



# **Telecommunications (Consumer Protection and Service Standards) Act 1999**

**Act No. 50 of 1999 as amended**

This compilation was prepared on 1 July 2005  
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The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
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Prepared by the Office of Legislative Drafting and Publishing,  
Attorney-General's Department, Canberra



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# **An Act about telecommunications, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title** [see Note 1]

This Act may be cited as the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

### **2 Commencement** [see Note 1]

- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (2) Part 3 commences on 1 July 1999.

### **3 Objects and regulatory policy**

The following provisions of the *Telecommunications Act 1997* apply to this Act in a corresponding way to the way in which they apply to that Act:

- (a) section 3 (objects);
- (b) section 4 (regulatory policy).

### **4 Simplified outline**

The following is a simplified outline of this Act:

- |   |
|---|
| <ul style="list-style-type: none"><li>• A universal service regime is established. The main object of the universal service regime is to ensure that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:<ol style="list-style-type: none"><li>(a) standard telephone services; and</li><li>(b) payphones; and</li></ol></li></ul> |
|---|

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(c) prescribed carriage services; and

(d) digital data services.

- Provision is made for the National Relay Service (NRS). The NRS provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service.
- Local calls are to be charged for on an untimed basis.
- The ACMA may make performance standards to be complied with by carriage service providers in relation to customer service.
- Certain carriers and carriage service providers must enter into the Telecommunications Industry Ombudsman scheme.
- Provision is made for the protection of residential customers of carriage service providers against failure by the providers to supply standard telephone services.
- The ACMA may impose requirements on carriers, carriage service providers and certain other persons in relation to emergency call services.
- Telstra is subject to price control arrangements.
- This Act regulates telephone sex services.
- The Minister may direct Telstra to take action directed towards ensuring that Telstra complies with this Act.

**5 Definitions**

(1) Unless the contrary intention appears, expressions used in this Act and in the *Telecommunications Act 1997* have the same meaning in this Act as they have in that Act.

(2) In this Act:

***alternative telecommunications services***, or ***ATS***, in Part 2 has the meaning given by section 8E.

***approved ATS marketing plan***:

- (a) for a primary universal service provider has the meaning given by subsection 12P(2); and
- (b) for a competing universal service provider, or applicant for approval as a competing universal service provider, has the meaning given by subsection 13M(2).

***approved digital data service plan*** means an approved digital data service plan under Subdivision B of Division 8 of Part 2.

***approved policy statement***:

- (a) for a primary universal service provider has the meaning given by subsection 12F(2); and
- (b) for a competing universal service provider, or applicant for approval as a competing universal service provider, has the meaning given by subsection 13F(2).

***approved standard marketing plan***:

- (a) for a primary universal service provider has the meaning given by subsection 12F(4); and
- (b) for a competing universal service provider, or applicant for approval as a competing universal service provider, has the meaning given by subsection 13F(4).

***claim period*** in Part 2 has the meaning given by section 8D.

***competing universal service provider*** has the meaning given by section 13A.

***contestable service obligation*** has the meaning given by section 11C.

***default arrangements*** has the meaning given by section 12.

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***digital data service*** has the meaning given by subsection 10E(1).

***digital data service charge*** has the meaning given by section 19.

***digital data service obligation*** has the meaning given by section 10.

***digital data service provider*** means:

- (a) a general digital data service provider; or
- (b) a special digital data service provider.

***draft ATS marketing plan:***

- (a) for a primary universal service provider has the meaning given by subsection 12P(1); and
- (b) for a competing universal service provider, or applicant for approval as a competing universal service provider, has the meaning given by subsection 13M(1).

***draft digital data service plan*** means a draft digital data service plan under Subdivision B of Division 8 of Part 2.

***draft policy statement:***

- (a) for a primary universal service provider has the meaning given by subsection 12F(1); and
- (b) for an applicant for approval as a competing universal service provider has the meaning given by subsection 13F(1).

***draft standard marketing plan:***

- (a) for a primary universal service provider has the meaning given by subsection 12F(3); and
- (b) for a competing universal service provider, or applicant for approval as a competing universal service provider, has the meaning given by subsection 13F(3).

***eligible revenue*** for an eligible revenue period has the meaning given by section 20B.

***eligible revenue period*** has the meaning given by section 20C.

***general digital data service*** has the meaning given by subsection 10E(2).



**general digital data service area** has the meaning given by section 10H.

**general digital data service obligation** has the meaning given by section 10A.

**general digital data service provider** has the meaning given by subsection 15(1).

**levy** means levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*.

**levy contribution factor** has the meaning given by section 20H.

**levy credit** has the meaning given by subsection 20J(2).

**levy debit** has the meaning given by subsection 20R(2).

**participating person** for an eligible revenue period has the meaning given by section 20A.

**primary universal service provider** has the meaning given by section 12A.

**service area** has the meaning given by section 8C.

**service obligation** has the meaning given by section 9B.

**special digital data service** has the meaning given by subsection 10E(3).

**special digital data service area** has the meaning given by section 10J.

**special digital data service obligation** has the meaning given by section 10B.

**special digital data service provider** has the meaning given by subsection 15(2).

**standard contestability arrangements** has the meaning given by section 13.

**standard telephone service** has the meaning given by section 6.

Section 6

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**Telecommunications Industry Ombudsman** means the Telecommunications Industry Ombudsman appointed under the Telecommunications Industry Ombudsman scheme.

**Telecommunications Industry Ombudsman scheme** means the scheme referred to in section 128.

**this Act** includes the regulations.

**universal service area** has the meaning given by section 9G.

**universal service charge** has the meaning given by section 18.

**universal service obligation** has the meaning given by section 9.

**universal service provider** has the meaning given by section 11A.

**universal service subsidy** has the meaning given by section 16.

## 6 Standard telephone service

- (1) A reference in a particular provision of this Act to a **standard telephone service** is a reference to a carriage service for each of the following purposes:
- (a) the purpose of voice telephony;
  - (b) if:
    - (i) voice telephony is not practical for a particular end-user with a disability (for example, because the user has a hearing impairment); and
    - (ii) another form of communication that is equivalent to voice telephony (for example, communication by means of a teletypewriter) would be required to be supplied to the end-user in order to comply with the *Disability Discrimination Act 1992*;the purpose of that form of communication;
  - (c) a purpose declared by the regulations to be a designated purpose for the purposes of that provision;
- where:
- (d) the service passes the connectivity test set out in subsection (2); and
  - (e) to the extent that the service is for the purpose referred to in paragraph (a)—the service has the characteristics (if any)

- declared by the regulations to be the designated characteristics in relation to that service for the purposes of that provision; and
- (f) to the extent that the service is for the purpose referred to in paragraph (b)—the service has the characteristics (if any) declared by the regulations to be the designated characteristics in relation to that service for the purposes of that provision; and
  - (g) to the extent that the service is for a particular purpose referred to in paragraph (c)—the service has the characteristics (if any) declared by the regulations to be the designated characteristics in relation to that service for the purposes of that provision.
- (2) A service passes the connectivity test if an end-user supplied with the service for a purpose mentioned in paragraph (1)(a), (b) or (c) is ordinarily able to communicate, by means of the service, with each other end-user who is supplied with the same service for the same purpose, whether or not the end-users are connected to the same telecommunications network.
- (3) The following are examples of purposes that could be declared by regulations made for the purposes of paragraph (1)(c):
- (a) the purpose of the carriage of data;
  - (b) the purpose of tone signalling.
- (4) In making a recommendation to the Governor-General at a particular time about the making of regulations for the purposes of paragraph (1)(c), the Minister must have regard to the following matters:
- (a) whether a carriage service for the purpose proposed to be declared by the regulations can be supplied using the same infrastructure as is, at that time, being used by universal service providers to supply a standard telephone service for the purpose referred to in paragraph (1)(a);
  - (b) such other matters (if any) as the Minister considers relevant.
- (5) This section does not prevent a characteristic declared by regulations made for the purposes of paragraph (1)(e), (f) or (g) from being a performance characteristic.
- (6) In this section:
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Section 7

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*this Act* includes the *Telecommunications Act 1997*.

**7 Application of this Act**

The following provisions of the *Telecommunications Act 1997* apply to this Act in a corresponding way to the way in which they apply to that Act:

- (a) section 8 (Crown to be bound);
- (b) section 9 (extra-territorial application);
- (c) section 10 (extension to external Territories);
- (d) section 11 (extension to adjacent areas);
- (e) section 12 (Act subject to Radiocommunications Act);
- (f) section 13 (continuity of partnerships).

**7A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* (except for Part 2.5) applies to all offences against this Act.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For criminal liability of corporations under this Act, see sections 574A and 575 of the *Telecommunications Act 1997*.

## **Part 2—Universal Service Regime**

### **Division 1—Introduction**

#### **8 Simplified outline**

This is a simplified outline of this Part:

This Part establishes a universal service regime.

In general terms, the universal service regime involves:

- (a) the universal service obligation and universal service subsidy; and
- (b) the digital data service obligation and digital data cost; and
- (c) arrangements for collecting and distributing universal service levy.

The main object of the universal service regime is to ensure that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:

- (a) standard telephone services; and
- (b) payphones; and
- (c) prescribed carriage services; and
- (d) digital data services.

The key elements of the universal service regime are as follows:

- (a) the specification of the universal service obligation and digital data service obligation;
- (b) the determination of universal service areas and digital data service areas;

- (c) the specification of arrangements for the fulfilment of the universal service obligation;
- (d) the determination of primary universal service providers and digital data service providers;
- (e) the determination of contestable service obligations for particular universal service areas;
- (f) requirements for the approval of, and compliance with, policy statements and marketing plans of universal service providers;
- (g) requirements for the approval of, and compliance with, digital data service plans of digital data service providers;
- (h) the determination of the universal service subsidy payable for supplying services in fulfilment of the universal service obligation;
- (i) the determination of the digital data cost for supplying services in fulfilment of the digital data service obligation;
- (j) the regulation of universal service charges and digital data service charges;
- (k) the assessment, collection, recovery and distribution of the levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*;
- (l) the disclosure of information on which certain decisions under this Part are based;
- (m) the maintenance by the ACMA of Registers, and the delegation of the Minister's powers under this Part to the ACMA.

## **8A Objects**

The objects of this Part are to give effect to the following policy principles:

- (a) all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:
  - (i) standard telephone services; and
  - (ii) payphones; and
  - (iii) prescribed carriage services; and
  - (iv) digital data services;
- (b) the universal service obligation described in section 9 and the digital data service obligation described in section 10 should be fulfilled:
  - (i) effectively, efficiently and economically; and
  - (ii) in ways that are consistent with Australia's open and competitive telecommunications regime; and
  - (iii) in ways that are, as far as practicable, responsive to the needs of consumers;
- (c) the fulfilment of the universal service obligation described in section 9, and the digital data service obligation described in section 10, should generally be open to competition among carriers and carriage service providers;
- (d) specific and predictable funding arrangements to advance the fulfilment of the universal service obligation, particularly in high cost areas, should be available;
- (e) providers of telecommunications services should contribute, in a way that is equitable and reasonable, to the funding of the universal service obligation and digital data service obligation;
- (f) information on the basis on which decisions are made for the purposes of the universal service regime should generally be open to public scrutiny;
- (g) the universal service regime should be flexible and able to deal with rapid changes in both the telecommunications industry and the needs of consumers.

Section 8B

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**8B Special meaning of *Australia***

- (1) A reference in this Part to *Australia* includes a reference to:
  - (a) the Territory of Christmas Island; and
  - (b) the Territory of Cocos (Keeling) Islands; and
  - (c) an external Territory specified in the regulations.
- (2) The definition of *Australia* in section 7 of the *Telecommunications Act 1997* does not apply to this Part.

**8C Meaning of *service area***

For the purposes of this Part, a *service area* is:

- (a) a geographical area within Australia; or
  - (b) any area of land; or
  - (c) any premises or part of premises;
- regardless of size.

**8D Meaning of *claim period***

- (1) For the purposes of this Part, a *claim period* is:
    - (a) the 2000-2001 financial year and each later financial year; or
    - (b) if the Minister determines in writing another period—the other period.
  - (2) The Minister may determine different periods under paragraph (1)(b) in respect of:
    - (a) one or more universal service subsidies; or
    - (b) the digital data cost of one or more digital data service providers.
  - (3) A period determined by the Minister under paragraph (1)(b) must not be a part of more than one financial year.
  - (4) If the Minister determines a period under paragraph (1)(b), the determination may modify the way this Part applies to carriers and carriage service providers. The modifications may include additions, omissions and substitutions.
  - (5) A determination under paragraph (1)(b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
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**8E Meaning of *alternative telecommunications services*, or *ATS***

For the purposes of this Part, *alternative telecommunications services*, or *ATS*, are services the supply of which by a particular universal service provider the ACMA authorises for the purposes of this section.

