>Legislation (Exemptions and Other Matters) Regulation 2015</i>		14
<i>Telecommunications Act 1997</i>		14
Schedule 3—Statutory infrastructure providers etc.		102
Part 1—Amendments		102
Division 1—Service provider determinations		102
<i>Telecommunications Act 1997</i>		102
Division 2—Other amendments		102
<i>Competition and Consumer Act 2010</i>		102
<i>Telecommunications Act 1997</i>		104
Part 2—Repeals		138
<i>Carrier Licence Conditions (NT Technology Services Pty Ltd) Declaration 2014</i>		138
<i>Carrier Licence Conditions (OptiComm Co Pty Ltd) Declaration 2013</i>		138
<i>Carrier Licence Conditions (Pivot Pty Ltd) Declaration 2013</i>		138

<i>Carrier Licence Conditions (Urban Renewal Authority Victoria t/a Places Victoria Pty Ltd) Declaration 2014</i>	138
Schedule 4—Funding of fixed wireless broadband and satellite broadband	139
<i>Competition and Consumer Act 2010</i>	139
<i>Telecommunications Act 1997</i>	140
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	142
Schedule 5—NBN Co transparency	200
<i>National Broadband Network Companies Act 2011</i>	200



Telecommunications Legislation Amendment (Competition and Consumer) Act 2020

No. 47, 2020

An Act to amend legislation relating to telecommunications, and for other purposes

[Assented to 25 May 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the *Telecommunications Legislation Amendment
(Competition and Consumer) Act 2020*.

No. 47, 2020

*Telecommunications Legislation Amendment (Competition and
Consumer) Act 2020*

1

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 5 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 May 2020
2. Schedule 1	The day after this Act receives the Royal Assent.	26 May 2020
3. Schedule 2	The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.	26 August 2020
4. Schedule 3, Part 1, Division 1	The day after this Act receives the Royal Assent.	26 May 2020
5. Schedule 3, Part 1, Division 2	The earlier of: (a) a single day to be fixed by Proclamation; and (b) 1 July 2020.	
6. Schedule 3, Part 2	Immediately after the commencement of the provisions covered by table item 5.	
7. Schedules 4 and 5	The day after this Act receives the Royal Assent.	26 May 2020

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

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

3 Schedules

- (1) Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The provisions of the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014* amended or inserted by this Act, and any other provisions of that instrument, may be varied by an instrument made under subsection 63(5) of the *Telecommunications Act 1997*, or revoked by an instrument made under subsection 63(6) of that Act (see subsection 13(5) of the *Legislation Act 2003*).
- (3) The provisions of the *Legislation (Exemptions and Other Matters) Regulation 2015* amended or inserted by this Act, and any other provisions of that instrument, may be amended or repealed by regulations made under section 62 of the *Legislation Act 2003* (see subsection 13(5) of the *Legislation Act 2003*).

4 Transitional—election to be bound by deemed standard functional separation undertaking

If:

- (a) in accordance with section 4 of the *Acts Interpretation Act 1901*, a determination is made under subsection 151B(1) of the *Telecommunications Act 1997* before the commencement of Schedule 2 to this Act; and
- (b) a corporation is included in a class of corporations specified in the determination;

the corporation may, before the commencement of that Schedule, give an election to be bound by the determination.

5 Modelling of Regional Broadband Scheme

Report

- (1) The Australian Competition and Consumer Commission (*ACCC*) must prepare a report in relation to the Regional Broadband Scheme that includes:

-
- (a) the estimates referred to in subsection (3); and
 - (b) such other matters (if any) as the ACCC considers relevant.
- (2) The purpose of the report is to provide updated costings in relation to the amount of the base component specified in paragraph 12(1)(a) of the Regional Broadband Scheme Charge Act, using the same model and methodology that was previously used to determine that amount but taking into account changes to inputs and assumptions that have occurred since that amount was first determined.
- (3) The report must include an estimate of each of the following:
- (a) the total losses that have been incurred by NBN Co in relation to fixed wireless broadband and satellite broadband matters during the period beginning on 1 July 2009 and ending on 30 June 2020;
 - (b) the total of the reasonable losses likely to be incurred by NBN Co in relation to fixed wireless broadband and satellite broadband matters during the period beginning on 1 July 2009 and ending on 30 June 2040 (the ***total expected net losses***);
 - (c) the amount that the base component for a month (within the meaning of the Regional Broadband Scheme Charge Act) would be required to be in order for the Commonwealth to receive a total amount by way of charge imposed by that Act that would offset the total expected net losses, if it were assumed that paragraph 9(1)(b) of that Act had not been enacted;
 - (d) the total of the reasonable losses likely to be incurred by NBN Co in relation to fixed wireless broadband and satellite broadband matters during the period beginning on 1 July 2020 and ending on 30 June 2040 (the ***total expected net forward facing losses***);
 - (e) the amount that the base component for a month (within the meaning of the Regional Broadband Scheme Charge Act) would be required to be in order for the Commonwealth to receive a total amount by way of charge imposed by that Act that would offset the total expected net forward facing losses, if it were assumed that paragraph 9(1)(b) of that Act had not been enacted;
-

-
- (f) the total expected number of chargeable premises by reference to which charge is to be calculated under the Regional Broadband Scheme Charge Act during the financial year beginning on 1 July 2025;
 - (g) such other matters (if any) as the ACCC considers relevant.

Note: For paragraph (f), see section 11 of the Regional Broadband Scheme Charge Act in relation to how numbers of chargeable premises are used in calculating charge under that Act.

- (4) The report must specify the aggregated data inputs and the modelling assumptions upon which the estimates referred to in subsection (3) were determined.
- (5) In preparing the report, the ACCC:
 - (a) must use the methodology and model that was used by the Department of Communications and the Arts' Bureau of Communications Research for the report entitled *NBN non-commercial services funding options—Final report March 2016*; but
 - (b) must, in doing so, update the inputs and assumptions of the methodology and model to reflect changes that have occurred since the publication of that report.
- (6) Without limiting paragraph (5)(b), the following are changes that must be taken into account in updating the inputs and assumptions:
 - (a) changes in the inputs for estimating the total number of chargeable premises by reference to which charge is imposed by the Regional Broadband Scheme Charge Act;
 - (b) changes in the inputs for build costs in relation to fixed wireless broadband and satellite broadband matters;
 - (c) changes in the inputs for estimating future capital expenditure requirements in relation to fixed wireless broadband and satellite broadband matters.
- (7) In preparing the report, the ACCC must assume that Division 6 of Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* had not been enacted.

Note: That Division deals with charge offset certificates.
- (8) Before the end of the 150-day period beginning when this section commences, the ACCC must:

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- (a) give the Minister the report; and
 - (b) make the report available on the ACCC's website.
- (9) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 5 sitting days of receiving it.

Use of the word "Regional"

- (10) To avoid doubt, the use of the word "Regional" in this section does not limit:
- (a) subsection 80(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
 - (b) subsection 13(3) of the *Regional Broadband Scheme Charge Act*.

Definitions

- (11) In this section:

fixed wireless broadband and satellite broadband matters means the matters referred to in paragraphs 13(3)(a) to (d) of the *Regional Broadband Scheme Charge Act*.

Minister means the Minister administering the *Telecommunications Act 1997*.

NBN Co has the same meaning as in the *National Broadband Network Companies Act 2011*.

Regional Broadband Scheme means the scheme embodied in:

- (a) Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
- (b) the *Regional Broadband Scheme Charge Act*.

Regional Broadband Scheme Charge Act means the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

Schedule 1—Layer 2 bitstream services

Part 1—Amendments

Competition and Consumer Act 2010

1 Section 152AC

Repeal the following definitions:

- (a) definition of *designated superfast telecommunications network*;
- (b) definition of *Layer 2 bitstream service*;
- (c) definition of *national broadband network*;
- (d) definition of *superfast carriage service*.

2 Section 152AGA

Repeal the section.

3 Subsections 152AL(3C) to (3H)

Repeal the subsections.

4 Subsection 152AL(8CA)

Repeal the subsection.

5 Subsections 152ALA(1) and (5)

Omit “(other than a declaration mentioned in subsection 152AL(3C))”.

6 Subsection 152ALA(5A)

Repeal the subsection.

7 Subsection 152AO(4)

Repeal the subsection (including the note).

8 Sections 152ARA and 152ARB

Repeal the sections.

9 Paragraph 152AZ(aa)

Omit “152ARA, 152ARB,”.

10 Paragraph 152BA(2)(aa)

Omit “152ARA, 152ARB,”.

11 Subsection 152BB(1AA)

Repeal the subsection.

12 Subsection 152BC(4AA)

Repeal the subsection.

13 Subsections 152BCB(4G) to (4J)

Repeal the subsections.

14 Subsection 152BCB(5)

Omit “, (4A) or (4G)”, substitute “or (4A)”.

15 Subsections 152BDA(4G) to (4J)

Repeal the subsections.

16 Subsection 152BDA(5)

Omit “, (4A) or (4G)”, substitute “or (4A)”.

17 Subsection 152BE(1B)

Repeal the subsection.

18 Sections 152BEBE to 152BEBG

Repeal the sections.

19 Section 152BEC

Omit “, 152BEBC, 152BEBE and 152BEBF”, substitute “and 152BEBC”.

20 Subsection 152BED(2)

Omit “, 152BEBC, 152BEBE and 152BEBF”, substitute “and 152BEBC”.

21 Subparagraphs 152CJH(a)(ia) and (ib)

Repeal the subparagraphs.

22 Subparagraph 152CJH(a)(iii)

Omit “and (4G) to (4J)”.

23 Subparagraph 152CJH(a)(iv)

Omit “and (4G) to (4J)”.

Telecommunications Act 1997

23A Section 7 (paragraph (a) of the definition of *Layer 2 bitstream service*)

Repeal the paragraph, substitute:

- (a) a Layer 2 bitstream service (within the ordinary meaning of that expression); and

23B Section 7 (definition of *Layer 2 bitstream service*)

Omit “this purpose, *Layer 2*”, substitute “the purposes of determining the ordinary meaning of the expression used in paragraph (a), assume that *Layer 2*”.

24 Part 7

Repeal the Part.

25 Subsection 349(16) (definition of *local access line*)

Repeal the definition, substitute:

local access line has the meaning given by section 349A.

26 After section 349

Insert:

349A Local access line

- (1) For the purposes of this Part, a *local access line* is a line that is part of the infrastructure of a local access network.

- (2) However, a line does not form part of a **local access line** to the extent that the line is on the customer side of the boundary of a telecommunications network.
- (3) For the purposes of this section, the **boundary of a telecommunications network** is to be determined in the same manner in which it is determined under section 22 for the purposes of sections 20, 21 and 30.
- (4) For the purposes of this section, **local access network** has the meaning generally accepted within the telecommunications industry.

Part 2—Transitional provisions

27 Transitional—exemptions

- (1) If, immediately before the commencement of this item, an instrument was in force under subsection 141A(1) of the *Telecommunications Act 1997*, the instrument has effect, after the commencement of this item, as if:
 - (a) it had been made under subsection 144(1) of that Act; and
 - (b) each reference in the instrument to section 141 of that Act were a reference to section 143 of that Act.
- (2) If, immediately before the commencement of this item, an instrument was in force under subsection 141A(2) of the *Telecommunications Act 1997*, the instrument has effect, after the commencement of this item, as if:
 - (a) it had been made under subsection 144(2) of that Act; and
 - (b) each reference in the instrument to section 141 of that Act were a reference to section 143 of that Act.
- (3) If, immediately before the commencement of this item, an instrument was in force under subsection 141A(3) of the *Telecommunications Act 1997*, the instrument has effect, after the commencement of this item, as if:
 - (a) it had been made under subsection 144(3) of that Act; and
 - (b) each reference in the instrument to subsections 141(2) and (3) of that Act were a reference to subsection 143(2) of that Act.

Schedule 2—Local access lines

Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014

1 Section 3

Repeal the section.

2 Subsection 4(1)

Insert:

designated commencement date means the date on which Schedule 2 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* commences.

functional separation undertaking has the same meaning as in Part 8 of the *Telecommunications Act 1997*.

3 Subsection 4(1) (at the end of the definition of *local access line*)

Add “(as that section stood immediately before the commencement of Schedule 2 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020*)”.

4 Subsection 4(1) (at the end of the definition of *superfast carriage service*)

Add “(as that section stood immediately before the commencement of Schedule 2 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020*)”.

5 Section 5

Before “A carrier licence”, insert “(1)”.

6 Section 5

Omit “residential customers.”, substitute:

residential customers, and:

-
- (a) the network came into existence before the designated commencement date; and
 - (b) the network has not been altered, upgraded or extended on or after the designated commencement date; and
 - (c) no functional separation undertaking given by the carrier is in force.

7 At the end of section 5

Add:

- (2) A reference in paragraph (1)(c) to a functional separation undertaking given by a carrier is a reference to a functional separation undertaking given by the carrier either:
 - (a) alone; or
 - (b) jointly with one or more other persons.

Competition and Consumer Act 2010

11 After paragraph 151BU(4)(da)

Insert:

- (db) the operation of Part 8 of the *Telecommunications Act 1997* (which deals with local access lines); or

12 After subparagraph 151BUA(2)(b)(ia)

Insert:

- (iib) the operation of Part 8 of the *Telecommunications Act 1997* (which deals with local access lines); or

13 After subparagraph 151BUB(2)(b)(ia)

Insert:

- (iib) the operation of Part 8 of the *Telecommunications Act 1997* (which deals with local access lines); or

14 After subparagraph 151BUC(2)(b)(ia)

Insert:

- (iib) the operation of Part 8 of the *Telecommunications Act 1997* (which deals with local access lines); or

Legislation (Exemptions and Other Matters)
Regulation 2015

15 Section 12 (table item 61, column headed “Legislative instrument”, after paragraph (a))

Insert:

- (aa) the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014* made under subsection 63(2) of that Act;

Telecommunications Act 1997

17 After subsection 69(4)

Insert:

- (4A) Subsection (1) does not apply to a condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

18 After subsection 70(1)

Insert:

- (1A) Subsection (1) does not apply to a condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

19 Before paragraph 70(5)(a)

Insert:

- (aaa) the condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI;

20 After subsection 102(4)

Insert:

(4A) Subsection (1) does not apply to the rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

21 After subsection 103(1)

Insert:

(1A) Subsection (1) does not apply to the rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

22 After subsection 103(4E)

Insert:

(4F) The ACCC may issue a formal warning if a person contravenes the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

23 Part 8 (heading)

Repeal the heading, substitute:

Part 8—Local access lines

24 Section 142

Repeal the section, substitute:

142 Simplified outline of this Part

- A controller of a local access line (other than a line that is part of the infrastructure of the national broadband network) must not use the line to supply an eligible service to a person other than a carrier or a service provider, if:

- (a) the line came into existence, or was upgraded, on or after the designated commencement date; and
 - (b) the line is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential customers, or prospective residential customers, in Australia; and
 - (c) no functional separation undertaking is in force.
- A controller of a telecommunications network (other than the national broadband network) must not use a local access line to supply an eligible service to a person other than a carrier or a service provider, if:
 - (a) the line is part of the infrastructure of the network; and
 - (b) the network came into existence, or was upgraded, on or after 1 January 2011, but before the designated commencement date; and
 - (c) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential customers, or prospective residential customers, in Australia; and
 - (d) no functional separation undertaking is in force.

25 Section 142A (definition of *alter*)

After “network”, insert “or line”.

26 Section 142A

Insert:

associate has the meaning given by section 152.

business unit means a part of a corporation.

close proximity has a meaning affected by section 162.

corporation means a body corporate.

customer interface means an interface for the purposes of:

- (a) ordering; and
- (b) provisioning; and

(c) billing; and
(d) service activation; and
(e) fault rectification;
in relation to the supply of local access line services.

declared service has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

designated carriage service has the meaning given by section 142BD.

designated commencement date means the date on which Schedule 2 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* commences.

fixed-line carriage service means a carriage service that is supplied using a line to premises occupied or used by an end-user.

functional includes organisational.

functional separation undertaking means:

- (a) a standard functional separation undertaking; or
- (b) a joint functional separation undertaking.

fundamental provision of a functional separation undertaking has the meaning given by subsection 151A(9) or 151C(9).

joint functional separation undertaking means an undertaking under section 151C.

local access line service means an eligible service supplied using a local access line.

multi-unit building means:

- (a) a building that has 2 or more units for occupation as a place of residence or business; or
- (b) a building in a complex, where each building has 2 or more units for occupation as a place of residence or business.

residential customer has a meaning affected by section 161.

retail business unit of a corporation means a business unit by which the corporation deals with the corporation's retail customers in relation to the supply of local access line services.

retail customer means a customer other than a wholesale customer.

retailer, when used in relation to a joint functional separation undertaking, means a person identified in the undertaking as the retailer, or one of the retailers, for the purposes of the undertaking.

Note: See paragraph 151C(2)(a).

27 Section 142A (definition of *small business customer*)

Repeal the definition.

28 Section 142A

Insert:

standard functional separation undertaking means an undertaking under section 151A.

29 Section 142A (paragraph (b) of the definition of *superfast carriage service*)

Omit "more than 25 megabits per second", substitute "25 megabits per second or more".

30 Section 142A

Insert:

supply, in relation to a service, includes supply of the service by a corporation to itself. This definition does not apply to subsection 142C(2) or 143(2).

unsatisfactory compliance record has a meaning affected by section 142BC.

31 Section 142A (definition of *upgrade*)

After "network", insert "or line".

32 Section 142A

Insert:

wholesale business unit of a corporation means a business unit by which the corporation deals with its wholesale customers, and its retail business unit, in relation to the supply of local access line services.

wholesale customer means a customer that is:

- (a) a carrier; or
- (b) a service provider.

wholesaler, when used in relation to a joint functional separation undertaking, means a person identified in the undertaking as the wholesaler, or one of the wholesalers, for the purposes of the undertaking.

Note: See paragraph 151C(2)(a).

worker means an individual who is:

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor.

33 At the end of Division 1 of Part 8

Add:

142B Functional separation undertaking given by a person

A reference in this Part to a functional separation undertaking given by a person is a reference to a functional separation undertaking given by the person either:

- (a) alone; or
- (b) jointly with one or more other persons.

142BA Promotion of the long-term interests of end-users of carriage services and of services supplied by means of carriage services

For the purposes of this Part, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as it is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.

142BB Terms and conditions

For the purposes of this Part:

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

142BC Unsatisfactory compliance record

For the purposes of this Part, the question of whether a person has an unsatisfactory compliance record in relation to functional separation is to be determined having regard only to:

- (a) any breaches by the person of functional separation undertakings given by the person, so long as the breaches occurred when the undertakings were in force; and
- (b) any contraventions by the person of section 143B, 151ZA, 151ZB, 151ZF, 151ZG, 151ZH or 151ZI.

142BD Designated carriage service

- (1) For the purposes of this Part, *designated carriage service* means:
 - (a) if a carriage service is specified in an instrument under subsection (2)—that carriage service; or
 - (b) otherwise—a Layer 2 bitstream service.
- (2) The ACCC may, by legislative instrument, specify a carriage service for the purposes of paragraph (1)(a).
- (3) The ACCC must not specify a carriage service under subsection (2) unless:
 - (a) the carriage service enables end-users to download communications; and
 - (b) the download transmission speed of the carriage service is normally 25 megabits per second or more; and
 - (c) the carriage service is supplied using a line to premises occupied or used by an end-user; and

-
- (d) there is in force a declaration under subsection 152AL(3) of the *Competition and Consumer Act 2010* that relates to the carriage service.

34 Before section 143

Insert:

142C Supply of eligible services to be on wholesale basis—lines that come into existence on or after the designated commencement date etc.

Scope

- (1) This section applies to a local access line if:
- (a) the line is part of the infrastructure of a telecommunications network in Australia; and
 - (b) the network is not the national broadband network; and
 - (c) the line is used, or proposed to be used, to supply a superfast carriage service wholly or principally to residential customers, or prospective residential customers, in Australia; and
 - (d) either:
 - (i) the line came into existence on or after the designated commencement date; or
 - (ii) the line was altered or upgraded on or after the designated commencement date, and as a result of the alteration or upgrade, the line became capable of being used to supply a superfast carriage service to residential customers in Australia.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

Note 3: For exemptions, see sections 143A to 151.

Use of line

- (2) If a person (the ***first person***):
-

- (a) is in a position to exercise control of the line; or
- (b) is an associate of a person who is in a position to exercise control of the line;

the first person must not, on or after the designated commencement date, use the line, either alone or jointly with one or more other persons, to supply an eligible service unless the service is supplied to:

- (c) a carrier; or
- (d) a service provider.

Note: For when a person is in a position to exercise control of a line, see section 155A.

- (3) Subsection (2) does not apply to the use of the line if a functional separation undertaking given by the first person is in force, unless:
 - (a) the ACCC has given a notice under section 151W revoking the undertaking; and
 - (b) the revocation has not taken effect; and
 - (c) the line came into existence after the notice was given.

Note 1: A functional separation undertaking relates to the supply of eligible services using a local access line, irrespective of when the line came into existence.

Note 2: See also section 142B.

Ancillary contraventions

- (4) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (5) Subsections (2) and (4) are ***civil penalty provisions***.

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

35 Section 143 (heading)

Repeal the heading, substitute:

143 Supply of eligible services to be on wholesale basis—networks in existence before the designated commencement date etc.

36 Paragraph 143(1)(b)

Omit “or small business” (wherever occurring).

37 Subparagraph 143(1)(d)(i)

After “2011”, insert “, but before the designated commencement date”.

38 Subparagraph 143(1)(d)(ii)

After “2011”, insert “, but before the designated commencement date,”.

39 Subparagraph 143(1)(d)(ii)

Omit “or small business” (wherever occurring).

40 Subsection 143(1) (note 2)

Omit “144”, substitute “143A”.

41 Subsections 143(2) and (3)

Repeal the subsections (including the penalty), substitute:

Use of network

(2) If a person (the **first person**):

- (a) is in a position to exercise control of the network; or
- (b) is an associate of a person who is in a position to exercise control of the network;

the first person must not use the line, either alone or jointly with one or more other persons, to supply an eligible service unless the service is supplied to:

- (c) a carrier; or
- (d) a service provider.

Note: For when a person is in a position to exercise control of a network, see section 155.

- (3) Subsection (2) does not apply to the use of the line if a functional separation undertaking given by the first person is in force, unless:
- (a) the ACCC has given a notice under section 151W revoking the undertaking; and
 - (b) the revocation has not taken effect; and
 - (c) the line came into existence after the notice was given.

Note 1: A functional separation undertaking relates to the supply of eligible services using a local access line, irrespective of when the line came into existence.

Note 2: See also section 142B.

- (4) Subsection (2) does not apply to the use of the line if:
- (a) the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014* is in force; and
 - (b) the line is part of the infrastructure of a designated telecommunications network (within the meaning of that declaration); and
 - (c) a carrier owns or operates the network; and
 - (d) as a result of the application of section 5 of that declaration to the network, the carrier licence held by the carrier is subject to the conditions set out in subsections 6(5), (5A), (6), (7) and (8) of that declaration.

Ancillary contraventions

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (6) Subsections (2) and (5) are ***civil penalty provisions***.

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

42 After section 143

Insert:

143AA Judicial enforcement of prohibitions

- (1) If the Federal Court is satisfied that a person has, on or after the designated commencement date, contravened subsection 142C(2) or (4) or 143(2) or (5), the Court may, on the application of:
- (a) the ACCC; or
 - (b) a carrier; or
 - (c) a carriage service provider;
- make all or any of the following orders:
- (d) an order directing the person to comply with that subsection;
 - (e) an order directing the person to compensate any other person (who may be the applicant) who has suffered loss or damage as a result of the contravention;
 - (f) any other order that the Court thinks appropriate.
- (2) The Federal Court may discharge or vary an order granted under this section.

Division 2A—Exemptions**143A Class exemptions***Determination providing for exemption*

- (1) The ACCC may, by legislative instrument, determine that, if:
- (a) a person is included in a specified class of persons; and
 - (b) the person has, by written notice given to the ACCC, elected to be bound by the determination; and
 - (c) the person has not, by written notice given to the ACCC, cancelled the election; and

- (d) in a case where the person is not a member of an associated group—the number of residential customers to whom the person supplies fixed-line carriage services does not exceed:
 - (i) 2,000; or
 - (ii) if a higher number (not exceeding 12,000) is specified in the regulations—that higher number; and
- (e) in a case where the person is a member of an associated group—the total number of residential customers to whom the members of the group supply fixed-line carriage services does not exceed:
 - (i) 2,000; or
 - (ii) if a higher number (not exceeding 12,000) is specified in the regulations—that higher number;

the person is exempt from section 142C.

Note: For *associated group*, see subsection (10) of this section.

- (2) The ACCC may, by legislative instrument, determine that, if:
 - (a) a person is included in a specified class of persons; and
 - (b) the person has, by written notice given to the ACCC, elected to be bound by the determination; and
 - (c) the person has not, by written notice given to the ACCC, cancelled the election; and
 - (d) in a case where the person is not a member of an associated group—the number of residential customers to whom the person supplies fixed-line carriage services does not exceed:
 - (i) 2,000; or
 - (ii) if a higher number (not exceeding 12,000) is specified in the regulations—that higher number; and
 - (e) in a case where the person is a member of an associated group—the total number of residential customers to whom the members of the group supply fixed-line carriage services does not exceed:
 - (i) 2,000; or
 - (ii) if a higher number (not exceeding 12,000) is specified in the regulations—that higher number;

the person is exempt from section 143.

Note: For *associated group*, see subsection (10) of this section.

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- (3) A determination under subsection (1) or (2) is subject to the following conditions and limitations:
- (a) the person must ensure that a designated carriage service is available for supply to wholesale customers, or prospective wholesale customers, of the person;
 - (b) the person must not discriminate between the person's wholesale customers, or the person's prospective wholesale customers, in relation to the supply of designated carriage services;
 - (c) the person must not discriminate in favour of itself in relation to the supply of designated carriage services;
 - (d) the person must not, in carrying on any of the following activities, discriminate between the person's wholesale customers or the person's prospective wholesale customers:
 - (i) developing a new eligible service;
 - (ii) enhancing an eligible service;
 - (iii) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (iv) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (v) an activity that is preparatory to the supply of an eligible service;
 - (vi) an activity that is ancillary or incidental to the supply of an eligible service;
 - (vii) giving information to service providers about any of the above activities;
 - (e) the person must not discriminate in favour of itself in relation to the carrying on of any of the following activities:
 - (i) developing a new eligible service;
 - (ii) enhancing an eligible service;
 - (iii) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (iv) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
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- (v) an activity that is preparatory to the supply of an eligible service;
- (vi) an activity that is ancillary or incidental to the supply of an eligible service;
- (vii) giving information to service providers about any of the above activities;
- (f) such other conditions and limitations as are specified in the determination.

Note 1: For compliance with conditions and limitations, see section 143B.

Note 2: For judicial enforcement of conditions and limitations, see section 143C.