**8F Meaning of *approved auditor***

- (1) A reference in this Part to an *approved auditor* is a reference to a person included in a class of persons specified in a written determination made by the ACMA for the purposes of this section.
- (2) A copy of the determination must be published in the *Gazette*.

**8G Meaning of *disability***

In this Part:

*disability* has the same meaning as in the *Disability Discrimination Act 1992*.

## **Division 2—Universal service obligation**

### **Subdivision A—What is the universal service obligation?**

#### **9 Universal service obligation**

- (1) For the purposes of this Act, the *universal service obligation* is the obligation:
  - (a) to ensure that standard telephone services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
  - (b) to ensure that payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
  - (c) to ensure that prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.
- (2) To the extent necessary to achieve the obligation mentioned in subsection (1), the universal service obligation includes:
  - (a) the supply of standard telephone services to people in Australia on request; and
  - (b) the supply, installation and maintenance of payphones in Australia; and
  - (c) the supply of prescribed carriage services to people in Australia on request.
- (3) The Minister may make a written determination that the universal service obligation includes the supply, installation and maintenance of payphones at specified locations in Australia. The determination has effect accordingly and a copy of the determination must be published in the *Gazette*.
- (4) An obligation does not arise under paragraph (2)(a) in relation to particular equipment, goods or services the supply of which is treated under section 9E as the supply of a standard telephone service if the customer concerned requests not to be supplied with the equipment, goods or services.

Section 9A

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- (5) An obligation does not arise under paragraph (2)(c) in relation to particular equipment, goods or services the supply of which is treated under section 9F as the supply of a prescribed carriage service if the customer concerned requests not to be supplied with the equipment, goods or services.
- (6) To avoid doubt, an obligation arising under paragraph (2)(a) in relation to customer equipment requires the customer concerned to be given the option of hiring the equipment.

**9A Determinations of what is necessary to ensure reasonable accessibility**

- (1) The Minister may determine in writing for the purpose of paragraph 9(1)(a) what is, or is not, necessary to ensure that standard telephone services are reasonably accessible as mentioned in that paragraph.
- (2) The Minister may determine in writing, for the purpose of paragraph 9(1)(b), what is, or is not, necessary to ensure that payphones are reasonably accessible as mentioned in that paragraph, including:
  - (a) criteria for determining the locations of payphones; and
  - (b) the process for public consultation on the location of payphones; and
  - (c) the process for resolution of any complaints about the location of payphones.
- (3) The Minister may determine in writing, for the purpose of paragraph 9(1)(c), what is, or is not, necessary to ensure that prescribed carriage services are reasonably accessible as mentioned in that paragraph.
- (4) Subsection 9(3) and subsection (2) of this section do not limit the generality of one another.
- (5) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**9B What is a *service obligation*?**

- (1) Unless the Minister makes a determination under subsection (2), each of the following is a ***service obligation***:
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- (a) the obligation referred to in paragraph 9(1)(a) (dealing with the standard telephone services);
  - (b) the obligation referred to in paragraph 9(1)(b) (dealing with payphones);
  - (c) the obligation referred to in paragraph 9(1)(c) (dealing with prescribed carriage services).
- (2) The Minister may determine in writing the *service obligations* by dividing the universal service obligation in another way.
- (3) The determination must also specify, in respect of each service obligation, what must be supplied or done in order to fulfil the service obligation.
- (4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### 9C Payphones

For the purposes of this Part, a *payphone* is a fixed telephone that:

- (a) is a means by which a standard telephone service is supplied; and
- (b) when in normal working order, cannot be used to make a telephone call (other than a free call or a call made with operator assistance) unless, as payment for the call, or to enable payment for the call to be collected:
  - (i) money, or a token, card or other object, has been put into a device that forms part of, is attached to, or is located near, the telephone; or
  - (ii) an identification number, or a code or other information (in numerical or any other form) has been input into a device that forms part of, is attached to, or is located near, the telephone; or
  - (iii) a prescribed act has been done.

### 9D Prescribed carriage services

For the purposes of this Part, a *prescribed carriage service* is a carriage service specified in the regulations.

### **9E Supply of standard telephone services**

- (1) A reference in this Part to the *supply* of a standard telephone service includes a reference to the supply of:
- (a) if the regulations prescribe customer equipment for the purposes of this paragraph—whichever of the following is applicable:
    - (i) that customer equipment;
    - (ii) if other customer equipment is supplied, instead of the first-mentioned customer equipment, in order to comply with the *Disability Discrimination Act 1992*—that other customer equipment; and
  - (b) if paragraph (a) does not apply—whichever of the following is applicable:
    - (i) a telephone handset that does not have switching functions;
    - (ii) if other customer equipment is supplied, instead of such a handset, in order to comply with the *Disability Discrimination Act 1992*—that other customer equipment; and
  - (c) other goods of a kind specified in the regulations; and
  - (d) services of a kind specified in the regulations;
- where the equipment, goods or services, as the case may be, are for use in connection with the standard telephone service.
- (2) A reference in this Part to the *supply* of a standard telephone service includes a reference to the supply, to a person with a disability, of:
- (a) customer equipment of a kind specified in the regulations; and
  - (b) other goods of a kind specified in the regulations; and
  - (c) services of a kind specified in the regulations;
- where the equipment, goods or services, as the case may be, are for use in connection with the standard telephone service.

### **9F Supply of prescribed carriage services**

A reference in this Part to the *supply* of a prescribed carriage service includes a reference to the supply of:

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- (a) customer equipment of a kind specified in the regulations;  
and
  - (b) other goods of a kind specified in the regulations; and
  - (c) services of a kind specified in the regulations;
- where the equipment, goods or services, as the case may be, are for use in connection with the prescribed carriage service.

**Subdivision B—Universal service areas**

**9G Universal service areas**

- (1) The Minister may make a written determination that a service area, determined in any way the Minister considers appropriate, is a universal service area in respect of one or more specified service obligations.

Note: In some circumstances, the Minister will be taken to have made a determination under this section: see subsections (3) and (4), and section 12E.

- (2) In determining universal service areas, the Minister must ensure that no universal service area in respect of a service obligation overlaps to any extent with any other universal service area in respect of that service obligation.
- (3) If, at a particular time, any areas of Australia are not within a universal service area, covered by a determination under subsection (1), in respect of a service obligation:
- (a) those areas together constitute at that time a single universal service area in respect of that service obligation; and
  - (b) the Minister is taken to have made a determination under subsection (1) to that effect.
- (4) If, at a particular time, one or more of the universal service areas, in respect of which the Minister is taken to have made a determination because of subsection (3), cover the same areas of Australia, then despite that subsection:
- (a) those areas together constitute at that time a single universal service area in respect of all of the service obligations referred to in that subsection; and
  - (b) the Minister is taken to have made a determination under subsection (1) to that effect.

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- (5) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: A determination that the Minister is taken to have made under this section because of section 12E is not a disallowable instrument (see subsection 12E(6)).

**9H Effect of determination**

- (1) A determination under section 9G takes effect on the day specified in the determination. That day must not be before the day on which notice of the determination is published in the *Gazette*.
- (2) If the determination is expressed to cease to have effect at a specified time, the determination ceases to have effect at that time.
- (3) A variation or revocation of a determination under section 9G takes effect on the day specified for the purpose in the instrument of variation or revocation. That day must not be before notice of the instrument is published in the *Gazette*.

**9J Transitional arrangements may be determined**

- (1) If the Minister revokes a determination under section 9G, the Minister may determine in writing arrangements to deal with any issues of a transitional nature that may arise as a result of the revocation.
- (2) A copy of a determination under subsection (1) must be published in the *Gazette*.

## Division 3—Digital data service obligation

### Subdivision A—What is the digital data service obligation?

#### 10 Digital data service obligation

For the purposes of this Act, the *digital data service obligation* is the obligation:

- (a) to ensure that one or other of the following:
  - (i) general digital data services;
  - (ii) special digital data services;are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
- (b) to ensure that general digital data services are reasonably accessible to at least 96% of the Australian population on an equitable basis; and
- (c) to ensure that special digital data services are reasonably accessible to the remainder of the Australian population on an equitable basis.

#### 10A General digital data service obligation

- (1) For the purposes of this Act, the *general digital data service obligation* is the obligation to ensure that general digital data services are reasonably accessible to all people in general digital data service areas on an equitable basis.
- (2) To the extent necessary to achieve the general digital data service obligation, it is part of that obligation to supply general digital data services to people in general digital data service areas on request.

#### 10B Special digital data service obligation

- (1) For the purposes of this Act, the *special digital data service obligation* is the obligation to ensure that special digital data services are reasonably accessible to all people in special digital data service areas on an equitable basis.



- (2) To the extent necessary to achieve the special digital data service obligation, it is part of that obligation to supply special digital data services to people in special digital data service areas on request.

### **10C Supply of customer equipment or other goods or services**

- (1) An obligation does not arise under subsection 10A(2) in relation to particular equipment, goods or services the supply of which is treated under subsection 10F(1) as the supply of a general digital data service if the customer concerned requests not to be supplied with the equipment, goods or services.
- (2) An obligation does not arise under subsection 10B(2) in relation to particular equipment, goods or services the supply of which is treated under subsection 10G(1) as the supply of a special digital data service if the customer concerned requests not to be supplied with the equipment, goods or services.

### **10D Rebate system**

- (1) The regulations may provide that:
- (a) an obligation that arises under subsection 10A(2) in relation to particular customer equipment the supply of which is treated under subsection 10F(1) as the supply of a general digital data service; or
  - (b) an obligation that arises under subsection 10B(2) in relation to particular customer equipment the supply of which is treated under subsection 10G(1) as the supply of a special digital data service;
- is taken to have been fulfilled by a person (so far as the obligation relates to a particular customer) if:
- (c) the customer acquires or hires the equipment from a third person; and
  - (d) the customer is entitled to a rebate from the first-mentioned person in respect of that acquisition or hire; and
  - (e) the amount of the rebate is equal to the amount ascertained in accordance with the regulations; and
  - (f) the liability to pay the rebate has been discharged; and
  - (g) the entitlement to the rebate complies with such requirements, restrictions and conditions (if any) as are specified in the regulations.

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- (2) Regulations made for the purposes of paragraph (1)(g) may require that the customer be given the option of assigning the customer's right to the rebate to the third person.
- (3) Subsection (2) does not, by implication, limit subsection (1).

**10E Digital data services**

- (1) For the purposes of this Act, a **digital data service** is:
  - (a) a general digital data service (see subsection (2)); or
  - (b) a special digital data service (see subsection (3)).

*General digital data service*

- (2) For the purposes of this Act, a **general digital data service** is a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service.

*Special digital data service*

- (3) For the purposes of this Act, a **special digital data service** is a carriage service that provides for a capability for the delivery of digital data to an end-user broadly comparable to the corresponding capability provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service.

*Designated basic rate ISDN service*

- (4) For the purposes of this section, if:
  - (a) immediately before 1 July 1997, Telstra supplied a basic rate Integrated Services Digital Network (ISDN) service; and
  - (b) the service complied with any of the standards for ISDN services made by the European Telecommunications Standards Institute (ETSI);the service is a **designated basic rate ISDN service**.

*Comparability of digital data capability*

- (5) For the purposes of subsection (2), the determination of the comparability of the digital data capability of a carriage service is to be based solely on a comparison of the data transmission speed available to an end-user of the service.

**10F Supply of general digital data services**

- (1) A reference in this Part to the *supply* of a general digital data service includes a reference to the supply of:
- (a) customer equipment of a kind specified in the regulations; and
  - (b) other goods of a kind specified in the regulations; and
  - (c) services of a kind specified in the regulations;
- where:
- (d) the equipment, goods or services, as the case may be, are for use in connection with the general digital data service; and
  - (e) the supply complies with such requirements, restrictions or conditions (if any) as are specified in the regulations.
- (2) Regulations made for the purposes of paragraph (1)(e) may require that the supply of a specified kind of customer equipment is to be by way of hire. If those regulations impose such a requirement, this Part has effect, in relation to the customer equipment concerned, as if a reference to *supply* were a reference to supply by way of hire.
- (3) Regulations made for the purposes of paragraph (1)(e) may require that specified customer equipment is to be supplied on the basis that the customer concerned enters into a legally enforceable agreement containing such terms and conditions relating to the ownership, possession, location, disposal or use of the equipment, as are specified in, or ascertained in accordance with, the regulations.
- (4) Subsections (2) and (3) do not, by implication, limit paragraph (1)(e).

**10G Supply of special digital data services**

- (1) A reference in this Part to the *supply* of a special digital data service includes a reference to the supply of:
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- (a) customer equipment of a kind specified in the regulations;  
and
  - (b) other goods of a kind specified in the regulations; and
  - (c) services of a kind specified in the regulations;
- where:
- (d) the equipment, goods or services, as the case may be, are for use in connection with the special digital data service; and
  - (e) the supply complies with such requirements, restrictions or conditions (if any) as are specified in the regulations.
- (2) Regulations made for the purposes of paragraph (1)(e) may require that the supply of a specified kind of customer equipment is to be by way of hire. If those regulations impose such a requirement, this Part has effect, in relation to the customer equipment concerned, as if a reference to *supply* were a reference to supply by way of hire.
- (3) Regulations made for the purposes of paragraph (1)(e) may require that specified customer equipment is to be supplied on the basis that the customer concerned enters into a legally enforceable agreement containing such terms and conditions relating to the ownership, possession, location, disposal or use of the equipment, as are specified in, or ascertained in accordance with, the regulations.
- (4) Subsections (2) and (3) do not, by implication, limit paragraph (1)(e).

**Subdivision B—Digital data service areas**

**10H General digital data service areas**

- (1) The Minister may make a written determination that a service area ascertained in accordance with the determination is a general digital data service area for the purposes of this Act. The determination has effect accordingly.
- (2) A copy of the determination must be published in the *Gazette*.
- (3) The Minister must exercise the powers conferred by this section in a manner that is consistent with the fulfilment of the digital data service obligation.

**10J Special digital data service areas**

- (1) The Minister may make a written determination that a service area ascertained in accordance with the determination is a special digital data service area for the purposes of this Act. The determination has effect accordingly.
- (2) A copy of the determination must be published in the *Gazette*.
- (3) The Minister must exercise the powers conferred by this section in a manner that is consistent with the fulfilment of the digital data service obligation.

## **Division 4—The arrangements for fulfilling the universal service obligation**

### **11 The arrangements that apply to universal service areas**

- (1) This section sets out the arrangements for the fulfilment of the universal service obligation by universal service providers.
- (2) The default arrangements set out in Division 5 apply to each universal service area in respect of a service obligation.
- (3) If the Minister determines under section 11C, for a universal service area in respect of a service obligation, that the obligation is a contestable service obligation, then:
  - (a) the default arrangements set out in Division 5 apply to the area; and
  - (b) the standard contestability arrangements set out in Division 6 apply to the area in respect of the contestable service obligation.
- (4) If the Minister determines under Division 7 that alternative arrangements apply to a universal service area in respect of a service obligation (whether or not it is a contestable service obligation), then:
  - (a) those alternative arrangements apply to the area; and
  - (b) the default arrangements set out in Division 5 apply to the area except to the extent that the determination modifies the way those arrangements apply, or excludes them from applying, to the area.

### **11A Universal service providers**

- (1) For the purposes of this Part, a *universal service provider* means:
    - (a) a primary universal service provider (see section 12A); or
    - (b) a competing universal service provider (see section 13A).
  - (2) For the purposes of this Part, a person who is a primary universal service provider under a determination that is in force under section 12A, at any time during a claim period, is:
    - (a) a universal service provider for the claim period; and
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- (b) a primary universal service provider for the claim period.
- (3) For the purposes of this Part, a person who is approved as a competing universal service provider under section 13B, at any time during a claim period, is:
  - (a) a universal service provider for the claim period; and
  - (b) a competing universal service provider for the claim period.

**11B Former universal service provider may be required to provide information to current universal service provider**

- (1) This section applies if:
  - (a) either:
    - (i) the Minister determines under section 12A that a carrier or carriage service provider (the **current provider**) is the primary universal service provider for a universal service area (the **relevant area**) in respect of a service obligation; or
    - (ii) the ACMA approves a carrier or carriage service provider (the **current provider**) under section 13B as a competing universal service provider for a universal service area (the **relevant area**) in respect of a contestable service obligation; and
  - (b) another person, who is or was a universal service provider for the area in respect of the obligation, is determined to be a former provider under subsection (2B).

Note: The Minister may be taken to have made a determination under section 12A if an agreement is made under section 56 or 57 of the *Telstra Corporation Act 1991*: see section 12E.

- (2) This section also applies if:
  - (a) any of the following applies:
    - (i) the Minister revokes or varies a determination under section 12A so that a person (the **former provider**) ceases to be a universal service provider for a universal service area (the **relevant area**) in respect of a service obligation; or

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- (ii) the ACMA revokes or varies an approval under section 13B so that a person (the *former provider*) ceases to be a universal service provider for a universal service area (the *relevant area*) in respect of a service obligation; or
    - (iii) a person (the *former provider*) otherwise ceases to be a universal service provider for a universal service area (the *relevant area*) in respect of a service obligation; and
  - (b) another person (the *current provider*), who was also a universal service provider for the relevant area in respect of the service obligation, continues to be a universal service provider for the area in respect of that obligation:
    - (i) if subparagraph (a)(i) or (ii) applies—after the revocation or variation; or
    - (ii) if subparagraph (a)(iii) applies—after the cessation.
- (2A) Subsections (1) and (2) can apply before the determination, revocation or variation under section 12A or the approval, revocation or variation under section 13B takes effect.
- (2B) The Minister may determine in writing that a person is a former provider for the purposes of this section.
- (3) The current provider may, by written notice given to the former provider, require the former provider to give to the current provider specified information of the kind referred to in subsection (4). A notice of this kind cannot be given more than 6 months after:
- (a) if subsection (1) applies—the later of the following days:
    - (i) the day on which the current provider became a universal service provider for the relevant area; or
    - (ii) the day on which the determination under section 12A was made, or the approval under section 13B was given, (as the case may be) in respect of the current provider; or
  - (b) if subsection (2) applies—the day on which the former provider ceases to be a universal service provider for the relevant area.
- (4) The information that may be required to be given must be information that will assist the current provider in doing something
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that the current provider is or will be required or permitted to do by or under a provision of this Part. The notice must identify the doing of that thing as the purpose for which the information is required.

Note 1: If, for example, information about service location and customer contact details will assist the current provider in fulfilling its obligation under subsection 12C(1), the former provider may be required to provide that kind of information.

Note 2: See also subsection (6), which allows the Minister to determine that a specified kind of information is information referred to in this subsection.

- (5) If a requirement made by a notice under subsection (3) is reasonable, the former provider must comply with the requirement as soon as practicable after receiving the notice. However, if the requirement is unreasonable, the former provider does not have to comply with it.
- (6) The Minister may make a written determination to the effect that, either generally or in a particular case, information of a kind specified in the determination is taken to be information that will assist a person in doing a specified thing that the person is or will be required or permitted to do by or under a provision of this Part. The determination has effect accordingly.
- (6A) If a former provider has been given notice of a requirement under subsection (3), the ACMA may, in writing, direct the former provider to comply with the requirement or with specified aspects of the requirement. The former provider must comply with the direction.
- (6B) In deciding whether to give a direction under subsection (6A), the ACMA must consider whether the requirement under subsection (3) is reasonable.
- (7) A determination under subsection (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **11C Determination of contestable service obligation**

- (1) The Minister may determine in writing, for a universal service area in respect of a service obligation, that the obligation is a ***contestable service obligation***.

**Part 2** Universal Service Regime

**Division 4** The arrangements for fulfilling the universal service obligation

**Section 11D**

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Note 1: This means that the standard contestability arrangements apply to the area in respect of the contestable service obligation (see subsection 11(3)).

Note 2: The Minister can make determinations under this section initially only in relation to pilot areas (see section 11F).

- (2) The Minister must give to the ACMA a copy of each determination made under this section.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**11D Effect of determination**

- (1) A determination under section 11C takes effect on the day specified in the determination. That day must not be before the day on which notice of the determination is published in the *Gazette*.
- (2) If a determination under section 11C is expressed to cease to have effect at a specified time, the determination ceases to have effect at that time.
- (3) A variation or revocation of a determination under section 11C takes effect on the day specified for the purpose in the instrument of variation or revocation. That day must not be before the day on which notice of the instrument is published in the *Gazette*.

**11E Transitional arrangements may be determined**

- (1) If the Minister revokes a determination under section 11C, the Minister may determine in writing arrangements to deal with any issues of a transitional nature that may arise as a result of the revocation.
- (2) A copy of a determination under subsection (1) must be published in the *Gazette*.

**11F Section 11C temporarily limited to pilot areas**

- (1) Until the Minister has done both of the following, the Minister can make determinations under section 11C only in relation to pilot areas (as defined in subsection (2)):
    - (a) received a comprehensive report, following a public inquiry by the ACMA, on whether a net benefit has accrued from the
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- operation, for a period not less than 12 months, of the standard contestability arrangements in each of the pilot areas;
- (b) caused the report to be tabled in each House of the Parliament within 10 sitting days of that House after the Minister receives the report.
- (2) A ***pilot area*** is an area determined in writing by the Minister for the purposes of this section. The Minister may determine a maximum of 2 pilot areas and cannot later change the boundaries of a pilot area.
- (3) Before the Minister can make any determination under section 11C in relation to a pilot area, the Minister must have determined under section 9G one or more universal service areas that cover the whole of the pilot area.
- (4) A copy of a determination under subsection (2) must be published in the *Gazette*.

## **Division 5—The default arrangements: primary universal service providers**

### **Subdivision A—What are the default arrangements?**

#### **12 The default arrangements**

The *default arrangements* consist of the arrangements set out in this Division.

Note: These apply to each universal service area except to the extent that a determination of alternative arrangements modifies the way they apply, or excludes them from applying, to the area (see subsection 11(4)).

### **Subdivision B—Primary universal service providers**

#### **12A Determination of primary universal service providers**

- (1) The Minister may determine in writing that a specified carrier or carriage service provider is the *primary universal service provider* for a universal service area in respect of a service obligation.
- (2) The Minister may determine:
  - (a) different primary universal service providers in respect of different service obligations for the same universal service area; and
  - (b) the same person as the primary universal service provider for one or more universal service areas in respect of one or more service obligations.
- (3) In exercising his or her powers under this section, the Minister must ensure that at all times there is one primary universal service provider, in respect of each service obligation, for each universal service area.
- (4) In deciding whether to make a determination that a person is a primary universal service provider, the Minister is limited to considering factors that are relevant to achieving the objects of this Act.

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- (5) The Minister must give to the person and to the ACMA a copy of the determination.
- (6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: A determination that the Minister is taken to have made under this section because of section 12D or 12E is not a disallowable instrument (see subsections 12D(2) and 12E(6)).

### **12B Effect of determination**

- (1) A determination under section 12A takes effect on the day specified in the determination. That day must not be before the day on which notice of the determination is published in the *Gazette*.
- (2) If such a determination is expressed to cease to have effect at a specified time, the determination ceases to have effect at that time.
- (3) A variation or revocation of a determination under section 12A takes effect on the day specified for the purpose in the instrument of variation or revocation. That day must not be before notice of the instrument is published in the *Gazette*.
- (4) If the Minister revokes a determination under section 12A, the Minister may determine in writing arrangements to deal with any issues of a transitional nature that may arise as a result of the revocation.
- (5) A copy of a determination under subsection (4) must be published in the *Gazette*.

### **12C Obligations of primary universal service providers**

- (1) A primary universal service provider for a universal service area in respect of a service obligation must take all reasonable steps to:
  - (a) fulfil that service obligation, so far as it relates to that area; and
  - (b) comply with:
    - (i) the provider's approved policy statement; and
    - (ii) the approved standard marketing plan of the provider that covers that area in respect of that service obligation; and

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- (iii) the approved ATS marketing plan (if any) of the provider that covers that area in respect of that service obligation.

Note 1: For the meaning of *approved policy statement* and *approved standard marketing plan*, see section 12F.

Note 2: For the meaning of *approved ATS marketing plan*, see section 12P.

- (1A) A primary universal service provider for a universal service area in respect of a service obligation, who fulfils that service obligation by supplying alternative telecommunications services in accordance with an approved ATS marketing plan, is taken to have fulfilled any other obligation that arises under this Act because of that service obligation to the extent that the other obligation applies to the supply of alternative telecommunications services.
- (2) The ACMA may determine in writing requirements that a primary universal service provider must comply with if the provider intends to cease supplying alternative telecommunications services in accordance with an approved ATS marketing plan. A copy of the determination must be given to the provider.
- (3) The provider must comply with those requirements (as well as any requirements in the plan).

**12D Transitional: when Telstra is taken to be a primary universal service provider**

- (1) Until:
  - (a) a determination of a primary universal service provider under section 12A; or
  - (b) a deemed determination of a primary universal service provider under section 12E;takes effect for the first time for a universal service area in respect of a service obligation, the Minister is taken to have made a determination under section 12A that Telstra is the primary universal service provider for that area in respect of that service obligation.
- (2) Despite subsection 12A(6), the determination that the Minister is taken to have made is not a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Instead, a notice must be published in the *Gazette* to the effect that

Telstra is the primary universal service provider for the area in respect of that service obligation.