- (4) The rule in paragraph (3)(b) does not prevent discrimination against a wholesale customer, or prospective wholesale customer, if the person has reasonable grounds to believe that the wholesale customer or prospective wholesale customer would fail, to a material extent, to comply with the terms and conditions on which the person supplies designated carriage services.
- (5) Examples of grounds for believing as mentioned in subsection (4) include:
 - (a) evidence that the wholesale customer or prospective wholesale customer is not creditworthy; and
 - (b) repeated failures by the wholesale customer or prospective wholesale customer to comply with the terms and conditions on which the person supplied eligible services (whether or not using the line).
- (6) A determination under subsection (1) or (2) must not specify a condition or limitation of a kind specified in a determination under subsection (7).
- (7) The Minister may, by legislative instrument, determine one or more kinds of condition or limitation for the purposes of subsection (6).

Criteria for making determination

- (8) In deciding whether to make a determination under subsection (1) or (2), the ACCC must have regard to:

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- (a) whether the determination promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services; and
 - (b) the matters (if any) specified in a determination under subsection (9); and
 - (c) such other matters (if any) as the ACCC considers relevant.
- (9) The Minister may, by legislative instrument, determine one or more matters for the purposes of paragraph (8)(b).

Associated group

- (10) For the purposes of this section, if:
- (a) a person is in a position to exercise control of:
 - (i) a local access line; or
 - (ii) a telecommunications network; and
 - (b) the person has one or more associates;
- then:
- (c) the person is taken to belong to an associated group; and
 - (d) the associated group consists of the person and those associates.

143B Compliance with conditions and limitations of exemption determinations

- (1) A person must, on or after the designated commencement date, comply with the conditions or limitations of a determination under subsection 143A(1) or (2).

Ancillary contraventions

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or

- (d) conspire with others to effect a contravention of subsection (1).

Civil penalty provisions

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

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

143C Judicial enforcement of conditions and limitations of exemption determinations

- (1) If the Federal Court is satisfied that a person has, on or after the designated commencement date, contravened any of the conditions or limitations of a determination under subsection 143A(1) or (2), the Court may, on the application of:
- (a) the ACCC; or
 - (b) a carrier; or
 - (c) a carriage service provider;
- make all or any of the following orders:
- (d) an order directing the person to comply with the condition or limitation;
 - (e) an order directing the person to compensate any other person (who may be the applicant) who has suffered loss or damage as a result of the contravention;
 - (f) any other order that the Court thinks appropriate.
- (2) The Federal Court may discharge or vary an order granted under this section.

143D Publication of list of persons who have elected to be bound by exemption determinations

If a determination is in force under subsection 143A(1) or (2), the ACCC must publish on its website a list setting out the names of the persons who:

- (a) have elected to be bound by the determination; and
- (b) have not cancelled the election concerned.

143E Exemptions—certain real estate development projects etc.

(1) If:

- (a) a part of the infrastructure of a telecommunications network is situated in a particular area that:
 - (i) on 1 January 2011, was being developed as a particular stage of a real estate development project; or
 - (ii) before 1 January 2011, was developed as a particular stage of a real estate development project; and
- (b) on or after the designated commencement date, the network is extended to another area that is being, or is to be, developed as another stage of the project; and
- (c) a carrier installs telecommunications network infrastructure; and
- (d) the infrastructure mentioned in paragraph (c) is part of the extension;

the infrastructure mentioned in paragraph (c) is exempt from sections 142C and 143.

(2) If:

- (a) a part of the infrastructure of a telecommunications network is situated in a particular area that:
 - (i) on 1 January 2011, was being developed as a particular stage of a real estate development project; or
 - (ii) before 1 January 2011, was developed as a particular stage of a real estate development project; and
 - (b) during the period:
 - (i) beginning at the start of the designated commencement date; and
 - (ii) ending when the Minister makes a declaration under section 48 of the *National Broadband Network Companies Act 2011* that, in the Minister's opinion, the national broadband network should be treated as built and fully operational;
- the network is extended to an area that is:
- (iii) the project area of a real estate development project specified under subsection (3); or

- (iv) the project area of a real estate development project that belongs to a class of real estate development projects specified under subsection (5); or
 - (v) the project area of a building redevelopment project specified under subsection (6); or
 - (vi) the project area of a building redevelopment project that belongs to a class of building redevelopment projects specified under subsection (8); and
- (c) a carrier installs telecommunications network infrastructure; and
- (d) the infrastructure mentioned in paragraph (c) is part of the extension;
- the infrastructure mentioned in paragraph (c) is exempt from sections 142C and 143.
- (3) The Minister may, by notifiable instrument, specify one or more real estate development projects for the purposes of subparagraph (2)(b)(iii).
 - (4) Subsection 13(3) of the *Legislation Act 2003* does not apply to subsection (3) of this section.
 - (5) The Minister may, by legislative instrument, specify one or more classes of real estate development projects for the purposes of subparagraph (2)(b)(iv).
 - (6) The Minister may, by notifiable instrument, specify one or more building redevelopment projects for the purposes of subparagraph (2)(b)(v).
 - (7) Subsection 13(3) of the *Legislation Act 2003* does not apply to subsection (6) of this section.
 - (8) The Minister may, by legislative instrument, specify one or more classes of building redevelopment projects for the purposes of subparagraph (2)(b)(vi).

Building redevelopment project

- (9) For the purposes of this section, a project is a **building redevelopment project** if the project involves:

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- (a) the significant refurbishment or repurposing of one or more buildings so as to bring into existence one or more building units; and
 - (b) the making available of any or all of those building units for sale or lease.
- (10) For the purposes of this section, the area or areas occupied by the building or buildings are the **project area** for the building redevelopment project.
- (11) For the purposes of subsection (9), it is immaterial whether:
- (a) the project has been, is being, or will be, implemented in stages; or
 - (b) different elements of the project have been, are being, or will be, carried out by different persons; or
 - (c) one or more approvals are given, are required, or will be required, under a law of the Commonwealth, a State or a Territory, for the project, or any element of the project.

143F Exemptions—lines installed in close proximity to other lines

- (1) If:
- (a) a telecommunications network came into existence on or after 1 January 2011; and
 - (b) a line came into existence on or after the designated commencement date for the purposes of connecting particular premises to the network; and
 - (c) the coming into existence of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the line; and
 - (d) the premises are in close proximity to a line that forms part of the infrastructure of the network as the network stood immediately before the designated commencement date; and
 - (e) the line mentioned in paragraph (b) is used to supply a superfast carriage service;
- the line mentioned in paragraph (b) is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

(2) If:

- (a) a designated telecommunications network (within the meaning of the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014*) was in existence immediately before the designated commencement date; and
- (b) a line came into existence on or after the designated commencement date for the purposes of connecting particular premises to the network; and
- (c) the coming into existence of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the line; and
- (d) the premises are in close proximity to a line that forms part of the infrastructure of the network as the network stood immediately before the designated commencement date; and
- (e) the line mentioned in paragraph (b) is used to supply a superfast carriage service;

the line mentioned in paragraph (b) is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

143G Exemptions—networks covered by exemption instruments

(1) If:

- (a) the *Telecommunications (Network Exemption—TransACT Very Small Scale Networks) Instrument 2012* was in force at the start of the designated commencement date; and
- (b) a line came into existence on or after the designated commencement date; and
- (c) the line forms part of the infrastructure of:
 - (i) an ACT Very Small Scale Network that is a FTTP network or a VDSL network (within the meaning of that instrument); or

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- (ii) a Victorian Very Small Scale Network that is a FTTP network, a VDSL network or a HFC network (within the meaning of that instrument); and
- (d) that instrument has not ceased to be in force;
- the line is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

(2) If:

- (a) the *Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012* was in force at the start of the designated commencement date; and
- (b) a line came into existence on or after the designated commencement date; and
- (c) the line forms part of the infrastructure of the Telstra South Brisbane Network (within the meaning of that instrument); and
- (d) that instrument has not ceased to be in force;
- the line is exempt from section 142C.

Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).

Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

(3) If:

- (a) the *Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012* was in force at the start of the designated commencement date; and
- (b) a line came into existence on or after the designated commencement date; and
- (c) the line forms part of the infrastructure of a TransACT Upgraded VDSL Network (within the meaning of that instrument); and
- (d) that instrument has not ceased to be in force;
- the line is exempt from section 142C.

- Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).
- Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

- (4) If:
- (a) the *Telecommunications (Network Exemption—Specified Velocity Networks) Instrument 2012* was in force at the start of the designated commencement date; and
 - (b) a line came into existence on or after the designated commencement date; and
 - (c) the line forms part of the infrastructure of a Specified Velocity Network (within the meaning of that instrument); and
 - (d) that instrument has not ceased to be in force;
- the line is exempt from section 142C.

- Note 1: See also section 156A (certain lines deemed to have come into existence on or after the designated commencement date).
- Note 2: See also section 158A (certain line extensions deemed to be local access lines in their own right, and to have come into existence on or after the designated commencement date).

- (5) For the purposes of paragraph (4)(c) of this section, assume that paragraph (c) of the definition of ***Specified Velocity Network*** in the *Telecommunications (Network Exemption—Specified Velocity Networks) Instrument 2012* were modified by omitting all the words from and including “in accordance with” to and including “project”.

143H Exemption—networks marketed as business networks

- (1) If:
- (a) a local access line is part of the infrastructure of a telecommunications network operated by a carrier; and
 - (b) the network is marketed by the carrier exclusively as a business network; and
 - (c) the line is used, or proposed to be used, to supply a superfast carriage service wholly or principally to residential

customers, or prospective residential customers, in Australia;
and

- (d) that use or proposed use, when considered in relation to the use or proposed use of all of the local access lines that are part of the infrastructure of the network, is minor; and
- (e) the other conditions (if any) determined under subsection (2) have been satisfied;

the line is exempt from section 142C.

- (2) The Minister may, by legislative instrument, determine one or more conditions for the purposes of paragraph (1)(e).

43 At the end of section 144

Add:

- (7) The Minister must not make an instrument under subsection (1), (2) or (3) on or after the designated commencement date.
- (8) Subsection (7) does not prevent the Minister from varying an instrument that was in force immediately after the start of the designated commencement date.

44 Subsections 145(1), (3) and (5)

Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and 143(2) do”.

45 Subsection 146(1)

Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and 143(2) do”.

46 Subsection 147(1)

Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and 143(2) do”.

47 Subsection 148(1)

Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and 143(2) do”.

48 Subsection 149(1)

Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and 143(2) do”.

49 Subsection 150(1)

Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and 143(2) do”.

50 Subsection 151(1)

Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and 143(2) do”.

51 Before Division 3 of Part 8

Insert:

Division 2B—Functional separation undertakings

151A Standard functional separation undertaking

- (1) If a person is a corporation, the person may give a written undertaking (a *standard functional separation undertaking*) to the ACCC.
- (2) The undertaking must:
 - (a) provide that the person will maintain:
 - (i) a single wholesale business unit; and
 - (ii) a single retail business unit; and
 - (b) provide that the person will maintain arm’s length functional separation between:
 - (i) the person’s wholesale business unit; and
 - (ii) the person’s retail business unit; and
 - (c) provide that the person will ensure that:
 - (i) the terms and conditions relating to price or a method of ascertaining price; and
 - (ii) other terms and conditions;
on which the person’s wholesale business unit supplies local access line services to the person’s retail business unit are documented; and

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- (d) provide that the person will, to the extent specified in the undertaking, ensure that the workers who perform their duties for the person's wholesale business unit are different from the workers who perform their duties for the person's retail business unit; and
 - (e) provide that the person will, to the extent specified in the undertaking, ensure that there are separate:
 - (i) operational support systems; and
 - (ii) business systems; and
 - (iii) communications systems; and
 - (iv) accounts;for:
 - (v) the person's wholesale business unit; and
 - (vi) the person's retail business unit; and
 - (f) provide that the person will publish on the person's website:
 - (i) the terms and conditions relating to price or a method of ascertaining price; and
 - (ii) other terms and conditions;on which the person's wholesale business unit offers to supply local access line services to the following:
 - (iii) the person's retail business unit;
 - (iv) the person's wholesale customers or prospective wholesale customers; and
 - (g) provide that the person will:
 - (i) if requested to do so by a wholesale customer or prospective wholesale customer, supply a local access line service to the wholesale customer or prospective wholesale customer; and
 - (ii) do so on the terms and conditions that were published on the person's website at the time when the request was made; and
 - (h) provide that the person will ensure that information provided to the person's wholesale business unit by the person's wholesale customers is not disclosed to the person's retail business unit; and
 - (i) provide that the person will ensure that the person's retail business unit does not obtain, access or use information
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provided to the person's wholesale business unit by the person's wholesale customers; and

- (j) provide that the person will ensure that information provided to the person's retail business unit by a carrier or carriage service provider (other than information of a kind specified in a determination under subsection (13)) is not disclosed to the person's wholesale business unit; and
- (k) provide that the person will ensure that the person's wholesale business unit does not obtain, access or use information provided to the person's retail business unit by a carrier or carriage service provider (other than information of a kind specified in a determination under subsection (13)); and
- (l) provide that the person will use the same customer interface for dealings between:
 - (i) the person's wholesale business unit; and
 - (ii) the person's wholesale customers;as the person uses for dealings between:
 - (iii) the person's wholesale business unit; and
 - (iv) the person's retail business unit; and
- (m) contain such other provisions (if any) as are specified in a determination under subsection (14); and
- (n) not contain a provision of a kind specified in a determination under subsection (15).

Note: A standard functional separation undertaking is supplemented by section 151ZF (which requires eligible services to be supplied on a non-discriminatory basis) and section 151ZG (which requires related activities to be carried on on a non-discriminatory basis).

- (3) An extent specified under paragraph (2)(d) or (e) may be a nil extent.

Form etc.

- (4) The undertaking must:
 - (a) be in a form approved in writing by the ACCC; and
 - (b) be accompanied by such information as is reasonably likely to assist the ACCC to decide whether to accept or reject the undertaking; and

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- (c) be accompanied by the fee (if any) specified in, or ascertained in accordance with, a determination under subsection (16).

Expiry time

- (5) The undertaking must specify the expiry time of the undertaking.
- (6) The expiry time of the undertaking may be described by reference to the end of a period beginning when the undertaking comes into force.
- (7) Subsection (6) does not, by implication, limit subsection (5).
- (8) The expiry time of the undertaking must not be more than 10 years after the undertaking comes into force.

Fundamental provisions

- (9) The undertaking:
 - (a) must state that the provisions of the undertaking covered by paragraphs (2)(a), (b), (c), (f), (g), (h), (i), (j) and (k) are fundamental provisions; and
 - (b) may state that one or more other provisions of the undertaking are fundamental provisions.

Compliance reports

- (10) The undertaking must provide that the person will give the ACCC periodic reports (to be known as compliance reports) that:
 - (a) relate to the person's compliance with the undertaking; and
 - (b) are in a form approved in writing by the ACCC.

Note: See section 151ZJ (self-incrimination).

Compliance plans

- (11) The undertaking must provide that the person will:
 - (a) prepare a plan (to be known as a compliance plan) setting out the actions to be taken by the person for the purpose of ensuring that the person complies with the undertaking; and
 - (b) give the ACCC:

- (i) a copy of the compliance plan; and
- (ii) a copy of any variation of the compliance plan.

ACCC may perform functions or exercise powers

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

Determinations

- (13) The ACCC may, by legislative instrument, determine one or more kinds of information for the purposes of paragraphs (2)(j) and (k).
- (14) The Minister may, by legislative instrument, determine one or more provisions for the purposes of paragraph (2)(m).
- (15) The Minister may, by legislative instrument, determine one or more kinds of provisions for the purposes of paragraph (2)(n).
- (16) The ACCC may, by legislative instrument, determine a fee, or a method of ascertaining a fee, for the purposes of paragraph (4)(c).
- (17) A fee determined under, or ascertained in accordance with, subsection (16) must not be such as to amount to taxation.

151B Deemed standard functional separation undertaking

- (1) The ACCC may, by legislative instrument, determine that, if:
 - (a) a corporation is included in a specified class of corporations; and
 - (b) the corporation has, by written notice given to the ACCC, elected to be bound by the determination; and
 - (c) the corporation has not, by written notice given to the ACCC, cancelled the election; and
 - (d) the ACCC has not revoked the election under subsection (7);this Act has effect as if:
 - (e) the corporation had given a standard functional separation undertaking in the terms set out in the determination; and
 - (f) the ACCC had accepted the undertaking; and

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- (g) if the election was given before the designated commencement date—the undertaking had come into force on the designated commencement date; and
 - (h) if the election was given on or after the designated commencement date—the undertaking had come into force when the election was given to the ACCC.
- (1A) A functional separation undertaking covered by a determination under subsection (1) must comply with the following provisions:
- (a) paragraphs 151A(2)(a) to (m);
 - (b) subsections 151A(9), (10) and (11).
- (1B) A functional separation undertaking covered by a determination under subsection (1) must not contain a provision of a kind specified in a determination under subsection 151A(15).
- (2) The following provisions do not apply to a functional separation undertaking covered by a determination under subsection (1):
- (a) subsections 151A(4) to (8);
 - (b) section 151N;
 - (c) section 151P;
 - (d) section 151Q;
 - (e) section 151W.
- (3) If, as a result of an election under a determination under subsection (1), a corporation is taken to have given a standard functional separation undertaking:
- (a) this Act does not prevent the corporation from giving the ACCC another standard functional separation undertaking; and
 - (b) if the other standard functional separation undertaking comes into force—the corporation is taken to have cancelled the election immediately before the other standard functional separation undertaking comes into force.
- (4) If, as a result of an election under a determination under subsection (1), a corporation is taken to have given a standard functional separation undertaking:

- (a) this Act does not prevent the corporation, together with one or more other persons, from giving the ACCC a joint functional separation undertaking; and
 - (b) if the joint functional separation undertaking comes into force—the corporation is taken to have cancelled the election immediately before the joint functional separation undertaking comes into force.
- (5) Before making a determination under subsection (1), the ACCC must:
- (a) publish on the ACCC’s website a notice:
 - (i) setting out the draft determination; and
 - (ii) inviting persons to make submissions to the ACCC about the draft determination within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (6) The time limit must not be shorter than 15 business days after the notice is published.
- (7) If:
- (a) a standard functional separation undertaking is in force as the result of an election made by a person as mentioned in paragraph (1)(b); and
 - (b) any of the following conditions is satisfied:
 - (i) the person has breached a fundamental provision of the undertaking;
 - (ii) the person has contravened section 151ZF or 151ZG;
 - (iii) the ACCC is satisfied that the person has an unsatisfactory compliance record in relation to functional separation;
- the ACCC may, by written notice given to the person, revoke the election.

151C Joint functional separation undertaking

- (1) If 2 or more persons are corporations, those persons may give a joint written undertaking (a ***joint functional separation undertaking***) to the ACCC.

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- (2) The undertaking must:
- (a) identify:
 - (i) one or more (but not all) of those persons as the wholesaler or wholesalers for the purposes of the undertaking; and
 - (ii) the remaining person or persons as the retailer or retailers for the purposes of the undertaking; and
 - (b) provide that a wholesaler will not supply a local access line service to a person unless the person is a wholesale customer; and
 - (c) provide that a retailer will not supply a local access line service to a person unless the person is a retail customer; and
 - (d) provide that a wholesaler will, to the extent specified in the undertaking, ensure that the wholesaler's workers will perform their duties exclusively for the wholesaler; and
 - (e) provide that a retailer will, to the extent specified in the undertaking, ensure that the retailer's workers will perform their duties exclusively for the retailer; and
 - (f) provide that a wholesaler will, to the extent specified in the undertaking, ensure that the workers who:
 - (i) are engaged by persons other than the wholesaler; and
 - (ii) perform duties for the wholesaler;are different from the workers who:
 - (iii) are engaged by persons other than the wholesaler; and
 - (iv) perform duties for a retailer; and
 - (g) provide that a retailer will, to the extent specified in the undertaking, ensure that the workers who:
 - (i) are engaged by persons other than the retailer; and
 - (ii) perform duties for the retailer;are different from the workers who:
 - (iii) are engaged by persons other than the retailer; and
 - (iv) perform duties for a wholesaler; and
 - (h) provide that a wholesaler will ensure that no director of the wholesaler is a director of a retailer; and
 - (i) provide that a retailer will ensure that no director of the retailer is a director of a wholesaler; and
 - (j) provide that:
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- (i) the wholesaler or wholesalers; and
 - (ii) the retailer or retailers;
- will, to the extent specified in the undertaking, have separate:
- (iii) operational support systems; and
 - (iv) business systems; and
 - (v) communications systems; and
 - (vi) accounts; and
- (k) provide that a wholesaler will publish on the wholesaler's website:
- (i) the terms and conditions relating to price or a method of ascertaining price; and
 - (ii) other terms and conditions;
- on which the wholesaler offers to supply local access line services to the following:
- (iii) a retailer;
 - (iv) its wholesale customers or prospective wholesale customers; and
- (l) provide that a wholesaler will:
- (i) if requested to do so by a wholesale customer or prospective wholesale customer, supply a local access line service to the wholesale customer or prospective wholesale customer; and
 - (ii) do so on the terms and conditions that were published on the wholesaler's website at the time when the request was made; and
- (m) provide that a wholesaler will ensure that information provided by its wholesale customers (other than the retailer or retailers) is not disclosed to any of the retailers; and
- (n) provide that a retailer will ensure that it does not obtain, access or use information provided to any of the wholesalers by the wholesaler's wholesale customers; and
- (o) provide that a retailer will ensure that information provided to the retailer by a carrier or carriage service provider, other than:
- (i) information provided by a wholesaler; or
 - (ii) information of a kind specified in a determination under subsection (15);

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- is not disclosed to any of the wholesalers; and
- (p) provide that a wholesaler will ensure that it does not obtain, access or use information provided to any of the retailers by a carrier or carriage service provider, other than:
 - (i) information provided by a wholesaler; or
 - (ii) information of a kind specified in a determination under subsection (15); and
 - (q) provide that a wholesaler will use the same customer interface for dealings between:
 - (i) the wholesaler; and
 - (ii) the wholesaler's wholesale customers (other than the retailer or retailers);as the wholesaler uses for dealings between:
 - (iii) the wholesaler; and
 - (iv) a retailer; and
 - (r) contain such other provisions (if any) as are specified in a determination under subsection (16); and
 - (s) not contain a provision of a kind specified in a determination under subsection (17).

Note: A joint functional separation undertaking is supplemented by section 151ZF (which requires eligible services to be supplied on a non-discriminatory basis) and section 151ZG (which requires related activities to be carried on on a non-discriminatory basis).

- (3) An extent specified under paragraph (2)(d), (e), (f), (g) or (j) may be a nil extent.

Form etc.

- (4) The undertaking must:
 - (a) be in a form approved in writing by the ACCC; and
 - (b) be accompanied by such information as is reasonably likely to assist the ACCC to decide whether to accept or reject the undertaking; and
 - (c) be accompanied by the fee (if any) specified in, or ascertained in accordance with, a determination under subsection (18).

Expiry time

- (5) The undertaking must specify the expiry time of the undertaking.
- (6) The expiry time of the undertaking may be described by reference to the end of a period beginning when the undertaking comes into force.
- (7) Subsection (6) does not, by implication, limit subsection (5).
- (8) The expiry time of the undertaking must not be more than 10 years after the undertaking comes into force.

Fundamental provisions

- (9) The undertaking:
 - (a) must state that the provisions of the undertaking covered by paragraphs (2)(a), (b), (c), (h), (i), (k), (l), (m), (n), (o) and (p) are fundamental provisions; and
 - (b) may state that one or more other provisions of the undertaking are fundamental provisions.

Compliance reports

- (10) The undertaking must provide that a wholesaler will give the ACCC periodic reports (to be known as compliance reports) that:
 - (a) relate to the wholesaler's compliance with the undertaking; and
 - (b) are in a form approved in writing by the ACCC.

Note: See section 151ZJ (self-incrimination).

- (11) The undertaking must provide that a retailer will give the ACCC periodic reports (to be known as compliance reports) that:
 - (a) relate to the retailer's compliance with the undertaking; and
 - (b) are in a form approved in writing by the ACCC.

Note: See section 151ZJ (self-incrimination).

Compliance plans

- (12) The undertaking must provide that a wholesaler will:
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- (a) prepare a plan (to be known as a compliance plan) setting out the actions to be taken by the wholesaler for the purpose of ensuring that the wholesaler complies with the undertaking; and
 - (b) give the ACCC:
 - (i) a copy of the compliance plan; and
 - (ii) a copy of any variation of the compliance plan.
- (13) The undertaking must provide that a retailer will:
- (a) prepare a plan (to be known as a compliance plan) setting out the actions to be taken by the retailer for the purpose of ensuring that the retailer complies with the undertaking; and
 - (b) give the ACCC:
 - (i) a copy of the compliance plan; and
 - (ii) a copy of any variation of the compliance plan.

ACCC may perform functions or exercise powers

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

Determinations

- (15) The ACCC may, by legislative instrument, determine one or more kinds of information for the purposes of paragraphs (2)(o) and (p).
- (16) The Minister may, by legislative instrument, determine one or more provisions for the purposes of paragraph (2)(r).
- (17) The Minister may, by legislative instrument, determine one or more kinds of provisions for the purposes of paragraph (2)(s).
- (18) The ACCC may, by legislative instrument, determine a fee, or a method of ascertaining a fee, for the purposes of paragraph (4)(c).
- (19) A fee determined under, or ascertained in accordance with, subsection (18) must not be such as to amount to taxation.

151D Further information about undertaking

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking.

Request for further information

- (2) The ACCC may request the person or persons to give the ACCC further information about the undertaking.
- (3) The ACCC may refuse to consider the undertaking until the person or persons give the ACCC the information.
- (4) The ACCC may withdraw its request for further information, in whole or in part.

151E Withdrawal of undertaking that is under consideration

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking.

Withdrawal

- (2) The person or persons may withdraw the undertaking at any time before the ACCC makes a decision to accept or reject the undertaking.
- (3) This Act does not prevent the person or persons from giving a fresh undertaking.

Refund of fee

- (4) If:
- (a) the person or persons withdraw the undertaking; and
 - (b) the person or persons have paid a fee in relation to the undertaking;
- the ACCC may, on behalf of the Commonwealth, refund the whole or a part of the fee.

151F ACCC to accept or reject functional separation undertaking*Scope*

- (1) This section applies if:
- (a) a person gives the ACCC a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking.

Decision to accept or reject undertaking

- (2) After considering the undertaking, the ACCC must:
- (a) accept the undertaking; or
 - (b) reject the undertaking.

Notice of decision

- (3) If the ACCC accepts the undertaking, the ACCC must give the person or persons a written notice stating that the undertaking has been accepted.
- (4) If the ACCC rejects the undertaking, the ACCC must give the person or persons a written notice:
- (a) stating that the undertaking has been rejected; and
 - (b) setting out the reasons for the rejection.

ACCC to make decision within 3 months

- (5) The ACCC must take all reasonable steps to ensure that a decision about the undertaking is made under subsection (2) within 3 months after receiving the undertaking.

- (6) In calculating the 3-month period referred to in subsection (5), disregard:
- (a) if:
 - (i) the ACCC has given a notice under section 151K in relation to the undertaking; and
 - (ii) no varied undertaking was given to the ACCC in response to the notice;a day in the period specified in the notice; and
 - (b) if:
 - (i) the ACCC has given a notice under section 151K in relation to the undertaking; and
 - (ii) a varied undertaking was given to the ACCC in response to the notice;a day in the period:
 - (iii) beginning on the day on which the notice was given; and
 - (iv) ending at the end of the time limit specified by the ACCC when it published the varied undertaking under section 151G; and
 - (c) if the ACCC has not given a notice under section 151K in relation to the undertaking—a day in the period:
 - (i) beginning on the day on which the ACCC published the undertaking under section 151G; and
 - (ii) ending at the end of the time limit specified by the ACCC when it published the undertaking under section 151G; and
 - (d) if the ACCC has requested further information under section 151D in relation to the undertaking—a day during any part of which the request, or any part of the request, remains unfulfilled.

Extension of decision-making period

- (7) The ACCC may, by written notice given to the person or persons, extend the 3-month period referred to in subsection (5) (the ***initial 3-month period***), so long as:
- (a) the extension is for a period of not more than 3 months; and

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- (b) the notice includes a statement explaining why the ACCC has been unable to make a decision on the undertaking within the initial 3-month period.
 - (8) As soon as practicable after the ACCC gives a notice under subsection (7), the ACCC must publish a copy of the notice on the ACCC's website.

151G Consultation—acceptance or rejection of undertaking

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking.

Consultation

- (2) Before making a decision to accept or reject the undertaking, the ACCC must:
 - (a) publish on the ACCC's website a notice:
 - (i) setting out the undertaking; and
 - (ii) inviting persons to make submissions to the ACCC about the undertaking within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (3) The time limit must not be shorter than 15 business days after the notice is published.

151H Serial undertakings

- (1) If:
 - (a) a person gives the ACCC a standard functional separation undertaking (the ***first functional separation undertaking***); and

- (b) the ACCC rejects the first functional separation undertaking;
and
- (c) the person subsequently gives the ACCC another standard functional separation undertaking; and
- (d) the ACCC is satisfied that any or all of the provisions of the first functional separation undertaking are materially similar to any or all of the provisions of the other functional separation undertaking;

the ACCC may refuse to consider the other functional separation undertaking.

(2) If:

- (a) 2 or more persons give the ACCC a joint functional separation undertaking (the *first functional separation undertaking*); and
- (b) the ACCC rejects the first functional separation undertaking;
and
- (c) those persons subsequently give the ACCC another joint functional separation undertaking; and
- (d) the ACCC is satisfied that any or all of the provisions of the first functional separation undertaking are materially similar to any or all of the provisions of the other functional separation undertaking;

the ACCC may refuse to consider the other functional separation undertaking.

Refund of fee

(3) If:

- (a) the ACCC refuses to consider a functional separation undertaking under this section; and
- (b) a person or persons have paid a fee in relation to the undertaking;

the ACCC must, on behalf of the Commonwealth, refund the fee.

151J Criteria for accepting functional separation undertaking

Scope

(1) This section applies if:

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- (a) a person gives the ACCC a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking.

Criteria

- (2) In deciding whether to accept the undertaking, the ACCC must have regard to:
 - (a) whether the undertaking promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services; and
 - (b) the matters (if any) specified in a determination that was in force under subsection (3) at the time the undertaking was given; and
 - (c) such other matters (if any) as the ACCC considers relevant.
- (3) The Minister may, by legislative instrument, determine one or more matters for the purposes of paragraph (2)(b).

151K Variation of functional separation undertaking that is under consideration

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a standard functional separation undertaking (the *original undertaking*); or
 - (b) 2 or more persons give the ACCC a joint functional separation undertaking (the *original undertaking*).

Notice

- (2) The ACCC may give the person or persons a written notice stating that, if:
 - (a) the person makes, or the persons make, such variations to the original undertaking as are specified in the notice; and
 - (b) the person gives, or the persons give, the varied undertaking to the ACCC within the period specified in the notice;

the ACCC will consider the varied undertaking under section 151F as if the varied undertaking had been given to the ACCC instead of the original undertaking.

Treatment of varied undertaking

- (3) If the person gives, or the persons give, the ACCC a varied undertaking in response to the notice, the ACCC must consider the varied undertaking under section 151F as if the varied undertaking had been given to the ACCC instead of the original undertaking.

No duty to consider whether to give a notice

- (4) The ACCC does not have a duty to consider whether to give a notice under subsection (2).

151L Replacement of functional separation undertaking that is under consideration

Scope

- (1) This section applies if a person gives the ACCC a standard functional separation undertaking (the *original undertaking*).

Notice

- (2) The ACCC may give the person a written notice stating that, if:
- (a) the person withdraws the original undertaking; and
 - (b) the person, together with one or more other persons specified in the notice, gives a joint functional separation undertaking in the terms specified in the notice; and
 - (c) the person does the things mentioned in paragraphs (a) and (b) within the time limit specified in the notice;
- the ACCC would be inclined to accept the joint functional separation undertaking.
- (3) The ACCC does not have a duty to consider whether to give a notice under subsection (2).

151M Renewal of functional separation undertaking

- (1) If:
- (a) a standard functional separation undertaking (the ***existing undertaking***) given by a person is in force; and
 - (b) at least 12 months before the expiry of the existing undertaking, the person gives the ACCC another standard functional separation undertaking;
- the other undertaking may be expressed to be given by way of renewal of the existing undertaking.

Note: For acceptance or rejection of the other undertaking, see section 151F.

- (2) If:
- (a) a joint functional separation undertaking (the ***existing undertaking***) given by 2 or more persons is in force; and
 - (b) at least 12 months before the expiry of the existing undertaking, those persons give another joint functional separation undertaking to the ACCC;
- the other undertaking may be expressed to be given by way of renewal of the existing undertaking.

Note 1: For acceptance or rejection of the other undertaking, see section 151F.

Note 2: For consultation on a decision to accept or reject the other undertaking, see section 151G.

151N Variation of expiry time of certain functional separation undertakings*Standard functional separation undertaking*

- (1) If:
- (a) a standard functional separation undertaking (the ***existing undertaking***) given by a person is in force; and
 - (b) another functional separation undertaking is given to the ACCC by the person; and
 - (c) the ACCC rejects the other undertaking;
- the ACCC may, by written notice given to the person, vary the existing undertaking by:
- (d) omitting the expiry time specified in the existing undertaking; and

- (e) substituting the expiry time specified in the notice.

Note: See also section 142B.

- (2) The expiry time specified in the notice:
 - (a) must be later than the rejection of the other undertaking; and
 - (b) must not be later than 12 months after the rejection of the other undertaking.
- (3) Subsection 151A(8) does not apply to an expiry time specified in a notice under subsection (1).

Joint functional separation undertaking

- (4) If:
 - (a) a joint functional separation undertaking (the **existing undertaking**) given by 2 or more persons is in force; and
 - (b) another functional separation undertaking is given to the ACCC by a person who is one of the persons mentioned in paragraph (a); and
 - (c) the ACCC rejects the other undertaking;the ACCC may, by written notice given to each of the persons mentioned in paragraph (a), vary the existing undertaking by:
 - (d) omitting the expiry time specified in the existing undertaking; and
 - (e) substituting the expiry time specified in the notice.

Note: See also section 142B.

- (5) The expiry time specified in the notice:
 - (a) must be later than the rejection of the other undertaking; and
 - (b) must not be later than 12 months after the rejection of the other undertaking.
- (6) Subsection 151C(8) does not apply to an expiry time specified in a notice under subsection (4).

Consultation

- (7) Before making a decision under this section to vary a functional separation undertaking, the ACCC must:
 - (a) publish on the ACCC's website a notice:

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- (i) setting out the proposed variation; and
 - (ii) inviting persons to make submissions to the ACCC about the proposed variation within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (8) The time limit must not be shorter than 15 business days after the notice is published.

151P Duration of functional separation undertaking

Scope

- (1) This section applies if:
- (a) either:
 - (i) a person gives the ACCC a standard functional separation undertaking (the ***new undertaking***); or
 - (ii) 2 or more persons give the ACCC a joint functional separation undertaking (the ***new undertaking***); and
 - (b) the ACCC accepts the new undertaking.

Duration

- (2) If the new undertaking is not expressed to be given by way of renewal of another functional separation undertaking:
- (a) in a case where the new undertaking is accepted before the designated commencement date—the new undertaking comes into force:
 - (i) on the designated commencement date; or
 - (ii) if a later day is specified in the new undertaking—on that day; and
 - (b) in a case where the new undertaking is accepted on or after the designated commencement date—the new undertaking comes into force:
 - (i) on the day after it is accepted; or
 - (ii) if a later day is specified in the new undertaking—on that day; and

- (c) unless sooner revoked, the new undertaking continues in force until it expires.
- (3) If the new undertaking is expressed to be given by way of renewal of another functional separation undertaking:
 - (a) the new undertaking comes into force immediately after the expiry of the other undertaking; and
 - (b) unless sooner revoked, the new undertaking continues in force until it expires.

151Q Variation of functional separation undertaking that is in force

Scope

- (1) This section applies if:
 - (a) a standard functional separation undertaking given by a person is in force; or
 - (b) a joint functional separation undertaking given by 2 or more persons is in force.

Variation

- (2) The person or persons may give the ACCC a variation of the undertaking.
- (3) If the undertaking is a standard functional separation undertaking, the undertaking as varied must comply with subsections 151A(2), (5), (8), (9), (10) and (11) and paragraph 151A(4)(a).
- (4) If the undertaking is a joint functional separation undertaking, the undertaking as varied must comply with subsections 151C(2), (5), (8), (9), (10), (11), (12) and (13) and paragraph 151C(4)(a).

Form etc.

- (5) The variation must:
 - (a) be accompanied by such information as is reasonably likely to assist the ACCC to decide whether to accept or reject the variation; and

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- (b) be accompanied by the fee (if any) specified in, or ascertained in accordance with, a determination under subsection (6).
 - (6) The ACCC may, by legislative instrument, determine a fee, or a method of ascertaining a fee, for the purposes of paragraph (5)(b).
 - (7) A fee determined under, or ascertained in accordance with, subsection (6) must not be such as to amount to taxation.

151R Further information about variation of functional separation undertaking

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

Request for further information

- (2) The ACCC may request the person or persons to give the ACCC further information about the variation.
- (3) The ACCC may refuse to consider the variation until the person or persons give the ACCC the information.
- (4) The ACCC may withdraw its request for further information, in whole or in part.

151S Withdrawal of variation that is under consideration

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

Withdrawal

- (2) The person or persons may withdraw the variation at any time before the ACCC makes a decision to accept or reject the variation.
- (3) This Act does not prevent the person or persons from giving a fresh variation.

Refund of fee

- (4) If:
 - (a) the person or persons withdraw the variation; and
 - (b) the person or persons have paid a fee in relation to the variation;the ACCC may, on behalf of the Commonwealth, refund the whole or a part of the fee.

151T ACCC to accept or reject variation

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

Decision to accept or reject variation

- (2) After considering the variation, the ACCC must:
 - (a) accept the variation; or
 - (b) reject the variation.

Notice of decision

- (3) If the ACCC accepts the variation, the ACCC must give the person or persons a written notice:
 - (a) stating that the variation has been accepted; and
 - (b) setting out the terms of the variation.

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- (4) If the ACCC rejects the variation, the ACCC must give the person or persons a written notice:
- (a) stating that the variation has been rejected; and
 - (b) setting out the reasons for the rejection.

ACCC to make decision within 3 months

- (5) The ACCC must take all reasonable steps to ensure that a decision about the variation is made under subsection (2) within 3 months after receiving the variation.
- (6) In calculating the 3-month period referred to in subsection (5), disregard:
- (a) a day in the period:
 - (i) beginning on the day on which the ACCC published the variation under section 151U; and
 - (ii) ending at the end of the time limit specified by the ACCC when it published the variation under section 151U; and
 - (b) if the ACCC has requested further information under section 151R in relation to the variation—a day during any part of which the request, or any part of the request, remains unfulfilled.

Extension of decision-making period

- (7) The ACCC may, by written notice given to the person or persons, extend the 3-month period referred to in subsection (5) (the **initial 3-month period**), so long as:
- (a) the extension is for a period of not more than 3 months; and
 - (b) the notice includes a statement explaining why the ACCC has been unable to make a decision on the variation within the initial 3-month period.
- (8) As soon as practicable after the ACCC gives a notice under subsection (7), the ACCC must publish a copy of the notice on the ACCC's website.

151U Consultation—acceptance or rejection of variation

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

Consultation

- (2) Before making a decision to accept or reject the variation, the ACCC must:
 - (a) publish on the ACCC's website a notice:
 - (i) setting out the variation; and
 - (ii) inviting persons to make submissions to the ACCC about the variation within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (3) The time limit must not be shorter than 15 business days after the notice is published.

151V Criteria for accepting variation

Scope

- (1) This section applies if:
 - (a) a person gives the ACCC a variation of a standard functional separation undertaking; or
 - (b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

Criteria

- (2) In deciding whether to accept the variation, the ACCC must have regard to:
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- (a) whether the variation promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services; and
 - (b) the matters (if any) specified in a determination under subsection (3); and
 - (c) such other matters (if any) as the ACCC considers relevant.
- (3) The Minister may, by legislative instrument, determine one or more matters for the purposes of paragraph (2)(b).

151W Revocation of functional separation undertaking

Standard functional separation undertaking

- (1) If:
- (a) a standard functional separation undertaking given by a person is in force; and
 - (b) the person has:
 - (i) breached a fundamental provision of the undertaking; or
 - (ii) contravened section 151ZF or 151ZG;
- the ACCC may, by written notice given to the person, revoke the undertaking.
- (2) If:
- (a) a standard functional separation undertaking given by a person is in force; and
 - (b) the ACCC is satisfied that the person has an unsatisfactory compliance record in relation to functional separation;
- the ACCC may, by written notice given to the person, revoke the undertaking.
- (3) If:
- (a) a standard functional separation undertaking given by a person is in force; and
 - (b) the person requests the ACCC, in writing, to revoke the undertaking;
- the ACCC must, by written notice given to the person, revoke the undertaking.

- (4) A revocation under subsection (1), (2) or (3) takes effect at the time specified in the notice of revocation. The specified time:
 - (a) must not be earlier than the time the notice is given; and
 - (b) must not be later than 12 months after the notice is given.
- (5) After the giving of a notice of revocation of a standard functional separation undertaking under subsection (1), (2) or (3):
 - (a) the undertaking does not apply to local access line services supplied using a local access line that came into existence after the notice was given; and
 - (b) the definitions of *retail business unit* and *wholesale business unit* in section 142A (in so far as those definitions relate to the undertaking) have effect as if references in those definitions to the supply of local access line services did not include the supply of local access line services using a local access line that came into existence after the notice was given.

Joint functional separation undertaking

- (6) If:
 - (a) a joint functional separation undertaking given by 2 or more persons is in force; and
 - (b) any of those persons has:
 - (i) breached a fundamental provision of the undertaking; or
 - (ii) contravened section 151ZF or 151ZG;the ACCC may, by written notice given to each of those persons, revoke the undertaking.
- (7) If:
 - (a) a joint functional separation undertaking given by 2 or more persons is in force; and
 - (b) the ACCC is satisfied that any of those persons has an unsatisfactory compliance record in relation to functional separation;the ACCC may, by written notice given to each of those persons, revoke the undertaking.
- (8) If:

-
- (a) a joint functional separation undertaking given by 2 or more persons is in force; and
 - (b) those persons request the ACCC, in writing, to revoke the undertaking;
- the ACCC must, by written notice given to each of those persons, revoke the undertaking.
- (9) A revocation under subsection (6), (7) or (8) takes effect at the time specified in the notice of revocation. The specified time:
 - (a) must not be earlier than the time the notice is given; and
 - (b) must not be later than 12 months after the notice is given.
 - (10) After the giving of a notice of revocation of a joint functional separation undertaking under subsection (6), (7) or (8), the undertaking does not apply to local access line services supplied using a local access line that came into existence after the notice was given.

Matters to which the ACCC must have regard

- (11) In exercising its powers under this section, the ACCC must have regard to the following matters:
 - (a) whether arrangements to maintain the continuity of the supply of superfast carriage services to residential customers using local access lines:
 - (i) have been made; or
 - (ii) can be made before the relevant revocation takes effect;
 - (b) in the case of a revocation under subsection (1) or (6)—the consequences of the breach;
 - (c) in the case of a revocation under subsection (2) or (7)—the consequences of the person's unsatisfactory compliance record;
 - (d) such other matters (if any) as the ACCC considers relevant.

151X Consultation—revocation of functional separation undertaking

Revocation of standard functional separation undertaking

- (1) Before making a decision under subsection 151W(1) or (2) to revoke a standard functional separation undertaking given by a person, the ACCC must:
 - (a) give the person a written notice:
 - (i) stating that the ACCC proposes to revoke the undertaking; and
 - (ii) inviting the person to make a submission to the ACCC about the revocation within the time limit specified in the notice; and
 - (b) consider any submission received within the time limit specified in the notice.
- (2) The time limit must not be shorter than 15 business days after the notice is given.

Revocation of joint functional separation undertaking

- (3) Before making a decision under subsection 151W(6) or (7) to revoke a joint functional separation undertaking given by 2 or more persons, the ACCC must:
 - (a) give each of those persons a written notice:
 - (i) stating that the ACCC proposes to revoke the undertaking; and
 - (ii) inviting those persons to make submissions to the ACCC about the revocation within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (4) The time limit must not be shorter than 15 business days after the notice is given.

151Y Notification that a person is at risk of having an unsatisfactory compliance record in relation to functional separation*Scope*

- (1) This section applies to:
- (a) a breach by a person of a functional separation undertaking given by the person, so long as the breach occurred when the undertaking was in force; and
 - (b) a contravention by a person of section 143B, 151ZA, 151ZB, 151ZF, 151ZG, 151ZH or 151ZI.

Note: See section 142B.

Notification

- (2) If:
- (a) a functional separation undertaking given by a person is in force; and
 - (b) the ACCC is aware of one or more breaches or contraventions by the person; and
 - (c) the ACCC is satisfied that those breaches or contraventions do not mean that the person has an unsatisfactory compliance record in relation to functional separation; and
 - (d) the ACCC is satisfied that, if there were to be a particular kind of additional breach or contravention by the person, the person would have an unsatisfactory compliance record in relation to functional separation;

the ACCC must:

- (e) give the person a written notice:
 - (i) stating that the ACCC considers that the person is at risk of having an unsatisfactory compliance record in relation to functional separation; and
 - (ii) informing the person that an unsatisfactory compliance record is a ground for revoking the undertaking; and
- (f) do so as soon as practicable after becoming satisfied as mentioned in paragraph (d).

Note: See section 142B.

- (3) A failure to comply with subsection (2) does not affect the validity of a revocation of a functional separation undertaking.

151Z Variation of functional separation undertaking following giving of revocation notice

Standard functional separation undertaking

- (1) If:
- (a) the ACCC has given a notice under section 151W revoking a standard functional separation undertaking; and
 - (b) the revocation has not taken effect;
- the ACCC may, by written notice given to the person who gave the undertaking, vary the undertaking.
- (2) The ACCC must not vary a standard functional separation undertaking under subsection (1) unless the variation:
- (a) addresses the matter or matters that constituted the grounds for the revocation of the undertaking under section 151W; and
 - (b) does not address any other matter.

Joint functional separation undertaking

- (3) If:
- (a) the ACCC has given a notice under section 151W revoking a joint functional separation undertaking; and
 - (b) the revocation has not taken effect;
- the ACCC may, by written notice given to each of the persons who gave the undertaking, vary the undertaking.
- (4) The ACCC must not vary a joint functional separation undertaking under subsection (3) unless the variation:
- (a) addresses the matter or matters that constituted the grounds for the revocation of the undertaking under section 151W; and
 - (b) does not address any other matter.

When variation takes effect

- (5) A variation under subsection (1) or (3) takes effect at the time the notice is given.

151ZA Reporting obligations following giving of revocation notice

Standard functional separation undertaking

- (1) If:
- (a) the ACCC has given a notice under section 151W revoking a standard functional separation undertaking; and
 - (b) the revocation has not taken effect;
- the ACCC may, by written notice given to the person who gave the undertaking, direct the person:
- (c) to give the ACCC:
 - (i) a report about the person's compliance with the undertaking; or
 - (ii) information about the person's compliance with the undertaking; or
 - (iii) a report about action that the person has taken, is taking, or proposes to take for the purpose of ensuring that the person complies with sections 142C and 143 after the revocation takes effect; or
 - (iv) information about action that the person has taken, is taking, or proposes to take for the purpose of ensuring that the person complies with sections 142C and 143 after the revocation takes effect; and
 - (d) to do so within the period specified in the direction.

Note: See section 151ZJ (self-incrimination).

Joint functional separation undertaking

- (2) If:
- (a) the ACCC has given a notice under section 151W revoking a joint functional separation undertaking; and
 - (b) the revocation has not taken effect;

the ACCC may, by written notice given to a person who gave the undertaking jointly with one or more other persons, direct the person:

- (c) to give the ACCC:
 - (i) a report about the person's compliance with the undertaking; or
 - (ii) information about the person's compliance with the undertaking; or
 - (iii) a report about action that the person has taken, is taking, or proposes to take for the purpose of ensuring that the person complies with sections 142C and 143 after the revocation takes effect; or
 - (iv) information about action that the person has taken, is taking, or proposes to take for the purpose of ensuring that the person complies with sections 142C and 143 after the revocation takes effect; and
- (d) to do so within the period specified in the direction.

Note: See section 151ZJ (self-incrimination).

Compliance with direction

- (3) A person must comply with a direction under subsection (1) or (2).

Ancillary contraventions

- (4) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (3); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (3); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (3); or
 - (d) conspire with others to effect a contravention of subsection (3).

Civil penalty provisions

- (5) Subsections (3) and (4) are ***civil penalty provisions***.

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

151ZB Requirement to notify changes in control of person who gave undertaking*Notification by person who gave undertaking*

- (1) If:
- (a) a functional separation undertaking given by a person (the **first person**) is in force; and
 - (b) the first person becomes aware that:
 - (i) a person who was not in a position to exercise control of the first person has become in a position to exercise control of the first person; or
 - (ii) a person who was in a position to control the first person has ceased to be in that position;
- the first person must:
- (c) notify the ACCC, in writing, of that event; and
 - (d) do so as soon as practicable, but not later than 10 business days, after becoming so aware.

Note: See section 154.

- (2) The notice must be in a form approved, in writing, by the ACCC.

Notification by controller of person who gave undertaking

- (3) If:
- (a) a functional separation undertaking given by a person (the **first person**) is in force; and
 - (b) another person becomes aware that the other person is in a position to exercise control of the first person;
- the other person must:
- (c) notify the ACCC, in writing, of that position; and
 - (d) do so as soon as practicable, but not later than 10 business days, after becoming so aware.

Note: See section 154.

- (4) The notice must be in a form approved, in writing, by the ACCC.

Ancillary contraventions

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1) or (3); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1) or (3); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1) or (3); or
 - (d) conspire with others to effect a contravention of subsection (1) or (3).

Civil penalty provisions

- (6) Subsections (1), (3) and (5) are ***civil penalty provisions***.

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

151ZC Register of functional separation undertakings

- (1) The ACCC is to maintain a Register in which the ACCC includes:
- (a) all functional separation undertakings that have been accepted by the ACCC (including those that are no longer in force); and
 - (b) in the case of a functional separation undertaking that, under section 151B, is taken to have been given by a corporation:
 - (i) the name of the corporation; and
 - (ii) the date the undertaking came into force; and
 - (c) all variations of functional separation undertakings.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the ACCC's website.
- (4) The Register is not a legislative instrument.

151ZD Compliance with functional separation undertaking

- (1) If a functional separation undertaking given by a person is in force, the person must comply with the undertaking.
-

Note: See also section 142B.

Ancillary contraventions

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
 - (d) conspire with others to effect a contravention of subsection (1).

Civil penalty provisions

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

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

151ZE Enforcement of functional separation undertaking

- (1) If:
- (a) a functional separation undertaking given by a person is in force; and
 - (b) the Federal Court is satisfied, on the application of:
 - (i) the ACCC; or
 - (ii) a carrier; or
 - (iii) a carriage service provider;that the person has breached the undertaking;
- the Court may make any or all of the following orders:
- (c) an order directing the person to comply with the undertaking;
 - (d) an order directing the disposal of network units, lines, shares or other assets;
 - (e) an order restraining the exercise of any rights attached to shares;
 - (f) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person;

- (g) an order that any exercise of rights attached to shares be disregarded;
- (h) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (i) any order that the Court considers appropriate directing the person to compensate any other person (who may be the applicant) who has suffered loss or damage as a result of the breach;
- (j) any other order that the Court considers appropriate.

Note: See also section 142B.

- (2) In addition to the Federal Court's powers under subsection (1), the Court:
 - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do, or refrain from doing, a specified act; and
 - (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.
- (3) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (4) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Division 2C—Non-discrimination rules

151ZF Eligible services to be supplied on a non-discriminatory basis

No discrimination between wholesale customers

- (1) If:
 - (a) an eligible service is supplied, or proposed to be supplied, by a person using a local access line; and
 - (b) any of the following conditions is satisfied:
-

-
- (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line;

the person must not, on or after the designated commencement date, discriminate between the person's wholesale customers, or the person's prospective wholesale customers, in relation to the supply of eligible services using the line.

- (2) The rule in subsection (1) does not prevent discrimination against a wholesale customer, or prospective wholesale customer, if the person has reasonable grounds to believe that the wholesale customer or prospective wholesale customer would fail, to a material extent, to comply with the terms and conditions on which the person supplies eligible services using the line.
- (3) Examples of grounds for believing as mentioned in subsection (2) include:
 - (a) evidence that the wholesale customer or prospective wholesale customer is not creditworthy; and
 - (b) repeated failures by the wholesale customer or prospective wholesale customer to comply with the terms and conditions on which the person supplied eligible services (whether or not using the line).

No discrimination by a person in favour of itself

- (4) If:
 - (a) a person supplies, or proposes to supply, an eligible service using a local access line:
 - (i) to itself; and
 - (ii) to its wholesale customers or prospective wholesale customers; and
 - (b) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking
-

that relates to local access line services supplied, or proposed to be supplied, using the line;
the person must not, on or after the designated commencement date, discriminate in favour of itself in relation to the supply of the eligible service.

Ancillary contraventions

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1) or (4); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1) or (4); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1) or (4); or
 - (d) conspire with others to effect a contravention of subsection (1) or (4).

Civil penalty provisions

- (6) Subsections (1), (4) and (5) are ***civil penalty provisions***.