**12E Effect of certain agreements under the *Telstra Corporation Act 1991***

- (1) This section applies to agreements under section 56 or 57 of the *Telstra Corporation Act 1991* made between the Commonwealth and a person (including a State or Territory) that are expressed to also have effect for the purposes of:
  - (a) this subsection; or
  - (b) subsection 20(2B) of this Act as in force immediately before the commencement of Schedule 1 to the *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000*.
- (2) The Minister is taken to have properly made:
  - (a) a determination under section 9G that each of the areas, specified in the agreement as a universal service area in respect of a service obligation, is a universal service area in respect of that service obligation for the purposes of this Act; and
  - (b) a determination under section 12A that the person is a primary universal service provider for each of the areas, in respect of the service obligation or obligations, specified in the agreement.Those determinations are referred to in this section as *deemed determinations*.
- (3) The deemed determinations take effect as follows:
  - (a) if the commencement date (see subsection (4)) is the same for each of the areas—they take effect on that commencement date; or
  - (b) if there are different commencement dates for different areas—they take effect for those different areas on those different dates.
- (4) The commencement date or dates for an area is or are as follows:
  - (a) if the agreement specifies a single date as the commencement date for the area—subject to paragraph (c), the commencement date for the area is the specified date;

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- (b) if the agreement specifies different dates as the commencement dates for different areas—subject to paragraph (c), the commencement dates for those areas are the specified dates;
- (c) if a determination under subsection (5) specifies a date as the commencement date for the area or areas—the commencement date for the area or areas is the specified date (regardless of any dates specified in the agreement).

A commencement date cannot be a date before the agreement is made, or before the commencement of this subsection or the subsection referred to in paragraph (1)(a).

- (5) The Minister may make a written determination specifying a date as the commencement date for the area or areas specified in the agreement as universal service areas. A copy of the determination must be published in the *Gazette*.
- (6) Despite subsections 9G(5) and 12A(6), the deemed determinations are not disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*. Instead, a notice must be published in the *Gazette* that:
  - (a) states that the person is a primary universal service provider for the area or areas concerned, in respect of the service obligation or obligations concerned; and
  - (b) includes the relevant commencement date or dates.
- (7) However, a variation or revocation of a deemed determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (8) This section applies to an agreement whether made before, on or after the commencement of Schedule 1 to the *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000*.

**12EA Exclusive access to universal service subsidy**

- (1) If a person is a primary universal service provider for a universal service area in respect of a service obligation because of subsection 12E(2):
  - (a) the Minister must not determine any other person to be a primary universal service provider; and



- (b) the ACMA must not approve any other person as a competing universal service provider;  
for that area in respect of that service obligation.
- (2) Subsection (1) applies while the agreement referred to in subsection 12E(2) remains in force in relation to that area but no longer than 3 years after the commencement date for the area.
- (3) This section applies despite anything else in this Part.

### **Subdivision C—Policy statements and standard marketing plans of primary universal service providers**

#### **12F Meaning of expressions**

- (1) A *draft policy statement* for a primary universal service provider is a general statement of the policy the provider will apply in supplying equipment, goods or services as a primary universal service provider.
- (2) A draft policy statement that has been approved by the ACMA under section 12K, and that is in force, is an *approved policy statement* for the primary universal service provider concerned.
- (3) A *draft standard marketing plan* for a primary universal service provider for a universal service area in respect of a service obligation is a plan that sets out:
  - (a) the equipment, goods or services that the provider will supply in fulfilment of that service obligation, so far as it relates to that area; and
  - (b) the arrangements for supplying and marketing the equipment, goods or services;but does not deal with alternative telecommunications services.
- (4) A draft standard marketing plan that has been approved by the ACMA under section 12K, and that is in force, is an *approved standard marketing plan* for the primary universal service provider concerned.
- (5) A draft or approved standard marketing plan may cover one or more universal service areas in respect of one or more service obligations.

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**12G Minister may determine requirements for drafts**

- (1) The Minister may determine in writing requirements for draft policy statements and draft standard marketing plans of primary universal service providers.
- (2) These are some examples of requirements in relation to draft standard marketing plans:
  - (a) timeframes for the supply of specified equipment, goods or services;
  - (b) performance standards relating to the fulfilment of the universal service obligation;
  - (c) processes for advising persons about the availability, offer and supply of equipment, goods or services in the fulfilment of the universal service obligation, and the terms and conditions on which the equipment, goods or services are offered or supplied;
  - (d) the form of a draft standard marketing plan.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**12H Obligation to submit a draft policy statement and draft standard marketing plan**

Within 90 days after a person becomes a primary universal service provider for a universal service area in respect of a service obligation, the provider must give the ACMA:

- (a) a draft policy statement, or draft variation of an approved policy statement; and
  - (b) a draft standard marketing plan, or draft variation of an approved standard marketing plan;
- covering that area in respect of that service obligation.

**12J Public consultation required on draft policy statement and draft standard marketing plan**

- (1) Before giving the ACMA a draft policy statement or draft standard marketing plan, a primary universal service provider must:
    - (a) publish a preliminary version of the draft and invite members of the public to make submissions to the provider about the
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preliminary version within a specified period (which must be at least 30 days); and

- (b) give consideration to any submissions received from members of the public within that period.
- (2) When giving the draft to the ACMA, the provider must include advice on the submissions considered and any changes made to the draft as a result.
- (3) However, this section does not apply to a fresh draft policy statement, or fresh draft standard marketing plan, given to the ACMA by a primary universal service provider in accordance with a direction under paragraph 12M(2)(b) unless the ACMA notifies the provider in writing that it does apply to the document.

### **12K Approval of draft policy statement**

- (1) The ACMA must approve, or refuse to approve, a draft policy statement that a primary universal service provider gives to the ACMA.
- (2) The ACMA must not approve the draft unless it is satisfied that the draft adequately deals with the supply of appropriate equipment, goods or services to:
  - (a) people with a disability; and
  - (b) people with special needs.
- (3) If the service obligation concerned is a contestable service obligation, the ACMA must also be satisfied that the draft sets out appropriate arrangements that the provider will put in place if a competing universal service provider for the universal service area concerned in respect of that obligation ceases to supply equipment, goods or services in that area in respect of that obligation.

Note: The arrangements may, for example, deal with the transfer of customers from a competing universal service provider to the primary universal service provider.
- (4) In deciding whether to approve the draft, the ACMA must also have regard to:
  - (a) whether the draft complies with the requirements (if any) under section 12G; and

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- (b) any other matters determined in writing by the Minister for the purposes of this paragraph; and
  - (c) such other matters as the ACMA considers relevant.
- (5) A copy of a determination made for the purposes of paragraph (4)(b) must be published in the *Gazette*.

**12L Approval of draft standard marketing plan**

- (1) The ACMA must approve, or refuse to approve, a draft standard marketing plan that a primary universal service provider gives to the ACMA.
- (2) The ACMA must not approve the draft unless it is satisfied that:
  - (a) the draft specifies appropriate equipment, goods or services that the provider will supply in fulfilment of the service obligation concerned, so far as it relates to the universal service area concerned; and
  - (b) the draft adequately deals with how the provider will fulfil that service obligation, so far as it relates to that area; and
  - (c) the draft sets out appropriate terms and conditions on which the equipment, goods or services are to be supplied; and
  - (d) the draft sets out appropriate arrangements for the marketing of the supply of the equipment, goods or services to persons in the universal service area concerned.
- (3) In deciding whether to approve the draft, the ACMA must also have regard to:
  - (a) whether the draft complies with the requirements (if any) under section 12G; and
  - (b) any other matters determined in writing by the Minister for the purposes of this paragraph; and
  - (c) any other matters the ACMA considers relevant.
- (4) A copy of a determination made for the purposes of paragraph (3)(b) must be published in the *Gazette*.

**12M Notice of decision**

- (1) The ACMA must give written notice of the ACMA's decision whether to approve a draft policy statement, or draft standard

marketing plan, to the primary universal service provider concerned.

- (2) If the ACMA refuses to approve the draft, the ACMA:
  - (a) must give the provider written notice of the reasons for that refusal; and
  - (b) may, by giving written notice to the provider, direct the provider to give the ACMA, within a specified period and in specified terms, a fresh draft policy statement or fresh draft standard marketing plan as the case may be.
- (3) The provider must comply with a direction under paragraph (2)(b).
- (4) A copy of the notice under subsection (1) must be published in the *Gazette* if the decision is to approve the draft.

### **Subdivision D—ATS marketing plans of primary universal service providers**

#### **12P Meaning of expressions**

- (1) A ***draft ATS marketing plan*** for a primary universal service provider for a universal service area in respect of a service obligation is a plan that sets out:
  - (a) the alternative telecommunications services that the provider will supply in fulfilment of that service obligation so far as it relates to that area; and
  - (b) the arrangements for supplying and marketing those services.
- (2) A draft ATS marketing plan that has been approved by the ACMA under section 12T, and that is in force, is an ***approved ATS marketing plan*** for the primary universal service provider concerned.
- (3) Each draft or approved ATS marketing plan must cover only one universal service area and only one service obligation. However, the ACMA may determine in writing that this subsection does not apply to:
  - (a) draft or approved ATS marketing plans generally; or
  - (b) a draft or approved ATS marketing plan of a particular primary universal service provider.

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- (4) A copy of a determination made under subsection (3) must be published in the *Gazette*.

**12Q Minister may determine requirements for drafts**

- (1) The Minister may determine in writing requirements for draft ATS marketing plans of primary universal service providers.
- (2) These are some examples of requirements:
- (a) timeframes for the supply of specified equipment, goods or services;
  - (b) performance standards relating to the fulfilment of the universal service obligation;
  - (c) processes for advising persons about the availability, offer and supply of equipment, goods or services in the fulfilment of the universal service obligation, and the terms and conditions on which the equipment, goods or services are offered or supplied;
  - (d) the form of a draft ATS marketing plan.
- (3) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**12R Primary universal service provider may submit a draft ATS marketing plan**

- (1) A primary universal service provider for a universal service obligation in respect of a service obligation, who wishes to supply alternative telecommunications services in fulfilment of that service obligation so far as it relates to that area, may give to the ACMA a draft ATS marketing plan covering the supply of those services.
- (2) To avoid doubt, the primary universal service provider is still required to fulfil that service obligation so far as it relates to that area in accordance with section 9.

**12S Public consultation required on draft ATS marketing plan**

- (1) Before deciding whether to approve a draft ATS marketing plan, the ACMA must require the provider concerned:

- (a) to publish a preliminary version of the draft and invite members of the public to make submissions to the applicant about the preliminary version within a specified period (which must be at least 30 days); and
  - (b) to give consideration to any submissions received from members of the public within that period; and
  - (c) to advise the ACMA on those submissions and any changes made to the draft as a result.
- (2) Subsection (1) applies only if a draft ATS marketing plan is materially different from an ATS marketing plan previously approved by the ACMA.

### **12T Approval of draft ATS marketing plan**

- (1) The ACMA must approve, or refuse to approve, a draft ATS marketing plan that a primary universal service provider gives to the ACMA.
- (2) The ACMA must not approve the draft unless it is satisfied that:
  - (a) the draft specifies appropriate equipment, goods or services that the provider will supply in supplying the alternative telecommunications services; and
  - (b) the draft adequately deals with how the provider will supply alternative telecommunications services in fulfilment of the service obligation concerned, so far as it relates to the area concerned; and
  - (c) the alternative telecommunications services are of general appeal and are appropriate for fulfilling that service obligation, so far as it relates to that area; and
  - (d) the draft sets out appropriate terms and conditions on which the equipment, goods or services are to be supplied; and
  - (e) the draft sets out appropriate arrangements for the marketing of the supply of the equipment, goods or services to persons in that area; and
  - (ea) the draft includes a requirement that, before entering into an agreement to supply a person with alternative telecommunications services, the provider must give to the person information about the substantive differences between:

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- (i) what is to be supplied under the draft in fulfilment of the service obligation concerned, so far as it relates to the area concerned; and
  - (ii) what would be supplied under the provider's draft standard marketing plan or approved standard marketing plan in fulfilment of the same service obligation, so far as it relates to the same area; and
  - (f) the draft sets out appropriate procedures that the provider will comply with if the provider ceases to supply alternative telecommunications services in fulfilment of that service obligation, so far as it relates to that area; and
  - (g) the requirements of section 12S have been met.
- (3) The procedures referred to in paragraph (2)(f) must include the giving of at least 45 days' notice to the ACMA, or such other notice as the ACMA determines in writing is adequate for the purposes of that paragraph.
- (4) In deciding whether to approve the draft, the ACMA must also have regard to:
- (a) whether the draft complies with the requirements (if any) under section 12Q; and
  - (b) any other matters determined in writing by the Minister for the purposes of this paragraph; and
  - (c) any other matters the ACMA considers relevant.
- (5) A copy of a determination made for the purposes of paragraph (2)(f) or (4)(b) must be published in the *Gazette*.