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

151ZG Eligible services—related activities to be carried on on a non-discriminatory basis

Scope

- (1) This section applies to a person, on and after the designated commencement date, if:
- (a) an eligible service is supplied, or proposed to be supplied, by a person using a local access line; and
 - (b) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line.
-

No discrimination between wholesale customers

- (2) The person must not, in carrying on any of the following activities, discriminate between the person's wholesale customers or the person's prospective wholesale customers:
- (a) developing a new eligible service;
 - (b) enhancing an eligible service;
 - (c) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (d) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (e) an activity that is preparatory to the supply of an eligible service;
 - (f) an activity that is ancillary or incidental to the supply of an eligible service;
 - (g) giving information to service providers about any of the above activities.

No discrimination by a person in favour of itself

- (3) The person must not discriminate in favour of itself in relation to the carrying on of any of the following activities:
- (a) developing a new eligible service;
 - (b) enhancing an eligible service;
 - (c) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (d) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (e) an activity that is preparatory to the supply of an eligible service;
 - (f) an activity that is ancillary or incidental to the supply of an eligible service;
 - (g) giving information to service providers about any of the above activities.

Ancillary contraventions

- (4) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2) or (3); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2) or (3); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2) or (3); or
 - (d) conspire with others to effect a contravention of subsection (2) or (3).

Civil penalty provisions

- (5) Subsections (2), (3) and (4) are ***civil penalty provisions***.

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

151ZH Statement about the differences between an access agreement and an offer etc.

- (1) If:
- (a) an access agreement is entered into by a person on or after the designated commencement date; and
 - (b) the eligible service to which the access agreement relates is an eligible service supplied, or proposed to be supplied, by the person using a local access line; and
 - (c) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line; and
 - (d) immediately before the access agreement was entered into, there was published on the person's website:
 - (i) the terms and conditions relating to price or a method of ascertaining price; or
 - (ii) other terms and conditions;

on which the person offers to supply eligible services using the line; and

- (e) the terms and conditions set out in the access agreement are not the same as the terms and conditions set out in the offer; the person must, within 5 business days after the day on which the access agreement was entered into, publish on the person's website a statement, in a form approved in writing by the ACCC:
- (f) identifying the parties to the access agreement; and
- (g) describing the differences between the terms and conditions set out in the access agreement and the terms and conditions set out in the offer; and
- (h) setting out such other information (if any) about the access agreement as is required by the form.

Note: For *access agreement*, see subsection (5).

Variation agreement

- (2) If:
 - (a) a variation agreement is entered into by a person on or after the designated commencement date; and
 - (b) the eligible service to which the relevant access agreement relates is an eligible service supplied, or proposed to be supplied, by the person using a local access line; and
 - (c) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line; and
 - (d) immediately before the variation agreement was entered into, there was published on the person's website:
 - (i) the terms and conditions relating to price or a method of ascertaining price; or
 - (ii) other terms and conditions;on which the person offers to supply eligible services using the line; and

- (e) the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) are not the same as the terms and conditions set out in the offer;
- the person must, within 5 business days after the day on which the variation agreement was entered into, publish on the person's website a statement, in a form approved in writing by the ACCC:
- (f) identifying the parties to the relevant access agreement (as varied by the variation agreement); and
 - (g) describing the differences between the terms and conditions set out in the relevant access agreement (as varied by the variation agreement) and the terms and conditions set out in the offer; and
 - (h) setting out such other information (if any) about the relevant access agreement (as varied by the variation agreement) as is required by the form.

Note: For *variation agreement*, see subsection (5).

Publication of offer

(2A) If:

- (a) a person offers to supply eligible services to the person's wholesale customers, or prospective wholesale customers, using a local access line; and
- (b) any of the following conditions is satisfied:
 - (i) section 142C applies to the line;
 - (ii) section 143 applies to the line;
 - (iii) neither section 142C nor section 143 applies to the line, and there is in force a functional separation undertaking that relates to local access line services supplied, or proposed to be supplied, using the line;

the person must publish on the person's website:

- (c) the terms and conditions relating to price or a method of ascertaining price; or
 - (d) other terms and conditions;
- on which the person offers to supply eligible services to the person's wholesale customers, or prospective wholesale customers, using the line.

Ancillary contraventions

- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1), (2) or (2A); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1), (2) or (2A); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1), (2) or (2A); or
 - (d) conspire with others to effect a contravention of subsection (1), (2) or (2A).

Civil penalty provisions

- (4) Subsections (1), (2), (2A) and (3) are ***civil penalty provisions***.

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

Access agreement and variation agreement

- (5) For the purposes of this section, ***access agreement*** and ***variation agreement*** have the same respective meanings as in Part XIC of the *Competition and Consumer Act 2010*. For this purpose, assume that:
- (a) each reference in section 152AF, subsections 152AG(1) and (3) and section 152BE of that Act to a declared service were a reference to an eligible service; and
 - (b) subsection 152BE(2) of that Act had not been enacted.

151ZHA Judicial enforcement of non-discrimination rules

- (1) If the Federal Court is satisfied that a person has, on or after the designated commencement date, contravened subsection 151ZF(1), (4) or (5), 151ZG(2), (3) or (4) or 151ZH(1), (2), (2A) or (3), the Court may, on the application of:
- (a) the ACCC; or
 - (b) a carrier; or
 - (c) a carriage service provider;
- make all or any of the following orders:
- (d) an order directing the person to comply with that subsection;

- (e) an order directing the person to compensate any other person (who may be the applicant) who has suffered loss or damage as a result of the contravention;
 - (f) any other order that the Court thinks appropriate.
- (2) The Federal Court may discharge or vary an order granted under this section.

52 Before section 152

Insert:

151ZI Anti-avoidance

- (1) A corporation must not, either alone or together with one or more other persons:
- (a) enter into a scheme; or
 - (b) begin to carry out a scheme; or
 - (c) carry out a scheme;
- for the sole or dominant purpose of avoiding the application of any provision of this Part in relation to:
- (d) the corporation; or
 - (e) any other corporation.

Ancillary contraventions

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
 - (d) conspire with others to effect a contravention of subsection (1).

Civil penalty provisions

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

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

Scheme

- (4) For the purposes of this section, ***scheme*** means:
- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or
 - (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;
- but does not include a functional separation undertaking.

151ZJ Self-incrimination

- (1) A person is not excused from:
- (a) giving a report in compliance with a provision of a functional separation undertaking covered by subsection 151A(10) or 151C(10) or (11); or
 - (b) giving a report or information under section 151ZA: on the ground that the report or information might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
- (a) the report or information; or
 - (b) giving the report or information; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the report or information;
- is not admissible in evidence against the individual:
- (d) in civil proceedings for the recovery of a penalty; or
 - (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to the report).

151ZK Delegation

The ACCC may, by writing, delegate to a person who is:

- (a) a member of the staff of the ACCC; and
 - (b) an SES employee or acting SES employee;
- the ACCC's powers under any of the following provisions:

- (c) subsection 103(4F) (formal warning);
- (d) section 151D (further information);
- (e) subsection 151F(7) (extension of decision-making period);
- (f) section 151H (serial undertakings);
- (g) section 151R (further information);
- (h) subsection 151T(7) (extension of decision-making period).

151ZL Review by the Australian Competition Tribunal

- (1) If the ACCC makes a decision under section 151F to reject a functional separation undertaking that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (2) If the ACCC makes a decision under section 151N to vary a functional separation undertaking that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (3) If the ACCC makes a decision under section 151T to reject a variation that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (4) If the ACCC makes a decision under section 151W to revoke a functional separation undertaking that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (5) If the ACCC makes a decision under section 151Z to vary a functional separation undertaking that was given by a person or persons, the person or persons may apply to the Australian Competition Tribunal for a review of the decision.
- (6) An application under this section for a review of a decision must be:
 - (a) in writing; and
 - (b) in the case of an application under subsection (1), (3), (4) or (5)—made within 21 days after the ACCC made the decision; and

- (c) in the case of an application under subsection (2)—made within 14 days after the ACCC made the decision.
- (7) If the Australian Competition Tribunal receives an application under this section for a review of a decision, the Australian Competition Tribunal must review the decision.

151ZM Functions and powers of the Australian Competition Tribunal etc.

Decision on review

- (1) On a review of a decision of the ACCC of a kind mentioned in section 151ZL, the Australian Competition Tribunal may make a decision:
- (a) affirming the ACCC's decision; or
 - (b) setting aside the ACCC's decision;
- and, for the purposes of the review, the Australian Competition Tribunal may perform all the functions and exercise all the powers of the ACCC.
- (2) A decision by the Australian Competition Tribunal:
- (a) affirming a decision of the ACCC; or
 - (b) setting aside a decision of the ACCC;
- is taken, for the purposes of this Act (other than this section or section 151ZL), to be a decision of the ACCC.
- (3) If the Australian Competition Tribunal sets aside a decision of the ACCC under section 151F to reject a functional separation undertaking, subsection 151F(5) has effect as if the undertaking had been received by the ACCC immediately after the decision was set aside.

Note: This subsection resets the start of the 3-month decision-making period set out in subsection 151F(5).

- (4) If the Australian Competition Tribunal sets aside a decision of the ACCC under section 151T to reject a variation, subsection 151T(5) has effect as if the variation had been received by the ACCC immediately after the decision was set aside.

Note: This subsection resets the start of the 3-month decision-making period set out in subsection 151T(5).

Conduct of review

- (5) For the purposes of a review by the Australian Competition Tribunal, the member of the Australian Competition Tribunal presiding at the review may require the ACCC to give such information, make such reports and provide such other assistance to the Australian Competition Tribunal as the member specifies.
- (6) For the purposes of a review, the Australian Competition Tribunal may have regard to any information given, documents produced or evidence given to the ACCC in connection with the making of the decision to which the review relates.
- (7) Paragraphs 103(1)(a) and (b) and 108(b) of the *Competition and Consumer Act 2010* have effect, in relation to a review, as if a reference in those paragraphs to that Act included a reference to this Part.

Note: Division 2 of Part IX of the *Competition and Consumer Act 2010* applies to proceedings before the Australian Competition Tribunal.

151ZN Provisions that do not apply in relation to an Australian Competition Tribunal review

Division 1 of Part IX of the *Competition and Consumer Act 2010* does not apply in relation to a review by the Australian Competition Tribunal of a decision of the ACCC of a kind mentioned in section 151ZL of this Act.

53 After paragraph 152(1)(a)

Insert:

- (aa) a line; or

54 Paragraphs 152(2)(a) and (b)

After “network”, insert “, line”.

55 At the end of section 155

Add:

- (4) Subsections (1) to (3) do not apply in determining the meaning of an expression used in:

-
- (a) section 142C; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 142C applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 142C; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 142C applies.

56 After section 155

Insert:

155A When a person is in a position to exercise control of a line

- (1) For the purposes of this Part, a person (the *controller*) is in a position to exercise control of a line if:
 - (a) the controller legally or beneficially owns the line (whether alone or together with one or more other persons); or
 - (b) the controller is in a position, either alone or together with an associate of the controller and whether directly or indirectly:
 - (i) to exercise control of the operation of all or part of the line; or
 - (ii) to exercise control of the selection of the kinds of services that are supplied using the line; or
 - (iii) to exercise control of the supply of services using the line; or
 - (c) a company other than the controller legally or beneficially owns the line (whether alone or together with one or more other persons), and:
 - (i) the controller is in a position, either alone or together with an associate of the controller, to exercise control of the company; or
 - (ii) the controller, either alone or together with an associate of the controller, is in a position to veto any action taken by the board of directors of the company; or
 - (iii) the controller, either alone or together with an associate of the controller, is in a position to appoint or secure the

- appointment of, or veto the appointment of, at least half of the board of directors of the company; or
- (iv) the controller, either alone or together with an associate of the controller, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
 - (v) the company or more than 50% of its directors act, or are accustomed to act, in accordance with the directions, instructions or wishes of, or in concert with, the controller, the controller and an associate of the controller acting together, or the directors of the controller; or
 - (vi) the company or more than 50% of its directors, under a contract or an arrangement or understanding (whether formal or informal), are intended or expected to act in accordance with the directions, instructions or wishes of, or in concert with, the controller, the controller and an associate of the controller acting together, or the directors of the controller.
- (2) An employee is not, except through an association with another person, to be regarded as being in a position to exercise control of a line under subsection (1) purely because of being an employee.
- (3) More than one person may be in a position to exercise control of a line.
- (4) Subsections (1) to (3) do not apply in determining the meaning of an expression used in:
- (a) section 143; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 143 applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 143; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 143 applies.

57 Section 156 (heading)

Repeal the heading, substitute:

156 Deemed networks etc.

58 Paragraph 156(1)(a)

After “2011”, insert “, but before the designated commencement date”.

59 Paragraph 156(1)(b)

Omit “or small business” (wherever occurring).

60 Paragraph 156(1)(d)

After “2011”, insert “, but before the designated commencement date”.

61 Paragraph 156(2)(a)

After “2011”, insert “, but before the designated commencement date”.

62 Paragraph 156(2)(b)

Omit “or small business” (wherever occurring).

63 Paragraph 156(2)(d)

After “2011”, insert “, but before the designated commencement date”.

63A Paragraph 156(3)(b)

Before “the network”, insert “before the designated commencement date.”.

64 Subsection 156(4)

Omit “subsection (2) does not apply to the extension.”, substitute:

then:

- (d) subsection (2) does not apply to the extension at any time before the designated commencement date; and
- (e) if, at a time that occurs on or after the designated commencement date, there is in force a legally enforceable agreement that satisfies the following conditions:

- (i) the agreement provides for the transfer of ownership or control of the infrastructure of the extension to an NBN corporation;
 - (ii) the agreement is covered by a determination made under subsection 577BA(9);
- subsection (2) of this section does not apply to the extension at that time; and
- (f) if, at a time that occurs on or after the designated commencement date, there is in force a legally enforceable agreement that satisfies the following conditions:
 - (i) the contract provides for the deactivation or decommissioning of the infrastructure of the extension;
 - (ii) the contract was entered into between NBN Co and the listed Optus companies (see subsection (7));subsection (2) does not apply to the extension at that time.

65 At the end of section 156

Add:

- (6) Subsections (1) and (2) do not apply in determining the meaning of an expression used in:
 - (a) section 142C; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 142C applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 142C; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 142C applies.

Listed Optus company

- (7) For the purposes of this section, ***listed Optus company*** means:
 - (a) Optus Networks Pty Limited (ACN 008 570 330); or
 - (b) Optus Internet Pty Limited (ACN 083 164 532); or
 - (c) Optus Vision Pty Limited (ACN 066 518 821); or
 - (d) Optus Vision Media Pty Limited (ACN 070 870 647); or

-
- (e) Optus Systems Pty Limited (ACN 056 541 167); or
 - (f) SingTel Optus Pty Limited (ACN 052 833 208).

66 After section 156

Insert:

156A Certain lines deemed to have come into existence on or after the designated commencement date

- (1) For the purposes of this Part, if:
 - (a) a local access line came into existence before the designated commencement date; and
 - (b) before the designated commencement date, the line was used wholly or principally to supply a superfast carriage service to non-residential customers in Australia; and
 - (c) on or after the designated commencement date, following:
 - (i) the construction or alteration of premises; or
 - (ii) changes to the activities carried out at premises;the line is used wholly or principally to supply a superfast carriage service to residential customers in Australia;the line is taken to have come into existence on or after the designated commencement date.
- (2) Subsection (1) does not apply in determining the meaning of an expression used in:
 - (a) section 143; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 143 applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 143; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 143 applies.

67 Section 157 (heading)

Repeal the heading, substitute:

157 Certain installations and connections are not taken to be an extension, alteration or upgrade of a network

68 Section 157

Before “For”, insert “(1)”.

69 At the end of section 157

Add:

- (2) Subsection (1) does not apply in determining the meaning of an expression used in:
- (a) section 142C; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 142C applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 142C; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 142C applies.

71 After subsection 158(2)

Insert:

- (2A) Subsection (2) has effect subject to subsection (2B).
- (2B) For the purposes of:
- (a) section 142C; and
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 142C applies; and
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 142C; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 142C applies;
- if a line in a multi-unit building is used to supply a superfast carriage service to a residential customer living in a unit in the building:
-

-
- (d) the line is taken to be a *local access line*; and
 - (e) the line is taken to form part of the infrastructure of a telecommunications network.

72 After section 158

Insert:

158A Deemed local access lines

- (1) For the purposes of this Part, if:
 - (a) a local access line was in existence immediately before the designated commencement date; and
 - (b) the line is extended on or after the designated commencement date;then:
 - (c) the extension is taken to be a local access line in its own right; and
 - (d) the local access line referred to in paragraph (c) is taken to have come into existence on or after the designated commencement date.
- (2) Subsection (1) does not apply in determining the meaning of an expression used in:
 - (a) section 143; or
 - (b) sections 151ZF, 151ZG and 151ZH, to the extent to which they relate to a line to which section 143 applies; or
 - (c) any other provision of this Part, so far as that provision relates to:
 - (i) section 143; or
 - (ii) section 151ZF, 151ZG or 151ZH, to the extent to which that section relates to a line to which section 143 applies.

73 Section 159

Before “For”, insert “(1)”.

74 At the end of section 159

Add:

- (2) For the purposes of this Part, an **alteration** of a line does not include an extension of the line.

75 Section 160

Before “For”, insert “(1)”.

76 At the end of section 160

Add:

- (2) For the purposes of this Part, an **upgrade** of a line does not include an extension of the line.

77 At the end of Part 8

Add:

161 Extended meaning of *residential customer*

Home-based business carried on by an individual

- (1) For the purposes of this Part, if a business is carried on (otherwise than in the capacity of trustee) by an individual, and:
- (a) most or all of the work of the business is carried out at the residence of the individual; or
 - (b) the business does not occupy any premises other than the residence of the individual;
- the individual, in the individual’s capacity as a customer, is taken to be a **residential customer**.

Home-based business carried on by a partnership

- (2) For the purposes of this Part, if a business is carried on by a partnership, and:
- (a) most or all of the work of the business is carried out at the residence of an individual who is:
 - (i) one of the partners of the partnership; or
 - (ii) the director, or one of the directors, of a corporation that is one of the partners of the partnership; or
 - (b) the business does not occupy any premises other than the residence of an individual who is:

-
- (i) one of the partners of the partnership; or
 - (ii) the director, or one of the directors, of a corporation that is one of the partners of the partnership;
- the partnership, in its capacity as a customer, is taken to be a **residential customer**.

Home-based business carried on by a corporation

- (3) For the purposes of this Part, if a business is carried on (otherwise than in the capacity of trustee) by a corporation, and:
 - (a) most or all of the work of the business is carried out at the residence of an individual who is the director, or one of the directors, of the corporation; or
 - (b) the business does not occupy any premises other than the residence of an individual who is the director, or one of the directors, of the corporation;the corporation, in its capacity as a customer, is taken to be a **residential customer**.

Home-based business carried on by a trust

- (4) For the purposes of this Part, if a business is carried on by a trust, and:
 - (a) most or all of the work of the business is carried out at the residence of an individual who is:
 - (i) a trustee of the trust; or
 - (ii) the director, or one of the directors, of a corporation that is a trustee of the trust; or
 - (b) the business does not occupy any premises other than the residence of an individual who is:
 - (i) a trustee of the trust; or
 - (ii) the director, or one of the directors, of a corporation that is a trustee of the trust;a trustee of the trust, in the trustee's capacity as a customer, is taken to be a **residential customer**.

162 Close proximity

- (1) The Minister may, by legislative instrument, determine that, if specified circumstances exist in relation to premises and a line, the premises are taken, for the purposes of this Part, to be in close proximity to the line.
- (2) The Minister may, by legislative instrument, determine that, if specified circumstances exist in relation to premises and a line, the premises are taken, for the purposes of this Part, not to be in close proximity to the line.
- (3) A determination under subsection (1) or (2) must be of a legislative character.

Delegation to the ACCC

- (4) The Minister may, by writing, delegate to the ACCC any or all of the Minister's powers under the following provisions:
 - (a) subsection (1);
 - (b) subsection (2).
- (5) In performing a delegated function or exercising a delegated power, the ACCC must comply with any written directions of the Minister.

78 Before paragraph 564(3)(a)

Insert:

- (aaa) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
- (aab) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

79 After paragraph 564(3)(ba)

Insert:

- (bb) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

80 Subsection 564(3) (before note 1)

Insert:

Note 1AA: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

80A After subsection 564(3)

Insert:

Injunctions relating to contraventions of section 151ZI

(3AA) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of section 151ZI, the Federal Court may, on the application of a carrier or a carriage service provider, grant an injunction:

- (a) restraining the person from engaging in the conduct; and
- (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

(3AB) Subsection (3AA) does not, by implication, limit subsection (1).

81 Before paragraph 571(3)(a)

Insert:

- (aaa) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
- (aab) the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

82 After paragraph 571(3)(ba)

Insert:

- (bb) the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

83 Subsection 571(3) (before note 1)

Insert:

Note 1AA: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH and 151ZI are set out in Part 8 (local access lines).

84 At the end of paragraph 572E(6)(c)

Add “(other than section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI)”.

85 After paragraph 572F(1)(c)

Insert:

- (ca) if the alleged contravention consists of a breach of:
 - (i) section 68, to the extent to which that section relates to the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
 - (ii) section 101, to the extent to which that section relates to the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
 - (iii) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI;
contain a statement to the effect that the matter will not be dealt with by the Federal Court if the penalty specified in the notice is paid to the ACCC, on behalf of the Commonwealth, within:
 - (iv) 28 days after the notice is given; or
 - (v) if the ACCC allows a longer period—that longer period;
and

86 Paragraph 572F(1)(d)

Before “contain”, insert “if paragraph (ca) does not apply—”.

87 At the end of section 572L

Add:

- (3) The ACCC may, by writing, appoint a member of the staff of the ACCC as an authorised infringement notice officer for the purposes of this Part.
- (4) The ACCC must not appoint a person under subsection (3) unless the person:

-
- (a) is an SES employee or acting SES employee; or
 - (b) holds, or is acting in, an Executive Level 1 or 2 position or an equivalent position.

Note: **SES employee** is defined in the *Acts Interpretation Act 1901*.

- (5) An authorised infringement notice officer appointed under subsection (1) must not give or withdraw an infringement notice if the alleged contravention consists of a breach of:
 - (a) section 68, to the extent to which that section relates to the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
 - (b) section 101, to the extent to which that section relates to the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
 - (c) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.
- (6) An authorised infringement notice officer appointed under subsection (3) must not give or withdraw an infringement notice unless the alleged contravention consists of a breach of:
 - (a) section 68, to the extent to which that section relates to the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
 - (b) section 101, to the extent to which that section relates to the service provider rule set out in Part 1 of Schedule 2 in so far as that rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or
 - (c) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

Schedule 3—Statutory infrastructure providers etc.

Part 1—Amendments

Division 1—Service provider determinations

Telecommunications Act 1997

1A After subsection 99(1)

Insert:

- (1A) The Minister may, by legislative instrument, make a determination setting out rules that apply to carriage service providers in relation to the supply of specified carriage services. The determination is called a *service provider determination*.

1B At the end of section 99

Add:

- (6) A service provider determination under subsection (1) has no effect to the extent to which it is inconsistent with a service provider determination under subsection (1A).

Division 2—Other amendments

Competition and Consumer Act 2010

1 After section 152BCCA

Insert:

152BCCB Statutory infrastructure provider standards and rules prevail over inconsistent access determinations

An access determination has no effect to the extent to which it is inconsistent with:

- (a) a standard determined under section 360U of the *Telecommunications Act 1997*; or

(b) rules made under section 360V of that Act.

2 After section 152BDCA

Insert:

152BDCB Statutory infrastructure provider standards and rules prevail over inconsistent binding rules of conduct

Binding rules of conduct have no effect to the extent to which they are inconsistent with:

- (a) a standard determined under section 360U of the *Telecommunications Act 1997*; or
- (b) rules made under section 360V of that Act.

3 Before section 152BEC

Insert:

152BEBH Statutory infrastructure provider standards prevail over inconsistent access agreements

- (1) An access agreement entered into after the commencement of this section has no effect to the extent to which it is inconsistent with a standard determined under section 360U of the *Telecommunications Act 1997*.
- (2) Subsection (1) does not apply to an access agreement covered by subsection 360U(5) of the *Telecommunications Act 1997*.

152BEBI Statutory infrastructure provider rules prevail over inconsistent access agreements

- (1) An access agreement entered into after the commencement of this section has no effect to the extent to which it is inconsistent with rules made under section 360V of the *Telecommunications Act 1997*.
- (2) Subsection (1) does not apply to an access agreement covered by subsection 360V(3) of the *Telecommunications Act 1997*.

4 After section 152CBIC

Insert:

152CBID Statutory infrastructure provider standards and rules prevail over inconsistent special access undertakings

A special access undertaking has no effect to the extent to which it is inconsistent with:

- (a) a standard determined under section 360U of the *Telecommunications Act 1997*; or
- (b) rules made under section 360V of that Act.

Telecommunications Act 1997

7 After Part 18

Insert:

Part 19—Statutory infrastructure providers

Division 1—Introduction

360 Simplified outline of this Part

- The statutory infrastructure provider for a service area must, on reasonable request by a carriage service provider on behalf of an end-user at premises in the service area, connect the premises to a qualifying telecommunications network in order that the carriage service provider can provide qualifying carriage services to the end-user at the premises.
- A statutory infrastructure provider must comply with standards, benchmarks and rules determined by the Minister.
- A statutory infrastructure provider must publish the terms and conditions on which it offers to:
 - (a) connect premises; or

- | |
|---|
| (b) supply related eligible services to carriage service providers. |
|---|

360A Definitions

In this Part:

access agreement has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

building redevelopment project has the meaning given by section 360Y.

designated day means the day on which a declaration is made under paragraph 48(1)(c) or (2)(a) of the *National Broadband Network Companies Act 2011*.

Note: The declaration will state that, in the Minister's opinion, the national broadband network should be treated as built and fully operational.

designated service area has the meaning given by section 360L.

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

GDA94 means Geocentric Datum of Australia 1994.

general service area has the meaning given by section 360F.

interim NBN service area has the meaning given by section 360D.

NBN Co has the same meaning as in the *National Broadband Network Companies Act 2011*.

nominated service area has the meaning given by section 360H or 360J.

project area, for a building redevelopment project, has the meaning given by section 360Y.

provisional interim NBN service area has the meaning given by section 360D.

provisional nominated service area has the meaning given by section 360H.

qualifying carriage service means:

- (a) a qualifying fixed-line carriage service; or
- (b) a qualifying fixed wireless carriage service; or
- (c) a qualifying satellite carriage service.

qualifying fixed-line carriage service means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the carriage service is supplied using a line to premises occupied or used by an end-user; and
- (c) the peak download transmission speed of the carriage service is at least 25 megabits per second; and
- (d) the peak upload transmission speed of the carriage service is at least 5 megabits per second.

qualifying fixed-line telecommunications network means a telecommunications network that is used to supply a qualifying fixed-line carriage service to customers in Australia.

qualifying fixed wireless carriage service has the meaning given by section 360AA.

qualifying satellite carriage service means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and
- (b) the carriage service is supplied using a satellite; and
- (c) the peak download transmission speed of the carriage service is at least 25 megabits per second; and
- (d) the peak upload transmission speed of the carriage service is at least 5 megabits per second;

but does not include a public mobile telecommunications service.

qualifying telecommunications network means a telecommunications network that is used, or proposed to be used,

to supply a qualifying carriage service to customers, or prospective customers, in Australia.

relevant service area, in relation to a statutory infrastructure provider, means a service area for which the provider is the statutory infrastructure provider.

request includes a notional request by a corporation (in its capacity as a carriage service provider) to itself (in its capacity as a carrier).

service area has the meaning given by section 360C.

statutory infrastructure provider:

- (a) for an interim NBN service area—has the meaning given by section 360E; or
- (b) for the general service area—has the meaning given by section 360G; or
- (c) for a nominated service area—has the meaning given by section 360K; or
- (d) for a designated service area—has the meaning given by section 360L.

TAB vector format means the MapInfo proprietary format that contains a spatial representation of data using points, lines, and polygons.

360AA Qualifying fixed wireless carriage service

- (1) For the purposes of this Part, **qualifying fixed wireless carriage service** means a carriage service, where:
 - (a) the carriage service is supplied using a fixed wireless technology platform; and
 - (b) the carriage service is marketed to customers, or potential customers, as a fixed wireless service; and
 - (c) the carriage service enables end-users to download communications; and
 - (d) the peak download transmission speed of the carriage service is at least 25 megabits per second; and
 - (e) the peak upload transmission speed of the carriage service is at least 5 megabits per second; and

- (f) the carriage service is not a public mobile telecommunications service; and
 - (g) the carriage service is a listed carriage service; and
 - (h) the conditions (if any) determined under subsection (2) are satisfied.
- (2) The Minister may, by legislative instrument, determine one or more conditions for the purposes of paragraph (1)(h).
- (3) For the purposes of this section, *fixed wireless technology platform* has the meaning generally accepted within the telecommunications industry.

Division 2—Service areas and statutory infrastructure providers

Subdivision AA—Introduction

360B Simplified outline of this Division

- There are 4 types of service area, as follows:
 - (a) an interim NBN service area;
 - (b) the general service area;
 - (c) a nominated service area;
 - (d) a designated service area.
- Interim NBN service areas exist only before the designated day.
- The general service area exists only after the start of the designated day.
- An NBN corporation will be the statutory infrastructure provider for an interim NBN service area.
- NBN Co will be the statutory infrastructure provider for the general service area.
- A nominated service area is an area that is attributable to:

- (a) a declaration made by a carrier; or
 - (b) certain carrier licence conditions declarations made by the Minister.
- The statutory infrastructure provider for a nominated service area that is attributable to a declaration made by a carrier will be:
 - (a) the carrier; or
 - (b) another carrier declared by the Minister.
 - The statutory infrastructure provider for a nominated service area that is attributable to a carrier licence conditions declaration will be:
 - (a) the carrier to whom the carrier licence conditions declaration applies; or
 - (b) another carrier declared by the Minister.
 - A designated service area is an area declared by the Minister.
 - The statutory infrastructure provider for a designated service area will be a carrier declared by the Minister.
 - Nominated service areas and designated service areas are excluded from interim NBN service areas and the general service area.
 - Designated service areas are excluded from nominated service areas.

360C Definition of *service area*

For the purposes of this Part, ***service area*** means:

- (a) before the designated day:
 - (i) an interim NBN service area; or
 - (ii) a nominated service area; or
 - (iii) a designated service area; or
- (b) after the start of the designated day:
 - (i) the general service area; or

- (ii) a nominated service area; or
- (iii) a designated service area.

Subdivision A—Rules applicable before the designated day

360D Interim NBN service area

- (1) For the purposes of the application of this Part before the designated day, an *interim NBN service area* is so much of a provisional interim NBN service area as is not:
 - (a) the whole or a part of a nominated service area; or
 - (b) the whole or a part of a designated service area.

Provisional interim NBN service area

- (2) If, during the period:
 - (a) beginning at the commencement of this section; and
 - (b) ending immediately before the designated day;there begins to be published on NBN Co's website a statement to the effect that a particular area in Australia is ready for service, NBN Co must:
 - (c) by written instrument, declare that the area is a *provisional interim NBN service area* for the purposes of the application of this Part before the designated day; and
 - (d) do so within 10 business days after the end of the month in which the statement began to be published.

Note: For the format of the description of the area, see section 360LA.

- (3) If, before the commencement of this section, there was published on NBN Co's website a statement to the effect that a particular area in Australia is ready for service, NBN Co must:
 - (a) by written instrument, declare that the area is a *provisional interim NBN service area* for the purposes of the application of this Part before the designated day; and
 - (b) do so within 10 business days after the commencement of this section.

Note: For the format of the description of the area, see section 360LA.

Publication etc.

- (4) NBN Co must publish a copy of a declaration made by it under subsection (2) or (3) on its website.
- (5) NBN Co must give a copy of a declaration made by it under subsection (2) or (3) to the ACMA.

Revocation

- (6) A declaration made under subsection (2) or (3) cannot be revoked.

Variation

- (7) A declaration made under subsection (2) or (3) cannot be varied except under subsection (8) or (9).
- (8) A declaration made under subsection (2) or (3) cannot be varied by NBN Co except to correct a clerical error or obvious mistake.
- (9) The Minister may, by writing, vary a declaration made under subsection (2) or (3).
- (10) The Minister must give a copy of a variation under subsection (9) to the ACMA.
- (11) Before making a decision under subsection (9) to vary a declaration, the Minister must:
 - (a) cause to be published on the Department's website a notice:
 - (i) setting out the draft variation; and
 - (ii) inviting persons to make submissions to the Minister about the draft variation within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (12) The time limit must not be shorter than 10 business days after the notice is published.

Rules

- (13) In making a declaration under subsection (2) or (3), NBN Co must comply with any rules under subsection (14).

- (14) The Minister may, by legislative instrument, make rules for the purposes of subsection (13).

Declaration and variation are not legislative instruments

- (15) A declaration made under subsection (2) or (3) is not a legislative instrument.
- (16) A variation under subsection (8) or (9) is not a legislative instrument.

360E Statutory infrastructure provider for an interim NBN service area

For the purposes of the application of this Part before the designated day, if:

- (a) an area is a provisional interim NBN service area because of a section 360D declaration made by NBN Co; and
- (b) the whole or a part of the provisional interim NBN service area is an interim NBN service area;

NBN Co is the *statutory infrastructure provider* for the interim NBN service area.

Subdivision B—Rules applicable after the start of the designated day

360F General service area

For the purposes of the application of this Part after the start of the designated day, the *general service area* means Australia, other than:

- (a) a nominated service area; or
- (b) a designated service area.

360G Statutory infrastructure provider for the general service area

For the purposes of the application of this Part after the start of the designated day, NBN Co is the *statutory infrastructure provider* for the general service area.

Subdivision C—Rules applicable before, at and after the start of the designated day

360H Nominated service area—declaration made by a carrier

- (1) For the purposes of this Part, if a provisional nominated service area is attributable to a declaration under this section, so much of the provisional nominated service area as is not:
- (a) the whole or a part of a provisional nominated service area that is attributable to a subsequent declaration under this section; or
 - (b) the whole or a part of a designated service area;
- is a ***nominated service area***.

Provisional nominated service area—real estate development project

- (2) If:
- (a) after the commencement of this section, a carrier (other than an NBN corporation) installs telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a real estate development project; and
 - (b) the installation was carried out under a contract; and
 - (c) the conditions specified in an instrument under subsection (3) are satisfied;
- the carrier must:
- (d) by written instrument, declare that the whole of the project area is a ***provisional nominated service area*** for the purposes of this Part; and
 - (e) do so within 10 business days after completing the installation of that infrastructure.

Note: For the format of the description of the area, see section 360LA.

- (3) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(c).
- (3A) The Minister may, by legislative instrument, exempt a specified real estate development project from subsection (2).

- (3B) Subsection (2) does not apply if the supply of the eligible services mentioned in paragraph (2)(a) is, or will be, in the circumstances specified in a determination under subsection 360Q(4).

Provisional nominated service area—building redevelopment project

- (4) If:
- (a) after the commencement of this section, a carrier (other than an NBN corporation) installs telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a building redevelopment project; and
 - (b) the installation was carried out under a contract; and
 - (c) the conditions specified in an instrument under subsection (5) are satisfied;
- the carrier must:
- (d) by written instrument, declare that the whole of the project area is a **provisional nominated service area** for the purposes of this Part; and
 - (e) do so within 10 business days after completing the installation of that infrastructure.

Note: For the format of the description of the area, see section 360LA.

- (5) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (4)(c).
- (5A) The Minister may, by legislative instrument, exempt a specified building redevelopment project from subsection (4).
- (5B) Subsection (4) does not apply if the supply of the eligible services mentioned in paragraph (4)(a) is, or will be, in the circumstances specified in a determination under subsection 360Q(4).

Infrastructure installed under a contract

- (6) If:
- (a) a carrier (other than an NBN corporation) has installed telecommunications network infrastructure that will enable the supply of eligible services to all of the premises in a particular area; and
-

- (b) the area does not consist of, and is not included in:
 - (i) the project area of a real estate development project; or
 - (ii) the project area of a building redevelopment project;and
- (c) the installation was carried out under a contract; and
- (d) under the contract, the carrier is or was required, on reasonable request by a carriage service provider on behalf of an end-user at premises in the area, to connect the premises to a qualifying telecommunications network in order that the carriage service provider can provide eligible services to the end-user at the premises; and
- (e) the conditions specified in an instrument under subsection (7) are satisfied;

the carrier may, by written instrument, declare that the area is a ***provisional nominated service area*** for the purposes of this Part.

Note: For the format of the description of the area, see section 360LA.

- (7) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (6)(e).

Publication etc.

- (8) A carrier must publish on its website a copy of a declaration made by it under this section.
- (9) A carrier must give a copy of a declaration made by it under this section to the ACMA.

Principles

- (10) In making a declaration under this section, a carrier must comply with any principles determined under subsection (11).
- (11) The Minister may, by legislative instrument, determine principles for the purposes of subsection (10).

Revocation

- (12) A declaration made under this section cannot be revoked.

Variation

- (13) A declaration made under this section cannot be varied except under subsection (14).
- (14) The Minister may, by writing, vary a declaration made under this section.
- (15) The Minister must give a copy of a variation under subsection (14) to the ACMA.
- (16) Before making a decision under subsection (14) to vary a declaration, the Minister must:
 - (a) cause to be published on the Department's website a notice:
 - (i) setting out the draft variation; and
 - (ii) inviting persons to make submissions to the Minister about the draft variation within the time limit specified in the notice; and
 - (b) consider any submissions received within the time limit specified in the notice.
- (17) The time limit must not be shorter than 10 business days after the notice is published.

Declaration and variation are not legislative instruments

- (18) A declaration made under this section is not a legislative instrument.
- (19) A variation under subsection (14) is not a legislative instrument.

Area may consist of the whole or a part of a building

- (20) An area specified in a declaration under subsection (6) may consist of the whole or a part of a building specified in the declaration.

360HA Nominated service area—anticipatory notice to be given to the ACMA by a carrier

Nominated service area—real estate development project

- (1) If:
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- (a) after the commencement of this section, a carrier (other than an NBN corporation) enters into a contract for the installation of telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a real estate development project; and
- (b) when the installation is completed, the carrier will be required, by subsection 360H(2), to declare that the whole of the project area is a provisional nominated service area for the purposes of this Part;

the carrier must:

- (c) give the ACMA a written notice that:
 - (i) states that the carrier has entered into the contract; and
 - (ii) specifies the project area; and
 - (iii) describes the telecommunications network infrastructure that is to be installed under the contract; and
 - (iv) sets out the carrier's estimate of the likely completion date for the installation; and
- (d) do so within 10 business days after entering into the contract.

Note: For the format of the description of the area, see section 360LA.

(2) If:

- (a) before the commencement of this section, a carrier (other than an NBN corporation) entered into a contract for the installation of telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a real estate development project; and
- (b) the installation was not completed before the commencement of this section; and
- (c) when the installation is completed, the carrier will be required, by subsection 360H(2), to declare that the whole of the project area is a provisional nominated service area for the purposes of this Part;

the carrier must:

- (d) give the ACMA a written notice that:
 - (i) states that the carrier has entered into the contract; and
 - (ii) specifies the project area; and

- (iii) describes the telecommunications network infrastructure that is to be installed under the contract; and
- (iv) sets out the carrier's estimate of the likely completion date for the installation; and
- (e) do so:
 - (i) within 90 days after the commencement of this section; or
 - (ii) if the ACMA allows a longer period—within that longer period.

Note: For the format of the description of the area, see section 360LA.

Nominated service area—building redevelopment project

- (3) If:
 - (a) after the commencement of this section, a carrier (other than an NBN corporation) enters into a contract for the installation of telecommunications network infrastructure that will enable the supply of eligible services to premises in the whole of the project area of a building redevelopment project; and
 - (b) when the installation is completed, the carrier will be required, by subsection 360H(4), to declare that the whole of the project area is a provisional nominated service area for the purposes of this Part;

the carrier must:

- (c) give the ACMA a written notice that:
 - (i) states that the carrier has entered into the contract; and
 - (ii) specifies the project area; and
 - (iii) describes the telecommunications network infrastructure that is to be installed under the contract; and
 - (iv) sets out the carrier's estimate of the likely completion date for the installation; and
- (d) do so within 10 business days after entering into the contract.

Note: For the format of the description of the area, see section 360LA.

- (4) If:
 - (a) before the commencement of this section, a carrier (other than an NBN corporation) entered into a contract for the installation of telecommunications network infrastructure that
-

will enable the supply of eligible services to premises in the whole of the project area of a building redevelopment project; and

- (b) the installation was not completed before the commencement of this section; and
- (c) when the installation is completed, the carrier will be required, by subsection 360H(4), to declare that the whole of the project area is a provisional nominated service area for the purposes of this Part;

the carrier must:

- (d) give the ACMA a written notice that:
 - (i) states that the carrier has entered into the contract; and
 - (ii) specifies the project area; and
 - (iii) describes the telecommunications network infrastructure that is to be installed under the contract; and
 - (iv) sets out the carrier's estimate of the likely completion date for the installation; and
- (e) do so:
 - (i) within 90 days after the commencement of this section; or
 - (ii) if the ACMA allows a longer period—within that longer period.

Note: For the format of the description of the area, see section 360LA.

360J Nominated service area—carrier licence conditions declarations

For the purposes of this Part, if, immediately before the commencement of this section, a carrier licence held by a carrier was subject to a condition under any of the following declarations in relation to a development area (within the meaning of the declaration):

- (a) the *Carrier Licence Conditions (OptiComm Co Pty Ltd) Declaration 2013*;
- (b) the *Carrier Licence Conditions (Pivot Pty Ltd) Declaration 2013*;
- (c) the *Carrier Licence Conditions (NT Technology Services Pty Ltd) Declaration 2014*;

the development area is a *nominated service area* for the purposes of this Part.

360K Statutory infrastructure provider for a nominated service area

Nominated service area covered by a declaration under section 360H

- (1) For the purposes of this Part, if:
 - (a) an area is a provisional nominated service area because of a declaration made by a carrier under section 360H; and
 - (b) the whole or a part of the provisional nominated service area is a nominated service area;the carrier is the *statutory infrastructure provider* for the nominated service area.
- (2) The Minister may, by legislative instrument, declare that:
 - (a) subsection (1) does not apply to a specified nominated service area; and
 - (b) a specified carrier is the *statutory infrastructure provider* for the nominated service area for the purposes of this Part.

Nominated service area resulting from the application of section 360J

- (3) For the purposes of this Part, if:
 - (a) immediately before the commencement of this section, a carrier licence held by a carrier was subject to a condition under a declaration mentioned in section 360J; and
 - (b) as a result of the application of section 360J to the declaration, an area is a nominated service area;the carrier is the *statutory infrastructure provider* for the nominated service area.
- (4) The Minister may, by legislative instrument, declare that:
 - (a) subsection (3) does not apply to a specified nominated service area; and
 - (b) a specified carrier is the *statutory infrastructure provider* for the nominated service area for the purposes of this Part.

360L Designated service area and statutory infrastructure provider

The Minister may, by legislative instrument, declare that:

- (a) a specified area is a *designated service area* for the purposes of this Part; and
- (b) a specified carrier is the *statutory infrastructure provider* for the designated service area for the purposes of this Part.

Note: For the format of the description of the area, see section 360LA.

Subdivision D—Format of description of areas

360LA Format of description of areas

- (1) An area declared under:
 - (a) subsection 360D(2); or
 - (b) subsection 360D(3); or
 - (c) subsection 360H(2); or
 - (d) subsection 360H(4); or
 - (e) subsection 360H(6); or
 - (f) section 360L;must be described:
 - (g) in a TAB vector format using the GDA94 coordinate system; or
 - (h) if another format is determined under subsection (3)—in that other format.
- (2) An area specified under:
 - (a) subsection 360HA(1); or
 - (b) subsection 360HA(2); or
 - (c) subsection 360HA(3); or
 - (d) subsection 360HA(4);must be described:
 - (e) in a TAB vector format using the GDA94 coordinate system; or
 - (f) if another format is determined under subsection (3)—in that other format.

- (3) The ACMA may, by legislative instrument, determine a format for the purposes of paragraphs (1)(h) and (2)(f).

Division 3—Obligations of statutory infrastructure provider

360P Obligation of statutory infrastructure provider to connect premises

- (1) The statutory infrastructure provider for a service area must, on reasonable request by a carriage service provider on behalf of an end-user at premises in the service area:
- (a) connect the premises to a qualifying fixed-line telecommunications network in order that the carriage service provider can provide qualifying fixed-line carriage services to the end-user at the premises; or
 - (b) if it is not reasonable for the statutory infrastructure provider to connect the premises to a qualifying fixed-line telecommunications network—connect the premises to a qualifying telecommunications network in order that the carriage service provider can provide:
 - (i) qualifying fixed wireless carriage services to the end-user at the premises; or
 - (ii) qualifying satellite carriage services to the end-user at the premises.

Exceptions

- (2) An obligation does not arise under subsection (1) in relation to the connection of premises in the circumstances (if any) specified in a determination under subsection (3).
- (3) The Minister may, by legislative instrument, determine circumstances for the purposes of subsection (2).

Requirements

- (4) In fulfilling its obligations under subsection (1), the statutory infrastructure provider for a service area must comply with such requirements (if any) as are determined under subsection (5).

- (5) The Minister may, by legislative instrument, determine one or more requirements for the purposes of subsection (4).
- (6) A requirement may be of general application or may be limited to one or more service areas.
- (7) Subsection (6) does not, by implication, limit the application of subsection 33(3A) of the *Acts Interpretation Act 1901*.

Terms and conditions

- (8) If:
 - (a) a carriage service provider makes a request as mentioned in subsection (1) in relation to the connection of premises in a service area; and
 - (b) as a result, the statutory infrastructure provider has an obligation under subsection (1) to connect the premises; and
 - (c) the statutory infrastructure provider has published on its website:
 - (i) the terms and conditions relating to price or a method of ascertaining price; and
 - (ii) other terms and conditions;on which it offers to connect premises in the service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises; and
 - (d) the carriage service provider requests the statutory infrastructure provider to enter into an agreement that:
 - (i) relates to the connection of premises in the service area to a qualifying telecommunications network in order that the carriage service provider can provide qualifying carriage services to an end-user at the premises; and
 - (ii) sets out terms and conditions that are the same as the terms and conditions published as mentioned in paragraph (c);the statutory infrastructure provider must comply with the request mentioned in paragraph (d).

Note: For publication, see section 360W.

- (9) If:
-

- (a) a carriage service provider makes a request as mentioned in subsection (1) in relation to the connection of premises; and
- (b) as a result, the statutory infrastructure provider has an obligation under subsection (1) to connect the premises; and
- (c) the connection is not covered by an agreement between the statutory infrastructure provider and the carriage service provider;

the statutory infrastructure provider must comply with the obligation on the terms and conditions that were published on the statutory infrastructure provider's website at the time when the request was made.

Note: For publication, see section 360W.

Ministerial determination—reasonable

- (10) The Minister may, by legislative instrument:
 - (a) determine that, if the condition specified in the determination is satisfied in relation to premises, then, for the purposes of subsection (1), it is taken not to be reasonable for a statutory infrastructure provider to connect the premises to a qualifying fixed-line telecommunications network; or
 - (b) determine that, if the conditions specified in the determination are satisfied in relation to premises, then, for the purposes of subsection (1), it is taken not to be reasonable for a statutory infrastructure provider to connect the premises to a qualifying fixed-line telecommunications network.
- (11) A determination under subsection (10) must be an instrument of a legislative character.

Response to request

- (11A) If a carriage service provider makes a request as mentioned in subsection (1) on behalf of an end-user at particular premises:
 - (a) the statutory infrastructure provider must:
 - (i) notify the carriage service provider that the statutory infrastructure provider will fulfil the request; or
 - (ii) refuse the request; and
 - (b) do so within:
 - (i) 10 business days after receiving the request; or

- (ii) if a longer period is specified under subsection (11B)—that longer period.

(11B) The Minister may, by legislative instrument, specify a period for the purposes of subparagraph (11A)(b)(ii).

Notification of refusal of request

(12) If:

- (a) a carriage service provider makes a request as mentioned in subsection (1) on behalf of an end-user at particular premises; and

- (b) the statutory infrastructure provider refuses the request;

then:

- (c) the statutory infrastructure provider must:

- (i) give written notice of the refusal to the carriage service provider; and

- (ii) do so within 5 business days after the refusal; and

- (d) if the carriage service provider receives the notice—the carriage service provider must:

- (i) give a copy of the notice to the end-user; and

- (ii) do so within 5 business days after receiving the notice.

360Q Obligation of statutory infrastructure provider to supply eligible services—premises

(1) The statutory infrastructure provider for a service area must, on reasonable request by a carriage service provider:

- (a) supply an eligible service to the carriage service provider in order that the carriage service provider can provide qualifying carriage services to end-users at premises in the service area; and

- (b) do so on the terms and conditions that were published on the statutory infrastructure provider's website at the time when the request was made.

Note: For publication, see section 360X.

(1A) The eligible service must enable the carriage service provider to supply, to end-users at premises in the service area, carriage

services that can be used by those end-users to make and receive voice calls.

- (1B) Subsection (1A) does not apply if the carriage service is supplied using a satellite.
- (1C) To avoid doubt, the requirement in subsection (1A) is part of the obligation under subsection (1).

Exceptions

- (2) If:
- (a) a statutory infrastructure provider for a service area supplies an eligible service to a carriage service provider in order that the carriage service provider can provide qualifying carriage services to end-users at premises in the service area; and
 - (b) the eligible service enables the carriage service provider to supply, to end-users at premises in the service area, carriage services that can be used by those end-users to make and receive voice calls; and
 - (c) the eligible service is a declared service (within the meaning of Part XIC of the *Competition and Consumer Act 2010*); and
 - (d) the statutory infrastructure provider is subject to a standard access obligation (within the meaning of Part XIC of the *Competition and Consumer Act 2010*) in relation to the eligible service;

the statutory infrastructure provider does not have an obligation under subsection (1) to supply the eligible service to the carriage service provider in order that the carriage service provider can provide qualifying carriage services to end-users at premises in the service area.

- (2A) Paragraph (2)(b) does not apply if the carriage service is supplied using a satellite.
- (3) An obligation does not arise under subsection (1) in relation to supply of an eligible service in the circumstances (if any) specified in a determination under subsection (4).
- (4) The Minister may, by legislative instrument, determine circumstances for the purposes of subsection (3).
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Requirements

- (5) In fulfilling its obligations under subsection (1), the statutory infrastructure provider for a service area must comply with such requirements (if any) as are determined under subsection (6).
- (6) The Minister may, by legislative instrument, determine one or more requirements for the purposes of subsection (5).
- (7) A requirement may be of general application or may be limited to one or more service areas.
- (8) Subsection (7) does not, by implication, limit the application of subsection 33(3A) of the *Acts Interpretation Act 1901*.

Terms and conditions

- (9) If:
 - (a) a carriage service provider makes a request as mentioned in subsection (1) in relation to the supply of an eligible service; and
 - (b) as a result, the statutory infrastructure provider has an obligation under subsection (1) to supply the eligible service; and
 - (c) the statutory infrastructure provider has published on its website:
 - (i) the terms and conditions relating to price or a method of ascertaining price; and
 - (ii) other terms and conditions;on which it offers to supply eligible services to carriage service providers in order that the carriage service providers can provide qualifying carriage services to end-users at premises in the service area; and
 - (d) the carriage service provider requests the statutory infrastructure provider to enter into an agreement that:
 - (i) relates to the supply of eligible services to the carriage service provider in order that the carriage service provider can provide qualifying carriage services to end-users at premises in the service area; and

- (ii) sets out terms and conditions that are the same as the terms and conditions published as mentioned in paragraph (c);

the statutory infrastructure provider must comply with the request mentioned in paragraph (d).

Note: For publication, see section 360X.

(10) If:

- (a) a carriage service provider makes a request as mentioned in subsection (1) in relation to the supply of an eligible service; and
- (b) as a result, the statutory infrastructure provider has an obligation under subsection (1) to supply the eligible service; and
- (c) the supply of the eligible service is not covered by an agreement between the statutory infrastructure provider and the carriage service provider;

the statutory infrastructure provider must comply with the obligation on the terms and conditions that were published on the statutory infrastructure provider's website at the time when the request was made.

Note: For publication, see section 360X.

360R Notification obligations of statutory infrastructure provider

Scope

- (1) This section applies if a carrier (the *first carrier*) is the statutory infrastructure provider for:
 - (a) a nominated service area; or
 - (b) a designated service area.

Obligations

- (2) If the first carrier becomes aware that it is likely that it will no longer be able to fulfil its obligations under section 360P or 360Q, so far as they relate to the area, the first carrier must:
 - (a) give written notice of the matter to:
 - (i) the Secretary of the Department; and

- (ii) the ACMA; and
 - (b) do so as soon as practicable after becoming so aware.
- (3) If:
- (a) subsection (2) applies; and
 - (b) the first carrier becomes aware that another carrier is willing to become the statutory infrastructure provider for the area; the first carrier must:
 - (c) give written notice of the matter to:
 - (i) the Secretary of the Department; and
 - (ii) the ACMA; and
 - (d) do so as soon as practicable after becoming so aware.

360S Targets for NBN Co

- (1) The Parliament intends that NBN Co should take all reasonable steps to ensure that the telecommunications networks that:
- (a) are operated by NBN Co; and
 - (b) are used to supply qualifying fixed-line carriage services to customers in Australia;
- are (when considered together) capable of being used to supply fixed-line carriage services, where:
- (c) the peak download transmission speed of the carriage service is at least 50 megabits per second; and
 - (d) the peak upload transmission speed of the carriage service is at least 10 megabits per second;
- to at least 90% of premises in the areas that, according to NBN Co's website, are serviced by NBN Co's fixed-line carriage services.
- (2) The Parliament intends that NBN Co should take all reasonable steps to ensure that the telecommunications networks that:
- (a) are operated by NBN Co; and
 - (b) are used to supply qualifying fixed-line carriage services to customers in Australia;
- are (when considered together) capable of being connected to at least 92% of premises in Australia.