**12U Notice of decision**

- (1) The ACMA must give the provider written notice of the ACMA's decision on whether to approve the draft ATS marketing plan.
- (2) If the ACMA refuses to approve the draft, the ACMA must give the provider written notice of the reasons for that refusal.
- (3) A copy of a notice under subsection (1) must be published in the *Gazette*, if the decision is to approve the draft.



**Subdivision E—Replacement, variation and revocation of  
policy statements, standard marketing plans and  
ATS marketing plans**

**12V Replacement of approved policy statement, approved standard  
marketing plan or approved ATS marketing plan**

- (1) An approved policy statement for a primary universal service provider ceases to be in force if a later draft policy statement, that is expressed to replace it, becomes an approved policy statement.
- (2) An approved standard marketing plan for a primary universal service provider ceases to be in force if a later draft standard marketing plan, that is expressed to replace it, becomes an approved standard marketing plan.
- (3) An approved ATS marketing plan for a primary universal service provider ceases to be in force if a later draft ATS marketing plan, that is expressed to replace it, becomes an approved ATS marketing plan.

**12W Variation of approved policy statement, approved standard  
marketing plan or approved ATS marketing plan**

- (1) This section applies if:
  - (a) an approved policy statement for a primary universal service provider (the *current statement*) is in force; or
  - (b) an approved standard marketing plan for a primary universal service provider (the *current plan*) is in force; or
  - (c) an approved ATS marketing plan for a primary universal service provider (the *current plan*) is in force;and the provider gives the ACMA a draft variation of the current statement or current plan.
- (2) The ACMA must:
  - (a) approve the variation; or
  - (b) refuse to approve the variation.
- (3) Before deciding whether to approve the variation, the ACMA may, if the ACMA considers it appropriate, require the provider:

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- (a) to publish a preliminary version of the draft variation and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
  - (b) to give consideration to any submissions from members of the public received within that period; and
  - (c) to advise the ACMA on those submissions and any changes made to the draft variation as a result.
- (4) The ACMA must not approve the variation unless it is satisfied that:
- (a) in the case of a draft variation of an approved policy statement—if the provider were to give the ACMA a draft policy statement in the same terms as the current statement as varied, the ACMA would approve that draft; or
  - (b) in the case of a draft variation of an approved standard marketing plan—if the provider were to give the ACMA a draft standard marketing plan in the same terms as the current plan as varied, the ACMA would approve that draft; or
  - (c) in the case of a draft variation of an approved ATS marketing plan—if the provider were to give the ACMA a draft ATS marketing plan in the same terms as the current plan as varied, the ACMA would approve that draft.

**12X Notice of decision**

- (1) After deciding whether to approve a variation under section 12W, the ACMA must give a written notice setting out the decision to the provider concerned.
- (2) If the ACMA refuses to approve the variation, the ACMA must give a written notice setting out the reasons for the refusal to the provider.
- (3) If the ACMA approves the variation:
  - (a) the current statement or plan is varied accordingly; and
  - (b) a copy of the notice given to the provider must be published in the *Gazette*, unless the variation is only of a minor technical nature.

**12Y Minister may direct variation or replacement of policy statement or standard marketing plan**

- (1) If an approved policy statement for a primary universal service provider is in force, the Minister may give the provider a written notice requiring the provider:
  - (a) within a specified period and in specified terms, to give the ACMA a draft variation of the statement; or
  - (b) within a specified period and in specified terms, to give the ACMA a fresh draft policy statement that is expressed to replace the statement.
- (2) If an approved standard marketing plan for a primary universal service provider is in force, the Minister may give the provider a written notice requiring the provider:
  - (a) within a specified period and in specified terms, to give the ACMA a draft variation of the plan; or
  - (b) within a specified period and in specified terms, to give the ACMA a fresh draft standard marketing plan that is expressed to replace the plan.
- (3) A primary universal provider to whom a notice under this section is given must comply with the notice.

**12Z Minister may revoke approved ATS marketing plan**

- (1) The Minister may, by giving written notice to a primary universal service provider, revoke the provider's approved ATS marketing plan if the Minister considers that it is in the public interest to do so. A copy of the notice must be given to the ACMA.
- (2) An approved ATS marketing plan that is revoked by the Minister ceases to be in force when the revocation takes effect.
- (3) The revocation takes effect on the day specified in the notice which must be on or after the day on which the notice is given to the provider.
- (4) The Minister may determine in writing arrangements to deal with issues of a transitional nature that may arise as a result of the revocation. A copy of the determination must be:
  - (a) given to the provider; and

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- (b) published in the *Gazette*.
- (5) The provider must comply with the arrangements (if any) in a determination under subsection (4).

## **Division 6—The standard contestability arrangements: competing universal service providers**

### **Subdivision A—What are the standard contestability arrangements?**

#### **13 The standard contestability arrangements**

The *standard contestability arrangements* consist of the arrangements set out in this Division.

Note: These apply to universal service areas in respect of a contestable service obligation or obligations (see subsection 11(3)).

### **Subdivision B—Competing universal service providers**

#### **13A Application to be approved as a competing universal service provider**

- (1) A carrier or carriage service provider may apply to the ACMA for approval as a *competing universal service provider* for a universal service area in respect of a contestable service obligation.
- (2) The application must be in the form approved in writing by the ACMA and must be accompanied by:
  - (a) a draft policy statement, or draft variation of an approved policy statement; and
  - (b) at least one of the following:
    - (i) a draft standard marketing plan;
    - (ii) a draft ATS marketing plan; and
  - (c) such information or documents as are required by the approved form.

Note 1: For the meaning of *draft policy statement* and *approved policy statement*, see section 13F.

Note 2: For the meaning of *draft ATS marketing plan*, see section 13M.

#### **13B Approval of person as a competing universal service provider**

- (1) The ACMA must, within a reasonable time:

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- (a) approve (in writing) the applicant as a competing universal service provider for the universal service area in respect of the contestable service obligation in accordance with the application; or
  - (b) refuse the application and give the applicant written notice of the reasons for that refusal.
- (2) The ACMA must not approve the applicant as a competing universal service provider unless:
- (a) subject to subsection (3), the ACMA is satisfied that the applicant is an appropriate person to be approved as a competing universal service provider, having regard to:
    - (i) the applicant's relevant technical competence and experience; and
    - (ii) the applicant's commercial competence and financial standing; and
    - (iii) any matters determined in writing by the Minister for the purposes of this subparagraph; and
    - (iv) any other matters the ACMA considers relevant; and
  - (b) the applicant has an approved policy statement; and
  - (c) the applicant has either or both of the following:
    - (i) an approved standard marketing plan;
    - (ii) an approved ATS marketing plan;covering the universal service area in respect of the contestable service obligation.
- (3) If the applicant is already a competing universal service provider for a universal service area in respect of another contestable service obligation, the ACMA may, but is not required to, assume that paragraph (2)(a) is satisfied.
- (4) A copy of a determination made for the purposes of subparagraph (2)(a)(iii) must be published in the *Gazette*.

**13C Date of effect of approval, or variation or revocation of approval**

- (1) An approval under section 13B takes effect on the day specified in the approval. That day must be on or after the day on which the approval is given.

- (2) If an approval is expressed to cease to have effect at a specified time, it ceases to have effect at that time.
- (3) A variation or revocation of an approval takes effect on the day specified for the purpose in the instrument of variation or revocation. That day must be on or after the day on which the instrument is made.
- (4) If the ACMA revokes an approval under section 13B, it may determine in writing arrangements to deal with any issues of a transitional nature that may arise as a result of the revocation.
- (5) A copy of a determination under subsection (4) must be published in the *Gazette*.

### **13D Obligations of competing universal service providers**

- (1) A competing universal service provider for a universal service area in respect of a contestable service obligation must take all reasonable steps to:
    - (a) fulfil that service obligation, so far as it relates to that area; and
    - (b) comply with:
      - (i) the provider's approved policy statement; and
      - (ii) the approved standard marketing plan (if any) of the provider that covers that area in respect of that service obligation; and
      - (iii) the approved ATS marketing plan (if any) of the provider that covers that area in respect of that service obligation.
- Note 1: For the meaning of *approved policy statement* and *approved standard marketing plan*, see section 13F.
- Note 2: For the meaning of *approved ATS marketing plan*, see section 13M.
- (2) A competing universal service provider for a universal service area in respect of a contestable service obligation, who fulfils that service obligation by supplying alternative telecommunications services in accordance with an approved ATS marketing plan, is taken to have fulfilled any other obligation that arises under this Act because of that service obligation to the extent that the other

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obligation applies to the supply of alternative telecommunications services.

- (3) The ACMA may determine in writing additional requirements that a competing universal service provider must comply with if the provider intends to cease fulfilling the contestable service obligation concerned, so far as it relates to the universal service area concerned, in accordance with:
  - (a) an approved standard marketing plan; or
  - (b) an approved ATS marketing plan.
- (4) A copy of the determination must be given to the provider. The provider must comply with those requirements.

**13E Surrender of approval as a competing universal service provider**

- (1) A competing universal service provider for a universal service area in respect of a contestable service obligation may, at any time, notify the ACMA that the provider intends to cease fulfilling that contestable service obligation, so far as it relates to that area.
- (2) In giving the notice to the ACMA, the provider must comply with:
  - (a) the procedures referred to in paragraph 13K(2)(e) set out in the provider's approved standard marketing plan; or
  - (b) the procedures referred to in paragraph 13Q(2)(f) set out in the provider's approved ATS marketing plan;whichever are applicable.
- (3) After receiving the notice, the ACMA may determine in writing:
  - (a) the date on which the provider's approval as a competing universal service provider in respect of that contestable service obligation ceases to have effect; and
  - (b) that section 13D does not apply, to the extent specified in the determination, to the provider from the day on which the ACMA received the notice or a later day specified in the determination.
- (4) A copy of the determination must be:
  - (a) given to the provider; and
  - (b) published in the *Gazette*.



### **Subdivision C—Policy statements and standard marketing plans of competing universal service providers**

#### **13F Meaning of expressions**

- (1) A *draft policy statement* for an applicant for approval as a competing universal service provider is a general statement of the policy the applicant will apply in supplying equipment, goods or services as a competing universal service provider.
- (2) A draft policy statement that has been approved by the ACMA under section 13J, and that is in force, is an *approved policy statement* for the applicant or competing universal service provider concerned.
- (3) A *draft standard marketing plan* for an applicant for approval as a competing universal service provider for a universal service area in respect of a contestable service obligation is a plan that sets out:
  - (a) the equipment, goods or services that the applicant will supply in fulfilment of that contestable service obligation, so far as it relates to that area; and
  - (b) the arrangements for supplying and marketing the equipment, goods or services;but does not deal with alternative telecommunications services.
- (4) A draft standard marketing plan that has been approved by the ACMA under section 13K, and that is in force, is an *approved standard marketing plan* for the applicant or competing universal service provider concerned.
- (5) Each draft or approved standard marketing plan may cover one or more universal service areas in respect of one or more contestable service obligations.

#### **13G Minister may determine requirements for drafts**

- (1) The Minister may determine in writing requirements for draft policy statements and draft standard marketing plans of competing universal service providers.
  - (2) These are some examples of requirements for draft standard marketing plans:
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- (a) timeframes for the supply of specified equipment, goods or services;
  - (b) performance standards relating to the fulfilment of the universal service obligation;
  - (c) processes for advising persons about the availability, offer and supply of equipment, goods or services in the fulfilment of the universal service obligation, and the terms and conditions on which the equipment, goods or services are offered or supplied;
  - (d) the form of a draft standard marketing plan.
- (3) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**13H Public consultation on draft policy statement or standard marketing plan**

*Draft policy statement*

- (1) Before giving the ACMA a draft policy statement, the applicant concerned must:
- (a) publish a preliminary version of the draft and invite members of the public to make submissions to the applicant about the preliminary version within a specified period (which must be at least 30 days); and
  - (b) give consideration to any submissions received from members of the public within that period.
- (2) When giving the draft to the ACMA, the applicant must include advice on the submissions considered and any changes made to the draft as a result.

*Draft standard marketing plan*

- (3) Before deciding whether to approve a draft standard marketing plan, the ACMA may require the applicant concerned:
- (a) to publish a preliminary version of the draft and invite members of the public to make submissions to the applicant about the preliminary version within a specified period (which must be at least 30 days); and

- (b) to give consideration to any submissions received from members of the public within that period; and
- (c) to advise the ACMA on those submissions and any changes made to the draft as a result.

### **13J Approval of draft policy statement**

- (1) The ACMA must approve, or refuse to approve, a draft policy statement that an applicant for approval as a competing universal service provider gives to the ACMA.
- (2) The ACMA must not approve the draft unless it is satisfied that the draft adequately deals with the supply of appropriate equipment, goods or services to:
  - (a) people with a disability; and
  - (b) people with special needs.
- (3) The ACMA must also be satisfied that the draft sets out appropriate arrangements that the applicant will put in place if another competing universal service provider for the universal service area concerned, in respect of the contestable service obligation concerned, ceases to supply equipment, goods or services in that area in respect of that contestable service obligation.