- (3) In fulfilling its obligations under section 360P or 360Q, NBN Co must have regard to subsections (1) and (2) of this section.

Division 4—Standards, benchmarks and rules

360U Standards and benchmarks

Standards

- (1) The Minister may, by legislative instrument, determine standards to be complied with by statutory infrastructure providers in relation to any or all of the following matters:
- (a) the terms and conditions of the supply of an eligible service to a carriage service provider in order that the carriage service provider can provide qualifying carriage services to an end-user at premises in a relevant service area;
 - (b) the reliability of such an eligible service supplied to a carriage service provider;
 - (c) the maximum period within which a statutory infrastructure provider must begin to supply such an eligible service following the making of a request by a carriage service provider;
 - (d) the maximum period within which a statutory infrastructure provider must rectify a fault or service difficulty relating to such an eligible service following the making of a report by a carriage service provider about the fault or service difficulty;
 - (e) any other matter concerning the supply, or proposed supply, of such an eligible service to a carriage service provider;
 - (f) the maximum period within which the statutory infrastructure provider must connect premises in a relevant service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises, following the making of a request by the carriage service provider on behalf of the end-user;
 - (g) any other matter concerning the connection of premises in a relevant service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises.

- (2) A determination under subsection (1) may be of general application or may be limited as provided in the determination.
- (3) Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (3A) Standards determined under subsection (1) may make provision for or in relation to a matter by conferring a power on the ACMA to make a legislative instrument.

Compliance with standards

- (4) A statutory infrastructure provider must comply with a standard determined under subsection (1).
- (5) However, a statutory infrastructure provider is not required to comply with a standard determined under subsection (1) to the extent that the standard is inconsistent with an access agreement to which the statutory infrastructure provider is a party, so long as:
 - (a) the agreement was entered into before the commencement of the standard; and
 - (b) the agreement has not been varied after the commencement of the standard.

Performance benchmarks

- (6) The Minister may, by legislative instrument, set minimum benchmarks in relation to compliance by a statutory infrastructure provider with a standard determined under subsection (1).
- (7) An instrument under subsection (6) may be of general application or may be limited as provided in the instrument.
- (8) Subsection (7) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (8A) Benchmarks set under subsection (6) may make provision for or in relation to a matter by conferring a power on the ACMA to make a legislative instrument.

Provider must meet or exceed minimum benchmarks

- (9) A statutory infrastructure provider must meet or exceed a minimum benchmark set by an instrument under subsection (6).

360V Rules

- (1) The Minister may, by legislative instrument, make rules to be complied with by statutory infrastructure providers in relation to any or all of the following matters:
- (a) the process for resolution of complaints about the supply of an eligible service to a carriage service provider in order that the carriage service provider can provide qualifying carriage services to an end-user at premises in a relevant service area;
 - (b) any other matter concerning the supply, or proposed supply, of such an eligible service to a carriage service provider;
 - (c) the process for resolution of complaints about the connection of premises in the service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises;
 - (d) any other matter concerning the connection of premises in the service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises.
- (1A) Rules under subsection (1) may make provision for or in relation to a matter by conferring a power on the ACMA to make a legislative instrument.

Compliance

- (2) A statutory infrastructure provider must comply with rules under subsection (1).
- (3) However, a statutory infrastructure provider is not required to comply with a rule under subsection (1) to the extent that the rule is inconsistent with an access agreement to which the statutory infrastructure provider is a party, so long as:
- (a) the agreement was entered into before the commencement of the rule; and

- (b) the agreement has not been varied after the commencement of the rule.

Division 5—Publication of offers

360W Publication of offer etc.—connection of premises

- (1) A statutory infrastructure provider for a service area must publish on its website:
 - (a) the terms and conditions relating to price or a method of ascertaining price; and
 - (b) other terms and conditions;on which it offers to connect premises in the service area to a qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises.
- (2) The terms and conditions mentioned in subsection (1) must include the maximum period within which the statutory infrastructure provider must so connect premises following the making of a request by a carriage service provider on behalf of an end-user at the premises.
- (3) Subsection (2) does not limit subsection (1).
- (4) An offer published under subsection (1) has no effect to the extent to which it is inconsistent with:
 - (a) a standard determined under section 360U; or
 - (b) rules made under section 360V.

360X Publication of offer—supply of eligible services

- (1) A statutory infrastructure provider for a service area must publish on its website:
 - (a) the terms and conditions relating to price or a method of ascertaining price; and
 - (b) other terms and conditions;on which it offers to supply eligible services to carriage service providers in order that the carriage service providers can provide

qualifying carriage services to end-users at premises in the service area.

- (2) The terms and conditions mentioned in subsection (1) must include:
 - (a) the maximum period within which the statutory infrastructure provider must begin to supply such an eligible service following the making of a request by a carriage service provider; and
 - (b) the maximum period within which the statutory infrastructure provider must rectify a fault or service difficulty relating to such an eligible service following the making of a report by a carriage service provider about the fault or service difficulty.
- (3) Subsection (2) does not limit subsection (1).
- (4) An offer published under subsection (1) has no effect to the extent to which it is inconsistent with:
 - (a) a standard determined under section 360U; or
 - (b) rules made under section 360V.

Division 6—Miscellaneous

360XA Periodic compliance reports

- (1) The Minister may, by legislative instrument, make rules requiring each statutory infrastructure provider to give to the ACMA periodic reports relating to the provider's compliance with this Part.

Compliance

- (2) A statutory infrastructure provider must comply with rules under subsection (1).
- (3) A person is not excused from giving a report under rules under subsection (1) on the ground that the report might tend to incriminate the person or expose the person to a penalty.
- (4) However, in the case of an individual:
 - (a) the report; or

- (b) giving the report; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the report;
- is not admissible in evidence against the individual:
- (d) in civil proceedings for the recovery of a penalty; or
 - (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to the report).

Other information-gathering powers not limited

- (5) This section does not, by implication, limit Part 27.

360Y Building redevelopment projects etc.

- (1) For the purposes of this Part, a project is a ***building redevelopment project*** if:
 - (a) the project involves:
 - (i) the significant refurbishment or repurposing of one or more buildings so as to bring into existence one or more building units; and
 - (ii) the making available of any or all of those building units for sale or lease; and
 - (b) the conditions (if any) specified in an instrument under subsection (3) are satisfied.
- (2) For the purposes of this Part, the area or areas occupied by the building or buildings are the ***project area*** for the building redevelopment project.
- (3) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (1)(b).
- (4) For the purposes of subsection (1), it is immaterial whether:
 - (a) the project has been, is being, or will be, implemented in stages; or
 - (b) different elements of the project have been, are being, or will be, carried out by different persons; or

- (c) one or more approvals are given, are required, or will be required, under a law of the Commonwealth, a State or a Territory, for the project, or any element of the project.

360Z Register of statutory infrastructure providers and anticipatory notices

- (1) The ACMA is to maintain a Register in which the ACMA includes:
 - (a) the name of each statutory infrastructure provider; and
 - (b) for each of those providers—the relevant service area or areas; and
 - (c) a copy of each notice given by a carrier under:
 - (i) subsection 360HA(1); or
 - (ii) subsection 360HA(2); or
 - (iii) subsection 360HA(3); or
 - (iv) subsection 360HA(4).
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the ACMA’s website.

360ZA Delegation

Delegation to the ACMA

- (1) The Minister may, by writing, delegate to the ACMA any or all of the Minister’s powers under the following provisions:
 - (a) subsection 360D(14);
 - (b) subsection 360H(3);
 - (c) subsection 360H(5);
 - (d) subsection 360H(7);
 - (e) subsection 360H(11);
 - (f) subsection 360P(3);
 - (g) subsection 360P(5);
 - (h) subsection 360P(10);
 - (i) subsection 360Q(4);
 - (j) subsection 360Q(6);
-

- (k) subsection 360U(1);
 - (l) subsection 360U(6);
 - (m) subsection 360XA(1);
 - (n) subsection 360Y(3).
- (2) In performing a delegated function or exercising a delegated power, the ACMA must comply with any written directions of the Minister.

Delegation to a member of the ACMA or to a member of the staff of the ACMA

- (3) The Minister may, by writing, delegate to:
- (a) a member of the ACMA; or
 - (b) a person who is:
 - (i) a member of the staff of the ACMA; and
 - (ii) an SES employee or acting SES employee;
- any or all of the Minister's powers under subsection 360H(14) (variation of nominated service area declaration).
- (4) In exercising a delegated power, the delegate must comply with any written directions of the Minister.

Part 2—Repeals

Carrier Licence Conditions (NT Technology Services Pty Ltd) Declaration 2014

8 The whole of the Declaration

Repeal the Declaration.

Carrier Licence Conditions (OptiComm Co Pty Ltd) Declaration 2013

9 The whole of the Declaration

Repeal the Declaration.

Carrier Licence Conditions (Pivot Pty Ltd) Declaration 2013

10 The whole of the Declaration

Repeal the Declaration.

Carrier Licence Conditions (Urban Renewal Authority Victoria t/a Places Victoria Pty Ltd) Declaration 2014

11 The whole of the Declaration

Repeal the Declaration.

Schedule 4—Funding of fixed wireless broadband and satellite broadband

Competition and Consumer Act 2010

1A Before paragraph 151BU(4)(e)

Insert:

- (dc) the operation of Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with the funding of fixed wireless broadband and satellite broadband); or
- (dd) the operation of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*; or

1B Before subparagraph 151BUA(2)(b)(iii)

Insert:

- (iic) the operation of Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with the funding of fixed wireless broadband and satellite broadband); or
- (iid) the operation of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*; or

1C Before subparagraph 151BUB(2)(b)(iii)

Insert:

- (iic) the operation of Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with the funding of fixed wireless broadband and satellite broadband); or
- (iid) the operation of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*; or

1D Before subparagraph 151BUC(2)(b)(iii)

Insert:

- (iic) the operation of Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals

- with the funding of fixed wireless broadband and satellite broadband); or
- (iid) the operation of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*; or

Telecommunications Act 1997

1 Section 7

Insert:

Federal Circuit Court means the Federal Circuit Court of Australia.

2 Paragraphs 58(2)(a) and (b)

Omit “or (2A)”, substitute “, (2A) or (2B)”.

3 After subsection 58(4A)

Insert:

When individual is disqualified—failure to pay funding charge

- (4B) For the purposes of subsection (2), an individual is ***disqualified*** at a particular time (the ***test time***) if:
- (a) at any time before the test time, a carrier licence held by a body corporate or partnership was cancelled under subsection 72(2B) because of a failure by the body corporate or partnership to pay in full the charge referred to in that subsection; and
- (b) in the case of a body corporate—at the time when the charge referred to in subsection 72(2B) was due and payable, the individual was:
- (i) a director of the body corporate; or
- (ii) the secretary of the body corporate; or
- (iii) a person (by whatever name called and whether or not a director of the body corporate) who was concerned in, or took part in, the management of the body corporate; and

- (c) in the case of a partnership—at the time when the charge referred to in subsection 72(2B) was due and payable, the individual:
 - (i) was an employee of the partnership; and
 - (ii) was concerned in, or took part in, the management of the partnership; and
- (d) the individual:
 - (i) aided, abetted, counselled or procured the failure of the body corporate or partnership; or
 - (ii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the failure of the body corporate or partnership.

4 Paragraph 58(5)(a)

Omit “or (2A)”, substitute “, (2A) or (2B)”.

5 After subsection 72(2A)

Insert:

Failure to pay funding charge

- (2B) The ACMA may cancel a carrier licence held by a carrier if the carrier fails to pay in full any funding charge on or before the date on which the funding charge becomes due and payable. For this purpose, **funding charge** means charge imposed by the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

6 Subsection 570(4)

Repeal the subsection, substitute:

- (4) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed:
 - (a) in the case of a contravention of subsection 68(1) or (2) that relates to the carrier licence condition set out in Part 1 of Schedule 1 in so far as that condition relates to subsection 97(1) or (1A) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*—10,000 penalty units for each contravention; or

(b) in any other case—\$50,000 for each contravention.

7 After paragraph 1(ja) of Schedule 4

Insert:

- (jaa) a decision of a kind referred to in subsection 102N(3) (which deals with remission of late payment penalty) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- (jab) a decision to make a notifiable instrument under subsection 102Z(2) or 102ZA(2);

Telecommunications (Consumer Protection and Service Standards) Act 1999

8 Section 4

Before:

- Local calls are to be charged for on an untimed basis.

insert:

- The Secretary is responsible for entering into contracts, and making grants, relating to:
 - (a) fixed wireless broadband; and
 - (b) satellite broadband.
- The ACMA will assess and collect the charge imposed on carriers by the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.
- The proceeds of the charge will be used to:
 - (a) pay contractors and grant recipients; and
 - (b) offset designated administrative costs.

9 Subsection 5(2) (definition of *contractor*)

Repeal the definition.

10 Subsection 5(2) (definition of *grant recipient*)

Repeal the definition.

11 After section 8

Insert:

8A Definitions

In this Part:

contractor has the meaning given by section 14.

grant recipient has the meaning given by section 14.

12 Subsections 14(2) and (3)

Omit “this Act”, substitute “this Part”.

13 After Part 2

Insert:

Part 3—Funding of fixed wireless broadband and satellite broadband

Division 1—Introduction

75 Simplified outline of this Part

- The Secretary is responsible for entering into contracts, and making grants, relating to:
 - (a) fixed wireless broadband; and
 - (b) satellite broadband.
- The ACMA will assess and collect the charge imposed on carriers by the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.
- The proceeds of the charge will be used to:
 - (a) pay contractors and grant recipients; and

(b) offset designated administrative costs.

76 Definitions

In this Part:

administrative cost instalment of charge has the meaning given by subsection 102D(5).

amount includes a nil amount.

annual administrative cost amount, for a financial year, has the same meaning as in the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

annual base amount, for a financial year, has the same meaning as in the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

annual chargeable premises amount, for a financial year, has the same meaning as in the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

associate has the same meaning as in Part 8 of the *Telecommunications Act 1997*.

base instalment of charge has the meaning given by subsection 102D(5).

broadcast television stream means a continuous stream of program material that is identical to the program material provided by:

- (a) a licensed television broadcasting service; or
- (b) a national television broadcasting service.

charge means charge imposed by the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

chargeable premises associated with a local access line of a person has the meaning given by section 93.

charge offset certificate means a certificate issued under section 98.

contractor has the meaning given by section 80.

declared service has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

designated administrative costs means:

- (a) remuneration, and other employment-related costs and expenses, incurred in respect of APS employees whose duties relate to the performance of the ACMA's functions, or the exercise of the ACMA's powers, under this Part; or
- (b) any other costs, expenses and other obligations incurred by the ACMA in connection with the performance of the ACMA's functions, or the exercise of the ACMA's powers, under this Part; or
- (c) remuneration, and other employment-related costs and expenses, incurred in respect of APS employees whose duties relate to the performance of the ACCC's functions, or the exercise of the ACCC's powers, under this Part or the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*; or
- (d) any other costs, expenses and other obligations incurred by the ACCC in connection with the performance of the ACCC's functions, or the exercise of the ACCC's powers, under this Part or the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*;

but does not include:

- (e) amounts incurred under contracts made under section 80; and
- (f) amounts incurred by way of grants made under section 80.

designated broadband service has the meaning given by section 76AA.

designated start date means 1 January 2021.

eligible financial year has the meaning given by section 79.

eligible funding recipient has the meaning given by section 78.

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

exempt line has the meaning given by section 96.

exempt premises has the meaning given by section 95.

financial year has a meaning affected by section 78A.

fixed wireless broadband service has the meaning given by section 76AB.

grant recipient has the meaning given by section 80.

instalment of charge: see subsection 102D(5).

licensed television broadcasting service means a broadcasting service that:

- (a) is provided in accordance with:
 - (i) a licence allocated by the ACMA under the *Broadcasting Services Act 1992*; or
 - (ii) a class licence determined by the ACMA under the *Broadcasting Services Act 1992*; and
- (b) provides television programs.

local access line has the meaning given by section 76A.

month means calendar month.

multi-unit building means:

- (a) a building that has 2 or more units for occupation as a place of residence or business; or
- (b) a building in a complex, where each building has 2 or more units for occupation as a place of residence or business.

national television broadcasting service means a broadcasting service that:

- (a) is a national broadcasting service within the meaning of the *Broadcasting Services Act 1992*; and
- (b) provides television programs.

NBN Co has the same meaning as in the *National Broadband Network Companies Act 2011*.

nominal funding entitlement of a person for a financial year means the amount specified in a nominal funding entitlement certificate that:

- (a) is held by the person; and
- (b) relates to the financial year.

nominal funding entitlement certificate means a certificate issued under section 86.

potentially chargeable premises has the meaning given by section 94.

potentially concessional premises has the meaning given by section 96A.

Note: See also subsection 100(5).

premises has a meaning affected by section 79A.

recently connected greenfield premises, in relation to a person for a month, has the meaning given by section 96B.

Note: See also subsection 100(11).

Regional Broadband Scheme Special Account means the Regional Broadband Scheme Special Account established by section 89.

residential customer has the same meaning as in Part 8 of the *Telecommunications Act 1997*.

satellite broadband service has the meaning given by section 77.

small business customer means:

- (a) a customer who is a small business employer (within the meaning of the *Fair Work Act 2009*); or
- (b) a customer who:
 - (i) carries on a business; and
 - (ii) does not have any employees.

For the purposes of paragraph (a) of this definition, it is to be assumed that each reference in section 23 of the *Fair Work Act 2009* to a national system employer were a reference to an employer (within the ordinary meaning of that expression).

superfast carriage service means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and

- (b) the download transmission speed of the carriage service is normally 25 megabits per second or more; and
- (c) the carriage service is supplied to particular premises using a line.

Note: The line does not need to be physically connected to the premises. This is because *using* has an extended meaning—see subsection 5(1) of this Act and section 24 of the *Telecommunications Act 1997* (when read together with section 18A of the *Acts Interpretation Act 1901*).

76A Local access line

- (1) For the purposes of this Part, a **local access line** is a line that is part of the infrastructure of a local access network.
- (2) However, a line does not form part of a **local access line** to the extent that the line is on the customer side of the boundary of a telecommunications network.
- (3) Subsection (2) has effect subject to subsection (4).
- (4) For the purposes of this Part, if a line in a multi-unit building is used to supply a carriage service to a unit in the building, the line is taken to be a **local access line**.
- (5) For the purposes of this section, the **boundary of a telecommunications network** is to be determined in the same manner in which it is determined under section 22 for the purposes of sections 20, 21 and 30.
- (6) For the purposes of this section, **local access network** has the meaning generally accepted within the telecommunications industry.

76AA Designated broadband services

- (1) For the purposes of this Part, **designated broadband service** means a carriage service that is supplied using a local access line, where:
 - (a) the carriage service enables end-users to download communications; and
 - (b) the local access line is part of the infrastructure of a telecommunications network in Australia; and

(c) the local access line is technically capable of being used to supply a superfast carriage service;

but does not include:

(d) a carriage service that can only be used by an end-user to make and receive voice calls; or

(e) a carriage service that can only be used by an end-user to view one or more broadcast television streams; or

(f) a carriage service that belongs to a class determined under subsection (2).

Note: See also section 102ZH.

(2) The Minister may, by legislative instrument, determine one or more classes of carriage service for the purposes of paragraph (1)(f).

Note: See also section 102ZFB (disallowance of determinations).

76AB Fixed wireless broadband service

(1) For the purposes of this Part, *fixed wireless broadband service* means a carriage service, where:

(a) the carriage service is supplied using a fixed wireless technology platform; and

(b) the carriage service is marketed to customers, or potential customers, as a fixed wireless service; and

(c) the carriage service enables end-users to download communications; and

(d) the peak download transmission speed of the carriage service is at least 25 megabits per second; and

(e) the peak upload transmission speed of the carriage service is at least 5 megabits per second; and

(f) the carriage service is not a public mobile telecommunications service; and

(g) the carriage service is a listed carriage service; and

(h) the conditions (if any) determined under subsection (2) are satisfied.

(2) The Minister may, by legislative instrument, determine one or more conditions for the purposes of paragraph (1)(h).

- (3) For the purposes of this section, *fixed wireless technology platform* has the meaning generally accepted within the telecommunications industry.

77 Satellite broadband service

- (1) For the purposes of this Part, *satellite broadband service* means a carriage service, where:
- (a) the carriage service is supplied using a satellite; and
 - (b) the carriage service enables end-users to download communications; and
 - (c) the peak download transmission speed of the carriage service is at least 25 megabits per second; and
 - (d) the peak upload transmission speed of the carriage service is at least 5 megabits per second; and
 - (e) the carriage service is not a public mobile telecommunications service; and
 - (f) the carriage service is a listed carriage service; and
 - (g) the conditions (if any) determined under subsection (2) are satisfied.
- (2) The Minister may, by legislative instrument, determine one or more conditions for the purposes of paragraph (1)(g).

78 Eligible funding recipients

- (1) For the purposes of this Part, *eligible funding recipient* means a carrier that is:
- (a) an NBN corporation; or
 - (b) determined under subsection (2).
- (2) The Minister may, by legislative instrument, determine one or more carriers for the purposes of paragraph (1)(b).

78A Financial year

For the purposes of this Part (other than section 85), the 6-month period beginning on the designated start date is taken to be a financial year.

79 Eligible financial year

For the purposes of this Part, *eligible financial year* means:

- (a) the financial year beginning on the designated start date; or
- (b) a later financial year.

79A Premises

- (1) The Minister may, by legislative instrument, determine that, if a location satisfies one or more specified conditions, the location is taken to be premises for the purposes of this Part.

Note: See also section 102ZFB (disallowance of determinations).

- (2) The Minister may, by legislative instrument, determine that, if a location satisfies one or more specified conditions, the location is taken not to be premises for the purposes of this Part.

Note: See also section 102ZFB (disallowance of determinations).

- (3) A determination under subsection (1) or (2) must be of a legislative character.

Division 2—Contracts and grants relating to fixed wireless broadband and satellite broadband

80 Contracts and grants

- (1) The Secretary may, on behalf of the Commonwealth:
 - (a) enter into a contract with; or
 - (b) make a grant of financial assistance to;
an eligible funding recipient in relation to:
 - (c) the connection of premises to a telecommunications network in order that a carriage service provider can provide:
 - (i) fixed wireless broadband services to an end-user at the premises; or
 - (ii) satellite broadband services to an end-user at the premises; or
 - (d) the supply of eligible services to a carriage service provider in order that the carriage service provider can provide:

- (i) fixed wireless broadband services to an end-user at premises; or
 - (ii) satellite broadband services to an end-user at premises; or
 - (e) facilities that are used, or proposed to be used, to supply:
 - (i) fixed wireless broadband services; or
 - (ii) satellite broadband services; or
 - (f) a matter that is incidental or ancillary to a matter mentioned in paragraph (c), (d) or (e).
- (2) For the purposes of this Part, if the Secretary enters into a contract with a person under subsection (1), the person is a **contractor**.
- (3) For the purposes of this Part, if the Secretary makes a grant of financial assistance to a person under subsection (1), the person is a **grant recipient**.
- (4) A contract under subsection (1) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses.
- (5) A grant under subsection (1) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses.
- (6) Subsections (4) and (5) do not limit subsection (1).
- (7) To avoid doubt, the use of the word “Regional” in:
 - (a) the short title of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*; or
 - (b) the name of the Regional Broadband Scheme Special Account; or
 - (c) section 92A;does not limit subsection (1) of this section.

81 Terms and conditions of grants

Scope

- (1) This section applies to a grant of financial assistance made under section 80.

Terms and conditions

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the grant recipient.
- (3) An agreement under subsection (2) is to be entered into by the Secretary on behalf of the Commonwealth.
- (4) Subsection (2) does not apply to a condition under section 82.

82 Condition about compliance with Ministerial determination

Condition

- (1) It is a condition of:
 - (a) a contract entered into under section 80; or
 - (b) a grant made under section 80;that the contractor or grant recipient, as the case may be, must comply with a determination under subsection (2) in so far as the determination applies to the contract or grant, as the case may be.

Determination

- (2) The Minister may, by legislative instrument, make a determination that sets out either or both of the following:
 - (a) standards or rules that must be complied with by contractors or grant recipients, as the case may be, in relation to contracts entered into, or grants made, under section 80;
 - (b) minimum benchmarks that must be met or exceeded by contractors or grant recipients, as the case may be, in relation to contracts entered into, or grants made, under section 80.

Application of determinations

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

Other terms and conditions

- (5) This section does not, by implication, limit:
- (a) the terms and conditions that may be included in a contract entered into under section 80; or
 - (b) the terms and conditions that may be included in an agreement under section 81.

Determination prevails over inconsistent contract or agreement

- (6) A term or condition:
- (a) of a contract entered into under section 80; or
 - (b) set out in an agreement under section 81;
- has no effect to the extent to which it is inconsistent with a determination under subsection (2) that applies to the contract or to the grant to which the agreement relates, as the case may be.
- (7) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it overrides a term or condition:
- (a) of a contract entered into under section 80; and
 - (b) that gives the contractor a right to adjustment of payment for a change in the services, facilities or customer equipment to be supplied by the contractor in accordance with the contract.
- (8) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it specifies the price, or a method of ascertaining the price, for any of the services, facilities or customer equipment to be supplied by a contractor in accordance with a section 80 contract.
- (9) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it overrides a term or condition:
- (a) set out in an agreement under section 81; and
 - (b) that gives the grant recipient a right to adjustment of payment for a change in the services, facilities or customer equipment to be supplied by the grant recipient in accordance with the terms and conditions of the grant.
- (10) Despite subsection (6), a determination under subsection (2) has no effect to the extent to which it specifies the price, or a method of ascertaining the price, for any of the services, facilities or customer
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equipment to be supplied by the grant recipient of a section 80 grant in accordance with the terms and conditions of the grant.

83 Secretary has powers etc. of the Commonwealth

- (1) The Secretary, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as:
 - (a) a party to a contract entered into under section 80; or
 - (b) the grantor of a grant made under section 80.
- (2) Without limiting subsection (1):
 - (a) an amount payable by the Commonwealth under a section 80 contract is to be paid by the Secretary on behalf of the Commonwealth; and
 - (b) an amount payable to the Commonwealth under a section 80 contract is to be paid to the Secretary on behalf of the Commonwealth; and
 - (c) a section 80 grant is to be paid by the Secretary on behalf of the Commonwealth; and
 - (d) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a section 80 grant is to be paid to the Secretary on behalf of the Commonwealth; and
 - (e) the Secretary may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns:
 - (i) a section 80 contract; or
 - (ii) a section 80 grant.

84 Conferral of powers on the Secretary

The Secretary may exercise a power conferred on the Secretary by:

- (a) a contract entered into under section 80; or
- (b) an agreement under section 80.

85 Monitoring of performance

- (1) The Secretary must monitor, and report each financial year to the Minister on, all significant matters relating to:
 - (a) the performance of contractors; and

- (b) the performance of grant recipients.
- (2) A report under subsection (1) for a financial year must set out details of the following matters:
 - (a) the adequacy of each contractor's compliance, during that year, with the terms and conditions of a section 80 contract;
 - (b) the adequacy of each grant recipient's compliance, during that year, with the terms and conditions of a section 80 grant;
 - (c) any notice of breach by a contractor of a section 80 contract, where the notice was given during that year;
 - (d) any notice of breach by a grant recipient of a term or condition of a section 80 grant, where the notice was given during that year;
 - (e) any remedial action taken by the Secretary during that year in response to a breach of a section 80 contract;
 - (f) any remedial action taken by the Secretary during that year in response to a breach of the terms or conditions of a section 80 grant;
 - (g) the result of any such remedial action.
- (3) Subsection (2) does not limit subsection (1).
- (4) A report under subsection (1) for a financial year must be included in the annual report prepared by the Secretary and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for the financial year.

86 Nominal funding entitlement certificate

Funding financial year

- (1) For the purposes of this section, ***funding financial year*** means:
 - (a) the second eligible financial year; or
 - (b) a later eligible financial year.

Issue of certificate

- (2) If a carrier is an eligible funding recipient at the start of 1 February in a funding financial year, the Secretary must:
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- (a) issue to the carrier a certificate stating that a specified amount is the nominal funding entitlement of the carrier for the funding financial year; and
 - (b) do so:
 - (i) by the end of 31 March in the funding financial year; and
 - (ii) if the carrier has applied under subsection 98(1) for a charge offset certificate in relation to the previous financial year—before making a decision in response to the application.
- (3) A certificate issued under subsection (1) is to be known as a ***nominal funding entitlement certificate***.

Estimated balance of Regional Broadband Scheme Special Account

- (4) The following provisions have effect in relation to the issue of nominal funding entitlement certificates in relation to a funding financial year:
- (a) before issuing those certificates, the Secretary must make an estimate of so much of the balance of the Regional Broadband Scheme Special Account as at 7 May in the funding financial year as is attributable to amounts paid to the Commonwealth by way of:
 - (i) so much of an amount of charge as is attributable to the annual base amount for a financial year; or
 - (ii) a base instalment of charge; and
 - (b) in issuing those certificates, the Secretary must have regard to that estimate.

Payments to holder of certificate

- (5) If:
- (a) a carrier is an eligible funding recipient; and
 - (b) the carrier is the holder of a nominal funding entitlement certificate in relation to a funding financial year;
- the Secretary must take all reasonable steps to ensure that the total of:

- (c) the amounts that have, or will, become due and payable by the Commonwealth to the carrier under section 80 contracts during the funding financial year; and
 - (d) the section 80 grants that were, or will be, made to the carrier during the funding financial year;
- equals whichever of the following amounts is applicable:
- (e) if the carrier holds a charge offset certificate for the previous financial year—the nominal funding entitlement of the carrier for the funding financial year, reduced by the amount specified in the charge offset certificate;
 - (f) if the carrier does not hold a charge offset certificate for the previous financial year—the nominal funding entitlement of the carrier for the funding financial year.

Copy of certificate to be given to the ACMA

- (6) If the Secretary issues a nominal funding entitlement certificate, the Secretary must give a copy of the certificate to the ACMA.

Publication of certificate

- (7) If the Secretary issues a nominal funding entitlement certificate, the Secretary must publish a copy of the certificate on the Department's website.

Certificate cannot be transferred

- (8) A nominal funding entitlement certificate cannot be transferred.

87 Secretary to comply with rules

- (1) The Minister may, by legislative instrument, make rules to be complied with by the Secretary in relation to the performance of the Secretary's functions, or the exercise of the Secretary's powers, under this Division.
- (2) The Secretary must comply with any rules in force under subsection (1).

88 Executive power of the Commonwealth

This Division does not, by implication, limit the executive power of the Commonwealth.

Division 3—Regional Broadband Scheme Special Account

89 Regional Broadband Scheme Special Account

- (1) The Regional Broadband Scheme Special Account is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

90 Credits to the Account

There must be credited to the Regional Broadband Scheme Special Account:

- (a) an amount equal to an amount paid to the Commonwealth by way of:
 - (i) charge; or
 - (ii) an instalment of charge; and
- (b) an amount equal to an amount paid to the Commonwealth under a section 80 contract; and
- (c) an amount equal to an amount paid to the Commonwealth by way of damages or compensation for a breach of a section 80 contract; and
- (d) an amount equal to an amount paid to the Commonwealth by way of the repayment of the whole or a part of a section 80 grant.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

91 Distribution of whole or part of balance of the Account

- (1) If:
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- (a) the whole or a part of the balance standing to the credit of the Regional Broadband Scheme Special Account at a particular time is attributable to charge paid by particular carriers; and
 - (b) a determination is in force under subsection (2);
- the Secretary may, on behalf of the Commonwealth, distribute to those carriers the whole or a part of the balance.
- (2) The Minister may, by legislative instrument, determine:
 - (a) rules to be complied with by the Secretary in relation to the timing of distributions under subsection (1); and
 - (b) a method to be applied by the Secretary in making distributions under subsection (1).
 - (3) The Secretary must comply with a determination in force under subsection (2).

92 Purposes of the Account

The purposes of the Regional Broadband Scheme Special Account are as follows:

- (a) to pay amounts payable by the Commonwealth under a contract entered into under section 80;
- (b) to make grants under section 80;
- (c) to make distributions in accordance with section 91;
- (d) to pay refunds under section 99 or 102J.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

92A Offset for designated administrative costs—transfer to general CRF

- (1) The Secretary may, by notifiable instrument, direct that a specified amount is to be debited from the Regional Broadband Scheme Special Account.
- (2) The total of the amounts debited under subsection (1) must not exceed whichever is the lesser of the following:
 - (a) the total of the relevant Budget amounts (see subsection (3));
 - (b) the total of the amounts paid to the Commonwealth by way of:

- (i) so much of an amount of charge as is attributable to the annual administrative cost amount for a financial year; or
- (ii) an administrative cost instalment of charge.
- (3) For the purposes of this section, **relevant Budget amounts** are to be ascertained using the following table.

Relevant Budget amounts			
Item	Document	Location in document	Relevant Budget amount
1	<i>Portfolio Additional Estimates Statements</i> for 2016-17 for the Treasury Portfolio	table that relates to the ACCC's Entity 2016-17 measures since Budget	the amount shown in the table in the column headed 2016-17 opposite the entry relating to Regional Broadband Scheme Departmental expenses
2	<i>Portfolio Additional Estimates Statements</i> for 2016-17 for the Communications and the Arts Portfolio	table that relates to the ACMA's Entity 2016-17 measures since Budget	the amount shown in the table in the column headed 2016-17 opposite the entry relating to Regional Broadband Scheme Departmental capital
3	<i>Portfolio Budget Statements</i> for 2018-19 for the Department	table that relates to Budgeted expenses for the Department	the amount shown in the table in the column headed 2017-18 opposite the entry relating to Regional Broadband Scheme Special Account Departmental expenses
4	<i>Portfolio Budget Statements</i> for: (a) the 2018-19 financial year; or (b) a later financial year; for the Department	table that relates to Budgeted expenses for the Department	the amount shown in the table in the column relating to that financial year opposite the entry relating to Regional Broadband Scheme Special

Relevant Budget amounts			
Item	Document	Location in document	Relevant Budget amount
			Account Departmental expenses

Division 4—Chargeable premises associated with a local access line

93 Chargeable premises associated with a local access line

For the purposes of this Part, if:

- (a) a person is a carrier; and
- (b) particular premises are potentially chargeable premises in relation to the person for a month; and
- (c) the premises are not exempt premises in relation to the person for the month;

the premises are *chargeable premises associated with a local access line* of the person for the month.

94 Potentially chargeable premises

If:

- (a) a person is a carrier; and
- (b) during a period comprising the whole or a part of a month in an eligible financial year, either:
 - (i) the person owns a local access line, but no nominated carrier declaration is in force in relation to the line; or
 - (ii) under a nominated carrier declaration, the person is the nominated carrier in relation to a local access line; and
- (c) the line is not an exempt line in relation to the person for the month; and
- (d) during the whole or a part of the period, a carriage service provider (who may be the person) supplies a designated broadband service to particular premises in Australia using the line;

the premises are ***potentially chargeable premises*** in relation to the person for the month.

Note: The line does not need to be physically connected to the premises. This is because ***using*** has an extended meaning—see subsection 5(1) of this Act and section 24 of the *Telecommunications Act 1997* (when read together with section 18A of the *Acts Interpretation Act 1901*).

95 Exempt premises—small networks

(1) If:

- (a) a person is a member of an associated group during the whole or a part of a month; and
- (b) the total number of potentially chargeable premises in relation to the members of the group for that month is less than 2,000; and
- (c) one or more of those potentially chargeable premises are potentially chargeable premises in relation to the person for that month;

each of the potentially chargeable premises mentioned in paragraph (c) are ***exempt premises*** in relation to the person for that month.

(2) If:

- (a) a person is not a member of an associated group during the whole or a part of a month; and
- (b) the total number of potentially chargeable premises in relation to the person for that month is less than 2,000;

each of those potentially chargeable premises are ***exempt premises*** in relation to the person for that month.

Associated group

(3) For the purposes of this section, if:

- (a) a person is in a position to exercise control of:
 - (i) a local access line; or
 - (ii) a telecommunications network; and
- (b) the person has one or more associates;

then:

- (c) the person is taken to belong to an associated group; and

- (d) the associated group consists of the person and those associates.
- (4) For the purposes of subsection (3), the question of whether a person is in a position to exercise control of:
 - (a) a local access line; or
 - (b) a telecommunications network;is to be determined in the same manner in which that question is determined for the purposes of Part 8 of the *Telecommunications Act 1997*.
- (5) For the purposes of subsection (3), the question of whether a person has one or more associates is to be determined in the same manner in which that question is determined for the purposes of Part 8 of the *Telecommunications Act 1997*.

96 Exempt lines—local access lines transitioning to the NBN

Telstra

- (1) If:
 - (a) a person is a carrier; and
 - (b) during a period comprising the whole or a part of a month in an eligible financial year, either:
 - (i) the person owns a local access line, but there is no nominated carrier declaration in force in relation to the line; or
 - (ii) under a nominated carrier declaration, the person is the nominated carrier in relation to a local access line; and
 - (c) the line is not owned by an NBN corporation at any time during that month; and
 - (d) the line is not used by an NBN corporation to supply a declared service at any time during that month; and
 - (e) during the whole of that month, there was in force a legally enforceable agreement that satisfies the following conditions:
 - (i) the agreement provides for the transfer of ownership or control of the line to an NBN corporation;

- (ii) the agreement is covered by a determination made under subsection 577BA(9) of the *Telecommunications Act 1997*;
 - (iii) the agreement is not specified in an instrument under subsection (2);
- the line is an ***exempt line*** in relation to the person for that month.
- (2) The Minister may, by legislative instrument, specify one or more agreements for the purposes of subparagraph (1)(e)(iii).

Optus

- (3) If:
- (a) a person is a carrier; and
 - (b) during a period comprising the whole or a part of a month in an eligible financial year, either:
 - (i) the person owns a local access line, but there is no nominated carrier declaration in force in relation to the line; or
 - (ii) under a nominated carrier declaration, the person is the nominated carrier in relation to a local access line; and
 - (c) the line is not owned by an NBN corporation at any time during that month; and
 - (d) the line is not used by an NBN corporation to supply a declared service at any time during that month; and
 - (e) during the whole of that month, there was in force a contract that satisfies the following conditions:
 - (i) the contract provides for the deactivation or decommissioning of lines that form part of the infrastructure of a hybrid fibre-coaxial network;
 - (ii) the contract was entered into between NBN Co and the listed Optus companies (see subsection (10));
 - (iii) the contract applies to the line;
 - (iv) the agreement is not specified in an instrument under subsection (4);
- the line is an ***exempt line*** in relation to the person for that month.
- (4) The Minister may, by legislative instrument, specify one or more agreements for the purposes of subparagraph (3)(e)(iv).

Other networks

- (5) If:
- (a) a person is a carrier; and
 - (b) during a period comprising the whole or a part of a month in an eligible financial year, either:
 - (i) the person owns a local access line, but there is no nominated carrier declaration in force in relation to the line; or
 - (ii) under a nominated carrier declaration, the person is the nominated carrier in relation to a local access line; and
 - (c) that month is one of the first 6 months of the first eligible financial year; and
 - (d) the line is not owned by an NBN corporation at any time during that month; and
 - (e) the line is not used by an NBN corporation to supply a declared service at any time during that month; and
 - (f) during the whole of that month, there was in force a legally enforceable agreement that satisfies the following conditions:
 - (i) the agreement provides for the transfer of ownership or control of the line to an NBN corporation;
 - (ii) the agreement was in force immediately before the commencement of this section;
 - (iii) the agreement is not covered by subparagraph (1)(e)(ii) or (3)(e)(ii);
 - (iv) the agreement is not specified in an instrument under subsection (6);
 - (v) such other conditions (if any) as are determined under subsection (7);
- the line is an *exempt line* in relation to the person for that month.
- (6) The Minister may, by legislative instrument, specify one or more agreements for the purposes of subparagraph (5)(f)(iv).
- (7) The Minister may, by legislative instrument, determine one or more conditions for the purposes of subparagraph (5)(f)(v).

When agreement comes into force

- (8) For the purposes of this section, an agreement is taken to come into force when the agreement is entered into.

No specification by class

- (9) Subsection 13(3) of the *Legislation Act 2003* does not apply to subsection (2), (4) or (6) of this section.

Listed Optus company

- (10) For the purposes of this section, **listed Optus company** means:
- (a) Optus Networks Pty Limited (ACN 008 570 330); or
 - (b) Optus Internet Pty Limited (ACN 083 164 532); or
 - (c) Optus Vision Pty Limited (ACN 066 518 821); or
 - (d) Optus Vision Media Pty Limited (ACN 070 870 647); or
 - (e) Optus Systems Pty Limited (ACN 056 541 167); or
 - (f) SingTel Optus Pty Limited (ACN 052 833 208).

96A Potentially concessional premises

For the purposes of this Part, if particular premises are potentially chargeable premises in relation to a person for a month because a carriage service provider (who may be the person) supplies a designated broadband service to:

- (a) a residential customer who occupies the premises; or
- (b) a small business customer who occupies the premises;

the premises are **potentially concessional premises** in relation to the person for that month.

96B Recently connected greenfield premises

- (1) If:
- (a) during a period comprising the whole or a part of a month in an eligible financial year, a person is a carrier; and
 - (b) a declaration made under subsection 63(2) of the *Telecommunications Act 1997* was in force on 30 June 2018 in relation to the carrier licence held by the person; and

- (c) the declaration provides that the person must (upon request by an end-user at relevant premises) connect, or arrange for another person on the person's behalf to connect, premises located in a development area (however described) specified in the declaration to a telecommunications network owned by the person (as specified in the declaration); and
- (d) the person, or another person on the person's behalf:
- (i) has connected one or more premises located in the development area to the telecommunications network; and
 - (ii) has done so before the end of 30 June 2019; and
- (e) one or more of the connected premises are potentially chargeable premises in relation to the person for that month; each of the potentially chargeable premises mentioned in paragraph (e) are **recently connected greenfield premises** in relation to the person for that month.
- (2) If:
- (a) a person is a carrier; and
 - (b) during a period comprising the whole or a part of a month in an eligible financial year, the person supplies an eligible local bitstream access service using a local access line; and
 - (c) during a whole or a part of that period, a carriage service provider supplies a designated broadband service to one or more premises using the line; and
 - (d) one or more of those premises are potentially chargeable premises in relation to the person for that month;
- each of the potentially chargeable premises mentioned in paragraph (d) are **recently connected greenfield premises** in relation to the person for that month.
- (3) In this section:
- eligible local bitstream access service** means a local bitstream access service that is first supplied at a time during the period:
- (a) beginning at the start of 1 January 2011; and
 - (b) ending at the end of 30 June 2019.
- local bitstream access service** has the meaning given by a declaration that:
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- (a) was made:
 - (i) under subsection 152AL(3) of the *Competition and Consumer Act 2010*; and
 - (ii) in compliance with repealed subsection 152AL(3C) of the *Competition and Consumer Act 2010*; and
- (b) was in force immediately before the commencement of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020*.

Division 5—Anti-avoidance

97 Anti-avoidance

- (1) A carrier must not, either alone or together with one or more other persons, enter into, begin to carry out or carry out a scheme if it would be concluded that the carrier did so for the sole or dominant purpose of avoiding the application of:
 - (a) section 93 of this Act; or
 - (b) any provision of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020* (other than section 20 of that Act);in relation to:
 - (c) the carrier; or
 - (d) any other carrier.
- (1A) A carrier must not, either alone or together with one or more other persons, enter into, begin to carry out or carry out a scheme if it would be concluded that the carrier did so for the sole or dominant purpose of obtaining the benefit of section 20 of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020* in relation to:
 - (a) the carrier; or
 - (b) any other carrier.

Ancillary contraventions

- (2) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (1) or (1A); or

- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1) or (1A); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1) or (1A); or
- (d) conspire with others to effect a contravention of subsection (1) or (1A).

Civil penalty provisions

- (3) Subsections (1), (1A) and (2) are ***civil penalty provisions***.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions.

Offences

- (4) A carrier commits an offence if:
- (a) the carrier, either alone or together with one or more other persons, enters into, begins to carry out or carries out a scheme; and
 - (b) the carrier did so for the sole or dominant purpose of avoiding the application of:
 - (i) section 93 of this Act; or
 - (ii) any provision of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020* (other than section 20 of that Act);in relation to:
 - (iii) the carrier; or
 - (iv) any other carrier.

Penalty: 10,000 penalty units.

- (4A) A carrier commits an offence if:
- (a) the carrier, either alone or together with one or more other persons, enters into, begins to carry out or carries out a scheme; and
 - (b) the carrier did so for the sole or dominant purpose of obtaining the benefit of section 20 of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020* in relation to:
 - (i) the carrier; or

(ii) any other carrier.

Penalty: 10,000 penalty units.

Validity of transactions

(5) A contravention of subsection (1), (1A), (2), (4) or (4A) does not affect the validity of any transaction.

Scheme

(6) For the purposes of this section, **scheme** means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

Division 6—Charge offset certificate

98 Charge offset certificate

Application

- (1) If:
- (a) a person is an eligible funding recipient; and
 - (b) the ACMA has made an assessment under section 102 setting out the charge payable by the person for a financial year (the **charge financial year**);
- the person may, at any time during the period:
- (c) beginning when the assessment was made; and
 - (d) ending at the end of the standard due date (within the meaning of section 102D) for the charge financial year;
- apply to the Secretary for the issue to the person of a charge offset certificate for the charge financial year.
- (2) An application under subsection (1) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Secretary; and
 - (c) be accompanied by such information as is specified in rules made under subsection (9).

Issue of certificate

- (3) If:
- (a) an application under subsection (1) has been made for the issue to a person of a charge offset certificate for the charge financial year; and
 - (b) the person is the holder of a nominal funding entitlement certificate in relation to the next financial year; and
 - (c) rules made under subsection (9) for the purposes of this paragraph are in force; and
 - (d) the conditions set out in those rules are satisfied;
- the Secretary must:
- (e) issue a certificate stating that the person is entitled to a charge offset for the charge financial year equal to the amount specified in the certificate; and
 - (f) do so by the end of 31 March next following the charge financial year.
- (4) The amount specified in the certificate:
- (a) must be the amount ascertained in accordance with rules made under subsection (9); and
 - (b) must not exceed the nominal funding entitlement of the person for the next financial year; and
 - (c) must not exceed the annual base amount of the person for the charge financial year.
- (5) A certificate issued under subsection (3) is to be known as a ***charge offset certificate***.

Refusal

- (6) If the Secretary decides to refuse to issue a charge offset certificate to a person, the Secretary must give written notice of the decision to the person.

Copy of certificate

- (7) If the Secretary issues a charge offset certificate, the Secretary must give a copy of the certificate to the ACMA.

Charge offset certificate cannot be transferred

- (8) A charge offset certificate cannot be transferred.

Rules

- (9) The Minister may, by legislative instrument, make rules for the purposes of this section.

99 Remission or refund of charge

Remission

- (1) If:
- (a) a person becomes the holder of a charge offset certificate for a financial year; and
 - (b) a base instalment of charge is payable by the person in relation to the financial year; and
 - (c) the base instalment of charge has not been paid;
- the Secretary must, on behalf of the Commonwealth, remit so much of the base instalment of charge as equals the amount specified in the certificate.

Note: For *base instalment* of charge, see section 102D.

- (2) The Secretary must inform the ACMA of a remission of charge under subsection (1).
- (3) If:
- (a) the ACMA has made an assessment under section 102 setting out the charge payable by a person for a financial year; and
 - (b) the base instalment of charge is remitted, to any extent, under subsection (1) of this section; and
 - (c) the ACMA is informed of the remission;
- the ACMA must, under subsection 102B(1), vary the assessment to reflect the remission.

Refund

- (4) If:
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- (a) a person becomes the holder of a charge offset certificate for a financial year; and
 - (b) a base instalment of charge was payable by the person in relation to the financial year; and
 - (c) the base instalment of charge has been paid;
- the Secretary must, on behalf of the Commonwealth, refund so much of the base instalment of charge as equals the amount specified in the certificate.

Note: For *base instalment* of charge, see section 102D.

Division 7—Assessment, collection and recovery of charge

Subdivision A—Reporting obligations

100 Reporting obligations

- (1) If there are one or more chargeable premises associated with a local access line of a person for a month in an eligible financial year, the person must:
 - (a) give the ACMA a written report about:
 - (i) those chargeable premises; and
 - (ii) the chargeable premises (if any) associated with a local access line of the person for each of the other months in the financial year; and
 - (b) do so before the end of 31 October next following the financial year.
- (2) The report must be in a form approved, in writing, by the ACMA.
- (3) The approved form may require verification, by a statutory declaration, of statements made in the report.
- (3A) If, at any time during a month covered by the report, the person had an associate in relation to control of:
 - (a) a telecommunications network; or
 - (b) a company; or
 - (c) a local access line;the report must:
 - (d) set out the name of the associate; and

- (e) set out the ACN (if any) of the associate; and
- (f) identify the network, company or line, as the case requires; and
- (g) identify which paragraph or paragraphs of subsection 152(1) of the *Telecommunications Act 1997* resulted in the person having the associate.

Transitional

- (4) If:
- (a) the report relates to:
 - (i) the first eligible financial year; or
 - (ii) the second eligible financial year; or
 - (iii) the third eligible financial year; or
 - (iv) the fourth eligible financial year; or
 - (v) the fifth eligible financial year; and
 - (b) there are one or more potentially concessional premises in relation to the person for a month in the eligible financial year;
- the report must set out the total number of potentially concessional premises in relation to the person for that month.

- (5) If:
- (a) particular premises are reported as potentially concessional premises in relation to the person for a month; and
 - (b) apart from this subsection, the premises are not potentially concessional premises in relation to the person for the month; and
 - (c) the person:
 - (i) did not know; and
 - (ii) could not, with reasonable diligence, have ascertained; that the premises are not potentially concessional premises in relation to the person for the month;
- the premises are taken, for all purposes, to be potentially concessional premises in relation to the person for the month.

- (6) If:
- (a) the report relates to:

- (i) the first eligible financial year; or
 - (ii) the second eligible financial year; or
 - (iii) the third eligible financial year; or
 - (iv) the fourth eligible financial year; or
 - (v) the fifth eligible financial year; and
- (b) during the whole or a part of a month in the eligible financial year, the person was the controller of an associated group;
- the report must:
- (c) set out a statement to that effect; and
 - (d) identify each of the members of the associated group; and
 - (e) set out the circumstances that resulted in the person being the controller of the associated group.

Associated group

- (7) For the purposes of subsection (6), if:
- (a) a person is in a position to exercise control of:
 - (i) a local access line; or
 - (ii) a telecommunications network; and
 - (b) the person has one or more associates;
- then:
- (c) the person is taken to belong to an associated group; and
 - (d) the associated group consists of the person and those associates; and
 - (e) the person is the controller of the associated group.
- (8) For the purposes of subsection (7), the question of whether a person is in a position to exercise control of:
- (a) a local access line; or
 - (b) a telecommunications network;
- is to be determined in the same manner in which that question is determined for the purposes of Part 8 of the *Telecommunications Act 1997*.
- (9) For the purposes of subsection (7), the question of whether a person has one or more associates is to be determined in the same manner in which that question is determined for the purposes of Part 8 of the *Telecommunications Act 1997*.

Transitional—recently connected greenfield premises

- (10) If:
- (a) the report relates to:
 - (i) the first eligible financial year; or
 - (ii) the second eligible financial year; or
 - (iii) the third eligible financial year; or
 - (iv) the fourth eligible financial year; or
 - (v) the fifth eligible financial year; and
 - (b) there are one or more recently connected greenfield premises in relation to the person for a month in the eligible financial year;
- the report must set out the total number of recently connected greenfield premises in relation to the person for that month.

- (11) If:
- (a) particular premises are reported as recently connected greenfield premises in relation to the person for a month; and
 - (b) apart from this subsection, the premises are not recently connected greenfield premises in relation to the person for the month; and
 - (c) the person:
 - (i) did not know; and
 - (ii) could not, with reasonable diligence, have ascertained; that the premises are not recently connected greenfield premises in relation to the person for the month;
- the premises are taken, for all purposes, to be recently connected greenfield premises in relation to the person for the month.

101 Offence of failing to lodge report

- (1) A person commits a strict liability offence if:
- (a) the person is subject to a requirement under section 100; and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty: 50 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

Subdivision B—Assessments

102 Assessments

- (1) If a person has given the ACMA a section 100 report in relation to a financial year before the end of 31 October next following the financial year, the ACMA must:
- (a) make a written assessment setting out:
 - (i) the total number of chargeable premises (if any) associated with a local access line of the person for each of the months in the financial year; and
 - (ii) the person's annual chargeable premises amount (if any) for the financial year; and
 - (iii) the person's annual base amount (if any) for the financial year; and
 - (iv) the person's annual administrative cost amount (if any) for the financial year; and
 - (v) the charge (if any) payable by the person in relation to the financial year; and
 - (b) do so by the assessment deadline for the financial year.

Note 1: Section 102D sets out when the charge is payable.

Note 2: If a month is in the first, second, third, fourth or fifth eligible financial year, the total number mentioned in paragraph (a) may be reduced—see subsection (6).

- (2) If a person has not given the ACMA a section 100 report in relation to a financial year before the end of 31 October next following the financial year, the ACMA may, before the assessment deadline for the financial year, make a written assessment setting out:
- (a) the total number of chargeable premises (if any) associated with a local access line of the person for each of the months in the financial year; and

- (b) the person's annual chargeable premises amount (if any) for the financial year; and
- (c) the person's annual base amount (if any) for the financial year; and
- (d) the person's annual administrative cost amount (if any) for the financial year; and
- (e) the charge (if any) payable by the person in relation to the financial year.