Note: The arrangements may, for example, deal with the transfer of customers from one competing universal service provider to another.
- (4) In deciding whether to approve the draft, the ACMA must also have regard to:
  - (a) whether the draft complies with the requirements (if any) under section 13G; and
  - (b) any other matters determined in writing by the Minister for the purposes of this paragraph; and
  - (c) such other matters as the ACMA considers relevant.
- (5) A copy of a determination made for the purposes of paragraph (4)(b) must be published in the *Gazette*.

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**13K Approval of draft standard marketing plan**

- (1) The ACMA must approve, or refuse to approve, a draft standard marketing plan that an applicant for approval as a competing universal service provider gives to the ACMA.
- (2) The ACMA must not approve the draft unless it is satisfied that:
  - (a) the draft specifies appropriate equipment, goods or services that the applicant will supply in fulfilment of the contestable service obligation concerned, so far as it relates to the universal service area concerned; and
  - (b) the draft adequately deals with how the applicant will fulfil that contestable service obligation, so far as it relates to that area; and
  - (c) the draft sets out appropriate terms and conditions on which the equipment, goods or services are to be supplied; and
  - (d) the draft sets out appropriate arrangements for the marketing of the supply of the equipment, goods or services to persons in that area; and
  - (e) the draft sets out appropriate procedures that the applicant will comply with if the applicant ceases:
    - (i) to supply any of the equipment, goods or services; or
    - (ii) to fulfil that contestable service obligation, so far as it relates to that area;including the giving of at least 45 days' notice to the ACMA, or such other notice as the ACMA determines in writing is adequate.
- (3) In deciding whether to approve the draft, the ACMA must also have regard to:
  - (a) whether the draft complies with the requirements (if any) under section 13G; and
  - (b) any other matters determined in writing by the Minister for the purposes of this paragraph; and
  - (c) any other matters the ACMA considers relevant.
- (4) A copy of a determination made for the purposes of paragraph (3)(b) must be published in the *Gazette*.

### **13L Notice of decision**

- (1) The ACMA must give written notice of the ACMA's decision whether to approve a draft policy statement, or draft standard marketing plan, given to the ACMA by an applicant for approval as a competing universal service provider.
- (2) If the ACMA refuses to approve the draft, the ACMA must give the applicant written notice of the reasons for that refusal.
- (3) A copy of a notice under subsection (1), if the decision is to approve the draft, must be published in the *Gazette*.

### **Subdivision D—ATS marketing plans of competing universal service providers**

#### **13M Meaning of expressions**

- (1) A ***draft ATS marketing plan*** for an applicant for approval as a competing universal service provider for a universal service area in respect of a contestable service obligation is a plan that sets out:
  - (a) the alternative telecommunications services that the applicant will supply in fulfilment of that contestable service obligation, so far as it relates to that area; and
  - (b) the arrangements for supplying and marketing those services.
- (2) A draft ATS marketing plan that has been approved by the ACMA under section 13Q, and that is in force, is an ***approved ATS marketing plan*** for the applicant or competing universal service provider concerned.
- (3) Each draft or approved ATS marketing plan must cover only one universal service area and only one contestable service obligation. However, the ACMA may determine in writing that this subsection does not apply to:
  - (a) draft or approved ATS marketing plans generally; or
  - (b) a draft or approved ATS marketing plan of a particular applicant or competing universal service provider.
- (4) A copy of a determination made under subsection (3) must be published in the *Gazette*.

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**13N Minister may determine requirements for drafts**

- (1) The Minister may determine in writing requirements for draft ATS marketing plans of competing universal service providers.
- (2) These are some examples of requirements:
  - (a) timeframes for the supply of specified equipment, goods or services;
  - (b) performance standards relating to the fulfilment of the universal service obligation;
  - (c) processes for advising persons about the availability, offer and supply of equipment, goods or services in the fulfilment of the universal service obligation, and the terms and conditions on which the equipment, goods or services are offered or supplied;
  - (d) the form of a draft ATS marketing plan.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**13P Public consultation required on draft ATS marketing plan**

- (1) Before deciding whether to approve a draft ATS marketing plan, the ACMA must require the applicant concerned:
  - (a) to publish a preliminary version of the draft and invite members of the public to make submissions to the applicant about the preliminary version within a specified period (which must be at least 30 days); and
  - (b) to give consideration to any submissions received from members of the public within that period; and
  - (c) to advise the ACMA on those submissions and any changes made to the draft as a result.
- (2) Subsection (1) applies only if a draft ATS marketing plan is materially different from an ATS marketing plan previously approved by the ACMA.

### **13Q Approval of draft ATS marketing plan**

- (1) The ACMA must approve, or refuse to approve, a draft ATS marketing plan that an applicant for approval as a competing universal service provider gives to the ACMA.
- (2) The ACMA must not approve the draft unless it is satisfied that:
  - (a) the draft specifies appropriate equipment, goods or services that the applicant will supply in supplying the alternative telecommunications services; and
  - (b) the draft adequately deals with how the applicant will supply alternative telecommunications services in fulfilment of the contestable service obligation concerned, so far as it relates to the universal service area concerned; and
  - (c) the alternative telecommunications services are of general appeal and are appropriate for fulfilling that contestable service obligation, so far as it relates to that area; and
  - (d) the draft sets out appropriate terms and conditions on which the equipment, goods or services are to be supplied; and
  - (e) the draft sets out appropriate arrangements for the marketing of the supply of the equipment, goods or services to persons within that area; and
  - (ea) the draft includes a requirement that, before entering into an agreement to supply a person with alternative telecommunications services, the provider must give to the person information about the substantive differences between:
    - (i) what is to be supplied under the draft in fulfilment of the service obligation concerned, so far as it relates to the area concerned; and
    - (ii) what would be supplied under the approved standard marketing plan of the relevant primary universal service provider in fulfilment of the same service obligation, so far as it relates to the same area; and
  - (f) the draft sets out appropriate procedures that the applicant will comply with if the applicant ceases:
    - (i) to supply any of the equipment, goods or services; or
    - (ii) to fulfil that contestable service obligation, so far as it relates to that area;

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including the giving of at least 45 days' notice to the ACMA, or such other notice as the ACMA determines in writing is adequate; and

- (g) the requirements of section 13P have been met.
- (3) In deciding whether to approve the draft, the ACMA must also have regard to:
  - (a) whether the draft complies with the requirements (if any) under section 13N; and
  - (b) any other matters determined in writing by the Minister for the purposes of this paragraph; and
  - (c) any other matters the ACMA considers relevant.
- (4) A copy of a determination made for the purposes of paragraph (2)(f) or (3)(b) must be published in the *Gazette*.

**13R Notice of decision**

- (1) The ACMA must give the applicant written notice of the ACMA's decision on whether to approve the draft ATS marketing plan.
- (2) If the ACMA refuses to approve the draft, the ACMA must give the applicant written notice of the reasons for that refusal.
- (3) A copy of a notice under subsection (1) must be published in the *Gazette*, if the decision is to approve the draft.

**Subdivision E—Replacement, variation and revocation of policy statements, standard marketing plans and ATS marketing plans**

**13S Replacement of approved policy statement, approved standard marketing plan or approved ATS marketing plan**

- (1) An approved policy statement for a competing universal service provider ceases to be in force if a later draft policy statement, that is expressed to replace it, becomes an approved policy statement.
  - (2) An approved standard marketing plan for a competing universal service provider ceases to be in force if a later draft standard marketing plan, that is expressed to replace it, becomes an approved standard marketing plan.
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- (3) An approved ATS marketing plan for a competing universal service provider ceases to be in force if a later draft ATS marketing plan, that is expressed to replace it, becomes an approved ATS marketing plan.

**13T Variation of approved policy statement, approved standard marketing plan or approved ATS marketing plan**

- (1) This section applies if:
- (a) an approved policy statement for a competing universal service provider (the *current statement*) is in force; or
  - (b) an approved standard marketing plan for a competing universal service provider (the *current plan*) is in force; or
  - (c) an approved ATS marketing plan for a competing universal service provider (the *current plan*) is in force;
- and the provider gives the ACMA a draft variation of the current statement or current plan.
- (2) The ACMA must:
- (a) approve the variation; or
  - (b) refuse to approve the variation.
- (3) Before deciding whether to approve the variation, the ACMA may, if the ACMA considers it appropriate, require the provider:
- (a) to publish a preliminary version of the draft variation and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
  - (b) to give consideration to any submissions from members of the public received within that period; and
  - (c) to advise the ACMA on those submissions and any changes made to the draft variation as a result.
- (4) The ACMA must not approve the variation unless it is satisfied that:
- (a) in the case of a draft variation of an approved policy statement—if the provider were to give the ACMA a draft policy statement in the same terms as the current statement as varied, the ACMA would approve that draft; or

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- (b) in the case of a draft variation of an approved standard marketing plan—if the provider were to give the ACMA a draft standard marketing plan in the same terms as the current plan as varied, the ACMA would approve that draft; or
- (c) in the case of a draft variation of an approved ATS marketing plan—if the provider were to give the ACMA a draft ATS marketing plan in the same terms as the current plan as varied, the ACMA would approve that draft.

**13U Notice of decision**

- (1) After deciding whether to approve a variation under section 13T, the ACMA must give a written notice setting out the decision to the provider concerned.
- (2) If the ACMA refuses to approve the variation, the ACMA must give a written notice setting out the reasons for the refusal to the provider.
- (3) If the ACMA approves the variation:
  - (a) the current statement or plan is varied accordingly; and
  - (b) a copy of the notice given to the provider must be published in the *Gazette*, unless the variation is only of a minor technical nature.

**13V Minister may revoke approved ATS marketing plan**

- (1) The Minister may, by giving written notice to a competing universal service provider, revoke the provider's approved ATS marketing plan if the Minister considers that it is in the public interest to do so. A copy of the notice must be given to the ACMA.
- (2) An approved ATS marketing plan that is revoked by the Minister ceases to be in force when the revocation takes effect.
- (3) The revocation takes effect on the day specified in the notice which must be on or after the day on which the notice is given to the provider.
- (4) The Minister may determine in writing arrangements to deal with issues of a transitional nature that may arise as a result of the revocation. A copy of the determination must be:

- (a) given to the provider; and
  - (b) published in the *Gazette*.
- (5) The provider must comply with the arrangements (if any) in a determination under subsection (4).

## **Division 7—Determination of alternative arrangements for fulfilling the universal service obligation**

### **14 Determination of alternative arrangements**

- (1) The Minister may determine in writing that specified alternative arrangements apply to a universal service area in respect of a service obligation (whether or not it is a contestable service obligation).
- (2) A determination under subsection (1) may expressly modify:
  - (a) the extent to which the default arrangements set out in Division 5 apply to the area; or
  - (b) the way in which any of the provisions in this Part apply to the area.
- (3) The Minister must give to the ACMA a copy of each determination made under this section.
- (4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) In this section:

*modify* includes excluding the application of a provision entirely, as well as omitting, adding and substituting provisions.

### **14A Effect of determination**

- (1) A determination under section 14 takes effect on the day specified in the determination. That day must not be before the day on which notice of the determination is published in the *Gazette*.
- (2) If a determination under section 14 is expressed to cease to have effect at a specified time, the determination ceases to have effect at that time.
- (3) A variation or revocation of a determination under section 14 takes effect on the day specified for the purpose in the instrument of variation or revocation. That day must not be before notice of the instrument is published in the *Gazette*.

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- (4) If the Minister revokes a determination under section 14, the Minister may determine in writing arrangements to deal with any issues of a transitional nature that may arise as a result of the revocation.
- (5) A copy of a determination under subsection (4) must be published in the *Gazette*.