Note 1: Section 102D sets out when the charge is payable.

Note 2: If a month is in the first, second, third, fourth or fifth eligible financial year, the total number mentioned in paragraph (a) may be reduced—see subsection (6).

- (3) An assessment under this section is not a legislative instrument.

Assessment deadline

- (4) For the purposes of this section, the **assessment deadline** for a financial year is the end of:
 - (a) 30 November next following the financial year; or
 - (b) if:
 - (i) a later day is ascertained in accordance with a determination made under subsection (5); and
 - (ii) the day ascertained in accordance with the determination is not later than 2 months before the standard due date (within the meaning of section 102D) for the financial year;the day ascertained in accordance with the determination.
- (5) The ACMA may, by legislative instrument, make a determination for the purposes of subparagraph (4)(b)(i).

Transitional—reduction of total number of chargeable premises

- (6) Section 20 of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020* applies for the purposes of subparagraph (1)(a)(i) and paragraph (2)(a) in the same way that it applies for the purposes of that Act.

102A Notification of assessment

As soon as practicable after making an assessment under section 102, the ACMA must give a copy of the assessment to:

- (a) the person to whom the assessment relates; and
- (b) the Secretary.

102B Variation of assessments

- (1) The ACMA may vary an assessment made under this Division by making such alterations and additions as it thinks necessary, even if charge has been paid in respect of an assessment.
- (2) Unless the contrary intention appears, a varied assessment is taken, for the purposes of this Division, to be an assessment under section 102.

102C ACMA may accept statements

Despite anything in this Division, the ACMA may, for the purposes of making an assessment under this Division, partly or completely accept a statement in a report under section 100.

Subdivision C—Collection and recovery of charge

102D When charge payable

Person other than an eligible funding recipient

- (1) Charge payable by a person (other than an eligible funding recipient) in relation to a financial year becomes due and payable on:
 - (a) the standard due date for the financial year; or
 - (b) if the ACMA, by written notice given to the person, allows a later day—that later day.
- (2) A day allowed under paragraph (1)(b) must not be later than 28 February next following the financial year.
- (3) A copy of a notice under paragraph (1)(b) must be published on the ACMA's website.

- (4) A notice under paragraph (1)(b) is not a legislative instrument.

Eligible funding recipient

- (5) If a person is an eligible funding recipient, charge payable by the person in relation to a financial year is payable in 2 instalments, as follows:
- (a) an instalment (the **base instalment**) of so much of the amount of the charge as equals the annual base amount of the person for the financial year;
 - (b) an instalment (the **administrative cost instalment**) of so much of the amount of the charge as equals the annual administrative cost amount of the person for the financial year.
- (6) If a person is an eligible funding recipient, the base instalment of charge payable by the person in relation to a financial year becomes due and payable on:
- (a) if the person has made an application under subsection 98(1) for a charge offset certificate for the financial year—30 April next following the financial year; or
 - (b) otherwise:
 - (i) the standard due date for the financial year; or
 - (ii) if the ACMA, by written notice given to the person, allows a later day—that later day.
- (7) A day allowed under subparagraph (6)(b)(ii) must not be later than 28 February next following the financial year.
- (8) A copy of a notice under subparagraph (6)(b)(ii) must be published on the ACMA's website.
- (9) A notice under subparagraph (6)(b)(ii) is not a legislative instrument.
- (10) If a person is an eligible funding recipient, the administrative cost instalment of charge payable by the person in relation to a financial year becomes due and payable on:
- (a) the standard due date for the financial year; or
 - (b) if the ACMA, by written notice given to the person, allows a later day—that later day.

- (11) A day allowed under paragraph (10)(b) must not be later than 28 February next following the financial year.
- (12) A copy of a notice under paragraph (10)(b) must be published on the ACMA's website.
- (13) A notice under paragraph (10)(b) is not a legislative instrument.

Standard due date

- (14) For the purposes of this section, the *standard due date* for a financial year is:
 - (a) 31 December next following the financial year; or
 - (b) if:
 - (i) a later day is ascertained in accordance with a determination made under subsection (15); and
 - (ii) the day ascertained in accordance with the determination is not later than 28 February next following the financial year;the day ascertained in accordance with the determination.
- (15) The ACMA may, by legislative instrument, make a determination for the purposes of subparagraph (14)(b)(i).

102E Recovery of charge

Charge, or an instalment of charge:

- (a) is a debt due to the ACMA on behalf of the Commonwealth; and
- (b) may be recovered by the ACMA, on behalf of the Commonwealth, in:
 - (i) the Federal Court; or
 - (ii) the Federal Circuit Court; or
 - (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

102F Validity of assessment

The validity of an assessment under this Division is not affected by a contravention of this Division.

102G Evidence of assessment

Scope

- (1) This section applies if a document that purports to be a copy of an assessment under section 102 is produced in a proceeding.

Evidence

- (2) Except so far as the contrary is established, it must be presumed:
 - (a) that the document is a copy of the assessment; and
 - (b) that the ACMA has duly made the assessment; and
 - (c) that the amounts and other particulars set out in the assessment are correct.

102H Onus of establishing incorrectness of assessment

In any proceeding, the onus of establishing that an assessment under section 102 is incorrect is on the party making that assertion.

102J Refund of overpayment of charge

If there is an overpayment of:

- (a) charge; or
- (b) an instalment of charge;

the overpayment is to be refunded by the Secretary on behalf of the Commonwealth.

102K Cancellation of certain exemptions from charge

- (1) This section cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay charge.
- (2) The cancellation does not apply if the provision of the other Act is enacted after the commencement of this section and refers specifically to charge imposed by the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

102L Commonwealth not liable to charge

- (1) The Commonwealth is not liable to pay charge.
- (2) A reference in this section to the *Commonwealth* includes a reference to an authority of the Commonwealth that cannot, by law of the Commonwealth, be made liable to taxation by the Commonwealth.

Subdivision D—Other matters

102N Late payment penalty

- (1) If an amount of:
 - (a) charge; or
 - (b) an instalment of charge;that is payable by a person remains unpaid after the day on which it becomes due and payable, the person is liable to pay a penalty (*late payment penalty*) on the unpaid amount for each day until all of:
 - (c) the charge; or
 - (d) the instalment of charge;as the case may be, has been paid.
- (2) The late payment penalty rate is 20% per year, or such lower rate as the ACMA determines in writing for the purposes of this subsection.
- (3) The ACMA may remit the whole or part of a late payment penalty that a person is liable to pay under subsection (1).
- (4) The late payment penalty for a day is due and payable at the end of that day.
- (5) Late payment penalty:
 - (a) is a debt due to the ACMA on behalf of the Commonwealth; and
 - (b) may be recovered by the ACMA, on behalf of the Commonwealth, in:
 - (i) the Federal Court; or
 - (ii) the Federal Circuit Court; or

- (iii) a court of a State or Territory that has jurisdiction in relation to the matter.
- (6) If the amount of the late payment penalty for a day is not an amount of whole dollars, the late payment penalty is rounded to the nearest dollar (rounding 50 cents upwards).
- (7) A determination under subsection (2) is a legislative instrument.

Division 8—Disclosure of information

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

102P Access to information or documents held by a carrier or carriage service provider

Scope

- (1) This section applies to a carrier or carriage service provider if the ACMA believes on reasonable grounds that the carrier or carriage service provider has information or a document that is relevant to the operation of:
 - (a) Division 4, 5, 6 or 7 of this Part; or
 - (b) subsection 102ZFA(4); or
 - (c) the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

Requirement

- (2) The ACMA may, by written notice given to the carrier or carriage service provider, require the carrier or carriage service provider:
 - (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies.

- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

Compliance

- (4) A carrier or carriage service provider must comply with a requirement under subsection (2) to the extent that the carrier or carriage service provider is capable of doing so.
- (5) A carrier or carriage service provider commits an offence if:
- (a) the ACMA has given a notice to the carrier or carriage service provider under subsection (2); and
 - (b) the carrier or carriage service provider engages in conduct; and
 - (c) the carrier's conduct, or the carriage service provider's conduct, contravenes a requirement in the notice.

Penalty for contravention of this subsection: 50 penalty units.

102Q Copying documents—compensation

A carrier or carriage service provider is entitled to be paid by the ACMA reasonable compensation for complying with a requirement covered by paragraph 102P(2)(c).

102R Copies of documents

- (1) The ACMA may:
- (a) inspect a document or copy produced under subsection 102P(2); and
 - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) The ACMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 102P(2)(c).

102S ACMA may retain documents

- (1) The ACMA may take, and retain for as long as is necessary, possession of a document produced under subsection 102P(2).

- (2) The carrier or carriage service provider otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ACMA to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the ACMA must, at such times and places as the ACMA thinks appropriate, permit the carrier or carriage service provider otherwise entitled to possession of the document, or a person authorised by that carrier or carriage service provider, to inspect and make copies of, or take extracts from, the document.

102T Law relating to legal professional privilege not affected

This Subdivision does not affect the law relating to legal professional privilege.

Subdivision B—Access to information or documents held by an eligible funding recipient

102U Access to information or documents held by an eligible funding recipient

Scope

- (1) This section applies to an eligible funding recipient if the ACCC believes on reasonable grounds that the eligible funding recipient has information or a document that is relevant to the performance of any of the ACCC's functions, or the exercise of any of the ACCC's powers, under the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

Requirement

- (2) The ACCC may, by written notice given to the eligible funding recipient, require the eligible funding recipient:
 - (a) to give to the ACCC, within the period and in the manner and form specified in the notice, any such information; or

- (b) to produce to the ACCC, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the ACCC, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

Compliance

- (4) An eligible funding recipient must comply with a requirement under subsection (2) to the extent that the eligible funding recipient is capable of doing so.
- (5) An eligible funding recipient commits an offence if:
- (a) the ACCC has given a notice to the eligible funding recipient under subsection (2); and
 - (b) the eligible funding recipient engages in conduct; and
 - (c) the eligible funding recipient's conduct contravenes a requirement in the notice.

Penalty for contravention of this subsection: 50 penalty units.

102V Copying documents—compensation

An eligible funding recipient is entitled to be paid by the ACCC reasonable compensation for complying with a requirement covered by paragraph 102U(2)(c).

102W Copies of documents

- (1) The ACCC may:
- (a) inspect a document or copy produced under subsection 102U(2); and
 - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) The ACCC may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 102U(2)(c).

102X ACCC may retain documents

- (1) The ACCC may take, and retain for as long as is necessary, possession of a document produced under subsection 102U(2).
- (2) The eligible funding recipient otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ACCC to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the ACCC must, at such times and places as the ACCC thinks appropriate, permit the eligible funding recipient otherwise entitled to possession of the document, or a person authorised by that eligible funding recipient, to inspect and make copies of, or take extracts from, the document.

102Y Law relating to legal professional privilege not affected

This Subdivision does not affect the law relating to legal professional privilege.

Subdivision C—Disclosure of information to certain bodies

102Z Disclosure of information by the ACMA to certain bodies

- (1) The ACMA may disclose information to any of the following bodies:
 - (a) the Department;
 - (b) the ACCC;
 - (c) the Regional Telecommunications Independent Review Committee;
 - (d) the Department administered by the Minister administering the *Public Governance, Performance and Accountability Act 2013*;
 - (e) the Department administered by the Treasurer;
 - (f) an authorised government agency (see subsection (2));if:
 - (g) the information was:

- (i) obtained under, or for the purposes of, this Division; or
 - (ii) set out in a report under section 100; and
 - (h) the ACMA is satisfied that the information will enable or assist the body to perform or exercise any of the functions or powers of the body.
- (2) The ACMA may, by notifiable instrument, declare that a specified department or authority of the Commonwealth, a State or a Territory is an **authorised government agency** for the purposes of paragraph (1)(f).
- (3) The ACMA may, by writing, impose conditions to be complied with in relation to information disclosed under subsection (1).
- (4) An instrument made under subsection (3) that imposes conditions relating to one particular disclosure identified in the instrument is a notifiable instrument.
- (5) Otherwise, an instrument made under subsection (3) is a legislative instrument.

102ZA Disclosure of information by the ACCC to certain bodies

- (1) The ACCC may disclose information to any of the following bodies:
- (a) the Department;
 - (b) the ACMA;
 - (c) the Regional Telecommunications Independent Review Committee;
 - (d) the Department administered by the Minister administering the *Public Governance, Performance and Accountability Act 2013*;
 - (e) the Department administered by the Treasurer;
 - (f) an authorised government agency (see subsection (2));
- if:
- (g) the information was obtained under, or for the purposes of, this Division or section 102ZF; and
 - (h) the ACCC is satisfied that the information will enable or assist the body to perform or exercise any of the functions or powers of the body.

- (2) The ACCC may, by notifiable instrument, declare that a specified department or authority of the Commonwealth, a State or a Territory is an **authorised government agency** for the purposes of paragraph (1)(f).
- (3) The ACCC may, by writing, impose conditions to be complied with in relation to information disclosed under subsection (1).
- (4) An instrument made under subsection (3) that imposes conditions relating to one particular disclosure identified in the instrument is a notifiable instrument.
- (5) Otherwise, an instrument made under subsection (3) is a legislative instrument.

Division 9—Other matters

102ZB Register of Contracts for the Funding of Fixed Wireless Broadband and Satellite Broadband

- (1) The Secretary is to maintain a register, to be known as the Register of Contracts for the Funding of Fixed Wireless Broadband and Satellite Broadband, in which the Secretary includes the following for each section 80 contract that is in force:
 - (a) the name of the contractor;
 - (b) the duration of the contract;
 - (c) if the contract requires actions to be undertaken by the contractor—a summary of those actions;
 - (d) if the contract requires services, facilities or customer equipment to be supplied by the contractor—a description of those services, facilities or customer equipment;
 - (e) if the contract provides for the Commonwealth to reimburse, or partly reimburse, costs or expenses—a description of those costs or expenses;
 - (f) one of the following:
 - (i) the total amount paid or to be paid by the Commonwealth under the contract;
 - (ii) an estimate of the total amount paid or to be paid by the Commonwealth under the contract;

- (iii) the method of working out the total amount paid or to be paid by the Commonwealth under the contract.
- (2) The Register of Contracts for the Funding of Fixed Wireless Broadband and Satellite Broadband is to be maintained by electronic means.
- (3) The Register of Contracts for the Funding of Fixed Wireless Broadband and Satellite Broadband is to be made available for inspection on the Department's website.
- (4) The Register of Contracts for the Funding of Fixed Wireless Broadband and Satellite Broadband is not a legislative instrument.

102ZC Register of Grants for the Funding of Fixed Wireless Broadband and Satellite Broadband

- (1) The Secretary is to maintain a register, to be known as the Register of Grants for the Funding of Fixed Wireless Broadband and Satellite Broadband, in which the Secretary includes the following for each section 80 grant that has been made:
 - (a) the name of the grant recipient;
 - (b) if the terms and conditions of the grant require action to be undertaken by the grant recipient—a summary of those actions;
 - (c) if services, facilities or customer equipment are to be supplied by the grant recipient in accordance with the terms and conditions of the grant—a description of those services, facilities or customer equipment;
 - (d) if the grant is by way of the reimbursement, or partial reimbursement, of costs or expenses—a description of those costs or expenses;
 - (e) either:
 - (i) the amount of the grant; or
 - (ii) the method for working out the amount of the grant.
- (2) The Register of Grants for the Funding of Fixed Wireless Broadband and Satellite Broadband is to be maintained by electronic means.

- (3) The Register of Grants for the Funding of Fixed Wireless Broadband and Satellite Broadband is to be made available for inspection on the Department's website.
- (4) The Register of Grants for the Funding of Fixed Wireless Broadband and Satellite Broadband is not a legislative instrument.

102ZD Publication of charge payments and charge offsets

The ACMA must publish on its website a statement, for each eligible financial year, that sets out:

- (a) the total amount of charge paid by carriers in relation to the eligible financial year; and
- (b) the total of the amounts specified in charge offset certificates issued to carriers in relation to the eligible financial year.

102ZE ACMA may give certain information to the ACCC

The ACMA may give the ACCC information that is relevant to the performance of any of the ACCC's functions, or the exercise of any of the ACCC's powers, under the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*.

102ZF Report about the number of premises supplied with designated broadband services during the applicable reporting period

Reportable premises

- (1) For the purposes of this section, if:
 - (a) a person is a carrier; and
 - (b) during a period comprising the whole or a part of the applicable reporting period, either:
 - (i) the person owns a local access line, but there is no nominated carrier declaration in force in relation to the line; or
 - (ii) under a nominated carrier declaration, the person is the nominated carrier in relation to a local access line; and
 - (c) during the whole or a part of the period, a carriage service provider (who may be the person) supplies a designated

broadband service to particular premises in Australia using the line;

the premises are *reportable premises* in relation to the person for the applicable reporting period.

Note: The line does not need to be physically connected to the premises. This is because *using* has an extended meaning—see subsection 5(1) of this Act and section 24 of the *Telecommunications Act 1997* (when read together with section 18A of the *Acts Interpretation Act 1901*).

Report

(2) If:

- (a) a person is a carrier; and
- (b) there are one or more reportable premises in relation to the person for the applicable reporting period;

the person must:

- (c) give the ACCC a written report setting out:
 - (i) the number of those premises; and
 - (ii) the number of potentially chargeable premises (if any) in relation to the person for the applicable reporting period (assuming paragraph 79(a) referred to 1 July 2019 instead of the designated start date); and
 - (iii) the number of chargeable premises (if any) associated with a local access line of the person for the applicable reporting period (assuming paragraph 79(a) referred to 1 July 2019 instead of the designated start date); and
 - (iv) the number of exempt premises (if any) in relation to the person for the applicable reporting period (assuming paragraph 79(a) referred to 1 July 2019 instead of the designated start date); and
 - (v) the number of exempt lines (if any) in relation to the person for the applicable reporting period (assuming paragraph 79(a) referred to 1 July 2019 instead of the designated start date); and
 - (vi) the number of potentially concessional premises (if any) in relation to the person for the applicable reporting period (assuming paragraph 79(a) referred to 1 July 2019 instead of the designated start date); and

- (vii) the number of recently connected greenfield premises (if any) in relation to the person for the applicable reporting period (assuming paragraph 79(a) referred to 1 July 2019 instead of the designated start date); and
 - (d) do so within 60 days after the commencement of this section.
- (3) The report must be in a form approved, in writing, by the ACCC.
 - (4) The approved form may require verification, by a statutory declaration, of statements made in the report.
- (4A) If, at any time during the applicable reporting period, the person had an associate in relation to control of:
- (a) a telecommunications network; or
 - (b) a company; or
 - (c) a local access line;
- the report must:
- (d) set out the name of the associate; and
 - (e) set out the ACN (if any) of the associate; and
 - (f) identify the network, company or line, as the case requires; and
 - (g) identify which paragraph or paragraphs of subsection 152(1) of the *Telecommunications Act 1997* resulted in the person having the associate.

Offence of failing to lodge report

- (5) A person commits a strict liability offence if:
 - (a) the person is subject to a requirement under subsection (2) or (4A); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty: 50 penalty units.

- (6) A person who contravenes subsection (5) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

Applicable reporting period

- (7) For the purposes of this section, ***applicable reporting period*** means the month immediately preceding the month in which this section commenced.

102ZFA Review of this Part etc.

- (1) The Minister must cause to be conducted a review of the following matters:
- (a) the operation of this Part;
 - (b) the operation of the remaining provisions of this Act to the extent to which they relate to this Part;
 - (c) the operation of the *Telecommunications Act 1997* to the extent to which that Act relates to this Part;
 - (d) the operation of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020*;
 - (e) whether this Part should be amended;
 - (f) whether the remaining provisions of this Act, to the extent to which they relate to this Part, should be amended;
 - (g) whether the *Telecommunications Act 1997*, to the extent to which that Act relates to this Part, should be amended;
 - (h) whether the *Telecommunications (Regional Broadband Scheme) Charge Act 2020* should be amended.
- (2) A review under subsection (1) must make provision for public consultation.
- (3) A review under subsection (1) must be conducted:
- (a) before the end of the period of 4 years after the commencement of this section; or
 - (b) as soon as practicable after the end of that 4-year period.

Direction to the ACMA

- (4) The Minister may give the ACMA a written direction requiring the ACMA to make available specified information for the purposes of facilitating the conduct of a review under subsection (1).
- (5) The ACMA must comply with a direction under subsection (4).

Direction to the ACCC

- (6) The Minister may give the ACCC a written direction requiring the ACCC to make available specified information for the purposes of facilitating the conduct of a review under subsection (1).
- (7) The ACCC must comply with a direction under subsection (6).

Report

- (8) The Minister must cause to be prepared a report of a review under subsection (1).
- (9) The Minister must cause copies of the report to be tabled in each House of the Parliament within 25 sittings days of that House after the completion of the preparation of the report.

102ZFB Disallowance of determinations

Scope

- (1) This section applies to a determination made under subsection 76AA(2), 79A(1) or (2).

Disallowance

- (2) Either House of the Parliament may, following a motion upon notice, pass a resolution disallowing the determination. For the resolution to be effective:
 - (a) the notice must be given in that House within 15 sitting days of that House after the copy of the determination was tabled in the House under section 38 of the *Legislation Act 2003*; and
 - (b) the resolution must be passed, in pursuance of the motion, within 15 sitting days of that House after the giving of that notice.
- (3) If neither House passes such a resolution, the determination takes effect on the day immediately after the last day upon which such a resolution could have been passed if it were assumed that notice of a motion to disallow the determination was given in each House on

the last day of the 15 sitting day period of that House mentioned in paragraph (2)(a).

(3A) If:

- (a) notice of a motion to disallow the determination is given in a House of the Parliament within 15 sitting days of that House after the copy of the determination was tabled in that House under section 38 of the *Legislation Act 2003*; and
- (b) at the end of 15 sitting days of that House after the giving of that notice of motion:
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the determination is then taken to have been disallowed, and subsection (3) does not apply to the determination.

(4) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note 1: The 15 sitting day notice period mentioned in paragraph (2)(a) of this section is the same as the 15 sitting day notice period mentioned in paragraph 42(1)(a) of the *Legislation Act 2003*.

Note 2: The 15 sitting day disallowance period mentioned in paragraph (2)(b) of this section is the same as the 15 sitting day disallowance period mentioned in paragraph 42(1)(b) of the *Legislation Act 2003*.

102ZG Delegation by the Secretary

(1) The Secretary may, by writing, delegate any or all of the Secretary's functions or powers under this Part to an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

(2) A delegate must comply with any written directions of the Secretary.

102ZH Meaning of *capable*

In determining the meaning of the expression *capable* when used in:

- (a) a provision of this Act (other than this Part); or
- (b) the *Telecommunications Act 1997*;

disregard the expression *technically capable* when used in section 76AA.

Schedule 5—NBN Co transparency

National Broadband Network Companies Act 2011

1 After section 98A

Insert:

98B Mapping data

Initial provision of mapping data

- (1) NBN Co must:
 - (a) provide to the Secretary the following mapping data about relevant premises connected, or due to be connected, to the national broadband network:
 - (i) the geographical location of the relevant premises;
 - (ii) the address of the relevant premises;
 - (iii) the technology type of the connection to the national broadband network of the relevant premises; and
 - (b) do so within 30 days after the Secretary gives a direction to NBN Co under subsection (4).

- (1A) NBN Co must:
 - (a) provide to the Secretary the following mapping data about each national broadband network serving area module:
 - (i) the boundaries and identification code for the national broadband network serving area module;
 - (ii) the dominant technology type of connections to the national broadband network within the national broadband network serving area module;
 - (iii) the date on which the majority of premises within the national broadband network serving area module were declared ready for service by NBN Co; and
 - (b) do so within 150 days after the Secretary gives a direction to NBN Co under subsection (4).

Subsequent provision of mapping data

- (2) The Secretary may, by written notice given to NBN Co, direct NBN Co to:
- (a) provide to the Secretary the following mapping data about relevant premises connected, or due to be connected, to the national broadband network:
 - (i) the geographical location of the relevant premises;
 - (ii) the address of the relevant premises;
 - (iii) the technology type of the connection to the national broadband network of the relevant premises; and
 - (b) do so within 30 days after the Secretary gives the direction to NBN Co.
- (2A) The Secretary may, by written notice given to NBN Co, direct NBN Co to:
- (a) provide to the Secretary the following mapping data about each national broadband network serving area module:
 - (i) the boundaries and identification code for the national broadband network serving area module;
 - (ii) the dominant technology type of connections to the national broadband network within the national broadband network serving area module;
 - (iii) the date on which the majority of premises within the national broadband network serving area module were declared ready for service by NBN Co; and
 - (b) do so within 90 days after the Secretary gives the direction to NBN Co.

Form of mapping data etc.

- (3) Mapping data provided under subsection (1), (1A), (2) or (2A) must be in a form that allows separate maps to be produced for each technology type of connection to the national broadband network.
- (4) Within 14 days after the commencement of this section, the Secretary must, by written notice given to NBN Co, direct NBN Co to ensure that mapping data provided by NBN Co under

subsection (1) or (1A) complies with specified requirements in relation to any or all of the following matters:

- (a) file format or formats;
 - (b) mapping specifications;
 - (c) any other matter that relates to the form of the mapping data.
- (5) The Secretary may, by written notice given to NBN Co, direct NBN Co to ensure that mapping data provided by NBN Co under subsection (2) or (2A) complies with specified requirements in relation to any or all of the following matters:
- (a) file format or formats;
 - (b) mapping specifications;
 - (c) any other matter that relates to the form of the mapping data.

Compliance with directions

- (6) NBN Co must comply with a direction given by the Secretary under subsection (2), (2A), (4) or (5).

National Map website

- (7) Before the end of the 60-day period beginning when this section commences, the Secretary must arrange for mapping data provided under subsection (1) to be made available on the National Map website (<https://nationalmap.gov.au>) in colour-coded format.
- (7A) Before the end of the 30-day period beginning on the day on which the Secretary is provided the mapping data under subsection (1A), the Secretary must arrange for the mapping data to be made available on the National Map website (<https://nationalmap.gov.au>) in colour-coded format.

Definitions

- (8) In this section:

national broadband network serving area module means a geographical region within NBN Co's fixed-line footprint which includes premises that are:

- (a) connected to the national broadband network; and

-
- (b) served by any of the following technology types of connection to the national broadband network:
- (i) fibre to the building;
 - (ii) fibre to the premises;
 - (iii) fibre to the node;
 - (iv) fibre to the curb;
 - (v) HFC.

relevant premises means:

- (a) planned premises (whether or not construction of the planned premises has commenced); or
- (b) existing premises.

Secretary means the Secretary of the Department.

technology type of a connection to the national broadband network means:

- (a) fibre to the node; or
- (b) fibre to the curb; or
- (c) fibre to the premises; or
- (d) HFC; or
- (e) fixed wireless; or
- (f) satellite; or
- (g) any other type of technology.

[Minister's second reading speech made in—
House of Representatives on 28 November 2019
Senate on 13 February 2020]

(223/19)