## Division 8—Digital data service providers

### Subdivision A—General

#### 15 Digital data service providers

- (1) The Minister may make a written determination stating that a specified carrier or carriage service provider is a ***general digital data service provider*** for a specified general digital data service area.
- (2) The Minister may make a written determination stating that a specified carrier or carriage service provider is a ***special digital data service provider*** for a specified special digital data service area.
- (3) In deciding whether to make a determination under subsection (1) or (2) in relation to a person and an area, the Minister is limited to considering factors that are relevant to achieving the objects of this Act.
- (4) A determination under subsection (1) or (2) has effect accordingly.
- (5) A determination under subsection (1) or (2) takes effect on the day specified in it. That day must not be before the day on which the notice of the determination is published in the *Gazette*.
- (6) A revocation of a determination under subsection (1) or (2) takes effect on the day specified in the instrument of revocation. That day must not be before the day on which notice of the instrument is published in the *Gazette*.
- (7) If:
  - (a) a determination is in force under subsection (1) or (2) in relation to a particular carrier; and
  - (b) at a particular time, the carrier ceases to hold a carrier licence;the determination ceases to be in force at that time.
- (8) If:

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- (a) a determination is in force under subsection (1) or (2) in relation to a particular carriage service provider that is not a carrier; and
  - (b) at a particular time, the carriage service provider ceases to be such a provider;
- the determination ceases to be in force at that time.
- (9) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**15A Effect of digital data service provider determination**

- (1) A digital data service provider in relation to a particular service area is a digital data service provider:
  - (a) for that area; and
  - (b) for each service area that is within that area.
- (2) For the purposes of this Part, a person in relation to whom a determination is in force under subsection 15(1) or (2) at any time during a claim period is a digital data service provider for the claim period.
- (3) For the purposes of this Part, the areas for which a person is a digital data service provider are taken to be a single area.
- (4) A general digital data service provider for a general digital data service area must take all reasonable steps to fulfil the general digital data service obligation, so far as the obligation relates to that area.
- (5) A special digital data service provider for a special digital data service area must take all reasonable steps to fulfil the special digital data service obligation, so far as the obligation relates to that area.

**15B Former digital data service provider may be required to provide information to current digital data service provider**

- (1) This section applies if:
  - (a) the Minister determines under section 15 that a carrier or carriage service provider (the *current provider*) is a digital

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- data service provider for a particular area (the *relevant area*);  
and
- (b) another person, who is or was a digital data service provider for some or all of the relevant area, is determined to be a former provider under subsection (4).
- (2) This section also applies if:
- (a) either:
- (i) the Minister revokes or varies a determination under section 15 so that a person (the *former provider*) ceases to be a digital data service provider for a digital data service area (the *relevant area*); or
- (ii) a person otherwise ceases to be a digital data service provider for a particular area (the *relevant area*); and
- (b) a person (the *current provider*), who was also a digital data service provider for some or all of the relevant area, continues to be a digital data service provider for some or all of the area:
- (i) if subparagraph (a)(i) applies—after the revocation or variation; or
- (ii) if subparagraph (a)(ii) applies—after the cessation.
- (3) Subsections (1) and (2) can apply before the determination, revocation or variation under section 15 or the cessation takes effect.
- (4) The Minister may determine in writing that a person is a former provider for the purposes of this section.
- (5) The current provider may, by written notice given to the former provider, require the former provider to give to the current provider specified information of the kind referred to in subsection (6). A notice of this kind cannot be given more than 6 months after:
- (a) if subsection (1) applies—the later of the following days:
- (i) the day on which the current provider became a digital data service provider for the relevant area; or
- (ii) the day on which the determination under subsection 15(1) or (2) was made in respect of the current provider;  
or



- (b) if subsection (2) applies—the day on which the former provider ceases to be a digital data service provider for the relevant area.
- (6) The information that may be required to be given must be information that will assist the current provider in doing something that the current provider is or will be required or permitted to do by or under a provision of this Part. The notice must identify the doing of that thing as the purpose for which the information is required.
- Note 1: If, for example, information about service location and customer contact details will assist the current provider in fulfilling its obligation under subsection 15A(4) or (5), the former provider may be required to provide that kind of information.
- Note 2: See also subsection (8), which allows the Minister to determine that a specified kind of information is information referred to in this subsection.
- (7) If a requirement made by a notice under subsection (5) is reasonable, the former provider must comply with the requirement as soon as practicable after receiving the notice. However, if the requirement is unreasonable, the former provider does not have to comply with it.
- (8) The Minister may make a written determination to the effect that, either generally or in a particular case, information of a kind specified in the determination is taken to be information that will assist a person in doing a specified thing that the person is or will be required or permitted to do by or under a provision of this Part. The determination has effect accordingly.
- (9) If a former provider has been given notice of a requirement under subsection (5), the ACMA may, in writing, direct the former provider to comply with the requirement or with specified aspects of the requirement. The former provider must comply with the direction.
- (10) In deciding whether to give a direction under subsection (9), the ACMA must consider whether the requirement under subsection (5) is reasonable.
- (11) A determination under subsection (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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**Subdivision B—Digital data service plans**

**15C Digital data service provider must submit draft digital data service plan**

- (1) A digital data service provider for a particular area must give the Minister a draft digital data service plan for that area.
- (2) The provider must give the Minister the plan within 90 days after the provider became a digital data service provider for that area.

**15D Digital data service plans**

A draft or approved digital data service plan for an area is a plan that sets out how a digital data service provider for that area will progressively fulfil:

- (a) if that area is a general digital data service area—the general digital data service obligation (in so far as the obligation relates to that area); or
- (b) if that area is a special digital data service area—the special digital data service obligation (in so far as the obligation relates to that area).

Note: An *approved digital data service plan* is a draft digital data service plan that has been approved by the Minister.

**15E Replacement of approved digital data service plan**

If an approved digital data service plan (the *original plan*) for an area is in force, a draft digital data service plan for the area may be expressed to replace the original plan. When the draft plan becomes an approved digital data service plan, the original plan ceases to be in force.

**15F Approval of draft digital data service plan by Minister**

- (1) If a digital data service provider gives the Minister a draft digital data service plan, the Minister must:
  - (a) approve the draft plan; or
  - (b) refuse to approve the draft plan.

- (2) If the Minister approves the draft plan, the draft plan becomes an approved digital data service plan.
- (3) If the Minister refuses to approve the draft plan, the Minister may, by written notice given to the provider, direct the provider to give the Minister, within the period and in the terms specified in the direction, a fresh draft digital data service plan for the area concerned. The provider must comply with the direction.

### **15G Public consultation—draft plan**

- (1) Before giving the Minister a draft digital data service plan under section 15F, a digital data service provider must:
  - (a) publish a preliminary version of the draft plan and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
  - (b) give consideration to any submissions received from members of the public within that period.
- (2) The period specified in the invitation must run for at least 30 days.
- (3) This section does not apply to a draft plan given to the Minister in accordance with a direction under subsection 15F(3).
- (4) This section does not apply to a draft plan given to the Minister in accordance with a notice under paragraph 15N(2)(b).

### **15H Minister to have regard to certain matters**

- (1) In deciding whether to approve a draft digital data service plan for a general digital data service area or a special digital data service area, the Minister must have regard to whether:
  - (a) the draft plan provides for the general digital data service obligation, or special digital data service obligation, (so far as it relates to that area) to be fulfilled:
    - (i) as efficiently and economically as practicable; and
    - (ii) at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community; and
    - (iii) progressively throughout that area within such period as the Minister considers reasonable; and

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- (aa) the draft plan addresses the needs of people with a disability;  
and
  - (b) the draft plan complies with any requirements in force under section 15J.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.

**15J Minister may formulate requirements for draft plans**

- (1) The Minister may, by writing, formulate requirements for draft digital data service plans.
- (2) The following are examples of requirements:
  - (a) timetables for the supply of services;
  - (b) performance standards relating to the fulfilment of the digital data service obligation;
  - (c) the form of a draft digital data service plan.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**15K Notification of decision**

- (1) After deciding whether to approve a draft digital data service plan for an area, the Minister must give a written notice setting out the decision to:
  - (a) the digital data service provider concerned; and
  - (b) the ACMA.
- (2) A copy of a notice under subsection (1) must be published in the *Gazette*.
- (3) If the Minister refuses to approve a draft digital data service plan for an area, the Minister must give a written notice setting out the reasons for the refusal to the digital data service provider concerned.

**15L Variation of approved digital data service plan**

- (1) This section applies if:
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- (a) an approved digital data service plan for an area (the *current plan*) is in force; and
  - (b) the digital data service provider concerned gives the Minister a draft variation of the plan.
- (2) The Minister must:
- (a) approve the variation; or
  - (b) refuse to approve the variation.
- (3) Before deciding whether to approve the variation, the Minister may, if he or she considers it appropriate, require the provider:
- (a) to publish a preliminary version of the draft variation and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
  - (b) to give consideration to any submissions from members of the public received within that period; and
  - (c) to advise the Minister on those submissions and any changes made to the draft variation as a result.
- (4) The Minister must not approve the variation unless the Minister is satisfied that, if the provider were to give the Minister a draft digital data service plan in the same terms as the current plan as proposed to be varied, the Minister would approve that draft.

### **15M Notice of decision on variation**

- (1) After deciding whether to approve a draft variation of an approved digital data service plan, the Minister must give a written notice setting out the decision to both the digital data service provider concerned and the ACMA.
- (2) A copy of the notice must be published in the *Gazette*.
- (3) If the Minister refuses to approve the variation, the Minister must give a written notice setting out the reasons for the refusal to the provider.
- (4) If the Minister approves the variation, the current plan is varied accordingly.
- (5) The Minister must give to the ACMA a copy of each variation approved under section 15L.

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**15N Minister may direct variation or replacement of plan**

- (1) This section applies if an approved digital data service plan (the *current plan*) for an area is in force.
- (2) The Minister may give the digital data service provider concerned a written notice requiring the provider:
  - (a) within the period and in the terms set out in the notice, to give the Minister a draft variation of the current plan; or
  - (b) within the period and in the terms set out in the notice, to give the Minister a fresh draft digital data service plan for the area that is expressed to replace the current plan.
- (3) The provider must comply with the notice.

**15P Compliance with approved digital data service plan**

If an approved digital data service plan is in force, the general digital data service provider, or special digital data service provider, concerned must take all reasonable steps to ensure that the plan is complied with.

## **Division 9—Universal service subsidy**

### **16 Determination of universal service subsidy**

- (1) Before the end of a claim period, the Minister must determine in writing one or more universal service subsidies for the period. A copy of a determination under this subsection must be published in the *Gazette*.
- (2) The Minister must ensure that there is a subsidy for each universal service area in respect of each service obligation. A subsidy may cover one or more universal service areas in respect of one or more service obligations.
- (3) A determination under this section must specify:
  - (a) the amount, or a method for working out the amount, of the subsidy; and
  - (b) the circumstances in which a universal service provider for the claim period is eligible to be paid the subsidy.
- (4) The circumstances that may be specified include, but are not limited to:
  - (a) whether the subsidy is payable to a primary universal service provider or a competing universal service provider; and
  - (b) the types or amount of equipment, goods or services that are supplied to persons in a universal service area.
- (5) The determination must specify that a subsidy is only payable to a universal service provider who complies with the provider's obligations under section 12C or 13D (whichever is applicable).
- (6) A determination may specify an amount of subsidy as zero.

### **16A Minister must seek ACMA's advice**

- (1) Before making or varying a determination under section 16, the Minister must direct the ACMA to give the Minister advice about the proposed determination or variation. However, this subsection does not apply to a proposed variation of a minor technical nature.
- (2) The ACMA must comply with the direction.

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- (3) If the Minister has received advice from the ACMA about a proposed determination or variation and does not make the determination or variation in accordance with the advice, the Minister must ensure that a notice of his or her reasons for departing from the advice:
  - (a) is published in the *Gazette* within 14 days after making the determination or variation; and
  - (b) is laid before each House of the Parliament within 5 sitting days of that House after making the determination or variation.
- (4) Subsection (1) does not, by implication, limit the Minister's powers under section 486 of the *Telecommunications Act 1997* (which deals with public inquiries).

**16B Effect of the determination**

- (1) A determination under section 16 takes effect on the day specified in the determination (which may be before, on or after the day on which the determination is made).
- (2) A determination under section 16 applies for the period specified in the determination, which must not be longer than 3 years.
- (3) A variation or revocation of such a determination takes effect on the day specified for the purpose in the instrument of variation or revocation (which may be before, on or after the day on which the instrument is made).



## **Division 10—Digital data cost of digital data service providers**

### **17 Digital data cost of a digital data service provider for a claim period**

(1) A person's digital data cost for a claim period depends on which of the following paragraphs is applicable for that claim period:

(a) if:

- (i) the person is a digital data service provider for that claim period; and
- (ii) a determination is in force under subsection (4) in relation to that claim period;

the person's digital data cost for the claim period is worked out in accordance with the determination;

(b) if:

- (i) the person is a digital data service provider for that claim period; and
- (ii) no determination is in force under subsection (4) in relation to that claim period;

then:

- (iii) if the amount worked out using the formula in subsection (2) is greater than zero—the person's digital data cost for the claim period is equal to that amount; or
- (iv) if the amount worked out using the formula in subsection (2) is not greater than zero—the person's digital data cost for the claim period is zero.

Note: The digital data cost is needed for the purposes of making a claim for levy credit for a claim period (see section 20J).

(2) The formula referred to in paragraph (1)(b) is as follows:

Customer  
equipment costs – Customer charges + Supplementary amount

where:

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**customer charges** means the total amount payable by persons in the area referred to in subsection (3) by way of charges for the supply by the person during the claim period of customer equipment covered by paragraph (3)(a).

**customer equipment costs** means the person's customer equipment costs for the claim period.

**supplementary amount** means the amount (if any) specified in, or ascertained in accordance with, regulations made for the purposes of this definition.

- (3) For the purposes of this section, if a person is a digital data service provider for an area for a claim period, the person's **customer equipment costs** for the claim period is an amount equal to the sum of:
- (a) the total costs incurred by the person in acquiring customer equipment that:
    - (i) is covered by a determination that was in force under section 19A during the claim period in relation to charges imposed, or proposed to be imposed, by the person for the supply of customer equipment of a kind specified in regulations made for the purposes of paragraph 10F(1)(a) or 10G(1)(a); and
    - (ii) was supplied by the person during the claim period to persons in the area; and
  - (b) the total rebates that became payable during the claim period by the person, in accordance with regulations made for the purposes of subsection 10D(1), in respect of customer equipment acquired or hired by persons in the area.
- (4) The Minister may make a written determination specifying a method of ascertaining an amount for the purposes of paragraph (1)(a).
- (5) The amount worked out under such a determination may be zero.
- (6) A copy of a determination under subsection (4) must be published in the *Gazette*.

**17A Reduction of excessive costs**

- (1) The Minister may, by written instrument, formulate principles or rules that are to be applied in determining the extent (if any) to which costs are to be treated as excessive for the purposes of subsection 17(3).
- (2) For the purposes of the application of subsection 17(3) in relation to a particular claim period, if:
  - (a) a person has incurred costs of a kind mentioned in paragraph 17(3)(a); and
  - (b) the costs are treated, under the principles or rules in force under subsection (1), as excessive to any extent;the amount of the costs is to be reduced by the amount of the excess.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## Division 11—Regulation of universal service charges

### 18 Universal service charges

- (1) This section applies if a person is the universal service provider for a universal service area.
- (2) For the purposes of this Division, a *universal service charge* is a charge imposed, or proposed to be imposed, by the person for:
  - (a) the supply of standard telephone services to persons in the area; or
  - (b) calls made from payphones in the area; or
  - (c) the supply of prescribed carriage services to persons in the area.

### 18A Determination subjecting universal service charges to price control arrangements

- (1) The Minister may, by notice published in the *Gazette*, determine that specified universal service charges are subject to price control arrangements under this Division.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### 18B Price control determinations

- (1) This section applies if a determination is in force under section 18A in relation to a particular universal service charge.
- (2) The Minister may make a written determination setting out:
  - (a) price-cap arrangements and other price control arrangements that are to apply in relation to the charge; or
  - (b) principles or rules in accordance with which the universal service provider may impose or alter the charge;or both.
- (3) A determination under subsection (2) has effect accordingly and takes effect on the day specified in the determination which must

be on or after notice of the determination is published in the *Gazette*.

- (4) A determination under subsection (2) may make different provision with respect to different customers. This section does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **18C Content of price control determinations**

- (1) A determination under section 18B relating to a universal service charge may:
  - (a) prohibit the charge from being imposed or altered without the Minister's consent; or
  - (b) prohibit the charge from being imposed or altered without the ACCC's consent; or
  - (c) prohibit the charge from being imposed or altered without prior notice being given to the Minister; or
  - (d) prohibit the charge from being imposed or altered without prior notice being given to the ACCC; or
  - (e) empower the Minister to direct the ACCC to give the Minister such reports and advice as the Minister requires for the purposes of assisting the Minister in deciding whether to give a consent in accordance with the determination.
- (2) Subsection (1) does not, by implication, limit section 18B.

### **18D Price control determinations subject to determinations under Part 9**

- (1) This section applies if a determination under subsection 154(1) or 157(1) is in force in relation to a charge imposed, or proposed to be imposed, by Telstra.
- (2) A determination under this Division is of no effect so far as it relates to that charge.

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**Division 11** Regulation of universal service charges

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**18E Compliance with price control determinations**

A universal service provider must comply with a determination in force under this Division.

## **Division 12—Regulation of digital data service charges**

### **19 Digital data service charges**

- (1) For the purposes of this Division, if a person is a general digital data service provider for a particular area, a *digital data service charge* is a charge imposed, or proposed to be imposed, by the person for the supply of general digital data services to persons in the area.
- (2) For the purposes of this Division, if a person is a special digital data service provider for a particular area, a *digital data service charge* is a charge imposed, or proposed to be imposed, by the person for the supply of special digital data services to persons in the area.

### **19A Determination subjecting digital data service charges to price control arrangements**

- (1) The Minister may, by notice published in the *Gazette*, determine that specified digital data service charges are subject to price control arrangements under this Division.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **19B Price control determinations**

- (1) This section applies if a determination is in force under section 19A in relation to a particular digital data service charge.
- (2) The Minister may make a written determination setting out:
  - (a) price-cap arrangements and other price control arrangements that are to apply in relation to the charge; or
  - (b) principles or rules in accordance with which the digital data service provider may impose or alter the charge;or both.
- (3) A determination under subsection (2) has effect accordingly and takes effect on the day specified in the determination which must

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be on or after notice of the determination is published in the *Gazette*.

- (4) A determination under subsection (2) may make different provision with respect to different customers. This section does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**19C Content of price control determinations**

- (1) A determination under section 19B relating to a digital data service charge may:
  - (a) prohibit the charge from being imposed or altered without the Minister's consent; or
  - (b) prohibit the charge from being imposed or altered without the ACCC's consent; or
  - (c) prohibit the charge from being imposed or altered without prior notice being given to the Minister; or
  - (d) prohibit the charge from being imposed or altered without prior notice being given to the ACCC; or
  - (e) empower the Minister to direct the ACCC to give the Minister such reports and advice as the Minister requires for the purposes of assisting the Minister in deciding whether to give a consent in accordance with the determination.
- (2) Subsection (1) does not, by implication, limit section 19B.

**19D Price control determinations subject to determinations under Part 9**

- (1) This section applies if a determination under subsection 154(1) or 157(1) is in force in relation to a charge imposed, or proposed to be imposed, by Telstra.
- (2) A determination under this Division is of no effect so far as it relates to that charge.



**19E Compliance with price control determinations**

A digital data service provider must comply with a determination in force under this Division.

## **Division 13—Assessment, collection, recovery and distribution of levy**

### **Subdivision A—Eligible revenue of participating persons**

#### **20 Participating person must lodge return of eligible revenue**

- (1) A participating person for an eligible revenue period must give the ACMA a written return of the person's eligible revenue for that period.
- (2) The return must be:
  - (a) given to the ACMA within the period specified in writing by the ACMA for providing returns; and
  - (b) in a form approved in writing by the ACMA.The approved form may require verification, by a statutory declaration, of statements made in the return.
- (3) The return must set out:
  - (a) the eligible revenue for the eligible revenue period of the participating person; and
  - (b) details of how the eligible revenue was worked out; and
  - (c) such other information (if any) as the approved form of return requires.

Note: It is an offence to make a false or misleading statement in connection with the operation of this Act (see Part 7.4 of the *Criminal Code*).

#### **20A Who is a *participating person*?**

- (1) For the purposes of this Act, a person is a *participating person* for an eligible revenue period if:
  - (a) the person was a carrier at any time during the eligible revenue period; or
  - (b) the Minister makes a written determination that carriage service providers are participating persons for the eligible revenue period and the person was a carriage service provider at any time during the eligible revenue period.

- (2) However, a person is not a *participating person* for an eligible revenue period if:
- (a) the person's gross telecommunications revenue for the eligible revenue period is less than the amount determined in writing by the Minister for the purposes of this paragraph; or
  - (b) the person is of a kind, determined in writing by the Minister for the purposes of this paragraph, to be exempt from this section.
- (3) A determination made for the purposes of subsection (1), or paragraph (2)(a) or (b), is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) In this section:
- gross telecommunications revenue* for an eligible revenue period has the meaning given by the determination made for the purposes of paragraph (2)(a).

#### **20B What is *eligible revenue*?**

- (1) For the purposes of this Part, a participating person's *eligible revenue* for an eligible revenue period is the amount that is taken to be the person's eligible revenue for that period in accordance with a determination in writing made by the ACMA for the purposes of this subsection.
- (2) To avoid doubt, the determination may, in providing the amount that is taken to be a person's eligible revenue, refer to revenue of other persons.
- (3) The ACMA is, immediately after the commencement of Schedule 1 to the *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000*, taken to have made a determination under subsection (1) in the same terms as the regulations that were referred to in section 17 of this Act, and in force, immediately before that commencement.
- (4) A determination under this section, other than a determination taken to have been made because of subsection (3), is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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**20C What is an *eligible revenue period*?**

- (1) For the purposes of this Act, an *eligible revenue period* is:
  - (a) the 1999-2000 financial year and each later financial year; or
  - (b) if the Minister determines in writing another period—that other period.
- (2) If the Minister determines another period, the Minister may, in the determination, modify the way in which this Part applies to participating persons. The modifications may include additions, omissions and substitutions.
- (3) A determination under paragraph (1)(b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**20D Audit report of eligible revenue return**

- (1) An eligible revenue return given to the ACMA under section 20 must be accompanied by a report of an approved auditor that:
  - (a) is in a form approved in writing by the ACMA; and
  - (b) states that the auditor has audited the return; and
  - (c) contains a determination, in the terms specified in the form, of the auditor's opinion; and
  - (d) states that the auditor has been given sufficient information and assistance in order to audit the return; and
  - (e) includes all other statements and information required by the form to be included.
- (2) However, the Minister may, by making a written determination, modify the requirements in subsection (1), including by omitting, adding or substituting requirements.
- (3) This section does not apply to a person if the ACMA gives written notice to the person to that effect.
- (4) A copy of a determination under subsection (2) must be published in the *Gazette*.

### **20E ACMA may inquire into correctness of return**

The ACMA may make whatever inquiries it thinks necessary or desirable in order to determine whether or not a participating person's eligible revenue return for an eligible revenue period correctly states the person's eligible revenue for that period.

### **20F ACMA to assess eligible revenue**

- (1) The ACMA must make a written assessment of each participating person's eligible revenue for an eligible revenue period.

Note: The assessment may be included in the same document as any other assessment the ACMA makes under this Part (see section 20Y).

- (2) A person's eligible revenue:
  - (a) must be assessed as zero if the person's eligible revenue is less than the amount (the *threshold amount*) determined in writing by the Minister for the purposes of this subsection; or
  - (b) in any other case—must be reduced by the threshold amount.
- (3) Subject to section 20G and subsection (2), the assessment must be based on:
  - (a) the person's eligible revenue return; and
  - (b) the information and documents obtained by the ACMA because of its inquiries into the correctness of the return; and
  - (c) any other information or documents that the ACMA has and that it thinks relevant to making the assessment.
- (4) A determination made for the purposes of subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The ACMA must give a copy of an assessment of a person's eligible revenue to the person concerned.

### **20G Assessment based on estimate of eligible revenue**

- (1) If a participating person fails to give the ACMA an eligible revenue return for an eligible revenue period, the ACMA may:
  - (a) estimate the person's eligible revenue for that period; and

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- (b) make a written assessment under section 20F of the person's eligible revenue for that period based on that estimate (but taking into account subsection 20F(2)).
- (2) The ACMA must give at least 14 days' notice to the person of the ACMA's proposal to make the assessment based on the estimate, and of the amount of eligible return proposed to be assessed. The notice must be in writing.
- (3) The ACMA must not make an assessment based on an estimate after receiving an eligible revenue return for the period from the person concerned.
- (4) However, if the ACMA has made an assessment based on the estimate, the ACMA is not required to change it if an eligible revenue return is later given to the ACMA.

**20H Levy contribution factor**

- (1) After the ACMA has assessed the eligible revenue of participating persons for an eligible revenue period, the ACMA must work out a levy contribution factor for the period for each of those persons.

Note: The levy contribution factor is used to work out the levy debit of a participating person. See section 20R.

- (2) The *levy contribution factor* for an eligible revenue period is the amount worked out using the following formula:

$$\frac{\text{Individual eligible revenue}}{\text{Total eligible revenue}}$$

where:

*individual eligible revenue* means the assessed eligible revenue of the participating person for the eligible revenue period.

*total eligible revenue* means the total assessed eligible revenue for the eligible revenue period of all the participating persons for the period.

## **Subdivision B—Levy credits**

### **20J Claims for levy credit**

- (1) Within the period of 45 days after the end of a claim period, or such other period as is determined in writing by the Minister, a carrier or carriage service provider who is a:
  - (a) universal service provider; or
  - (b) a digital data service provider;for the claim period may give to the ACMA a claim for a levy credit for that period.
- (2) A person's *levy credit* for a claim period is the total of:
  - (a) all amounts of universal service subsidy to which the person is entitled for the period; and
  - (b) the person's digital data cost for the period.
- (3) A claim must be in a form approved in writing by the ACMA, and must include:
  - (a) in the case of a universal service provider—details of:
    - (i) the provider's entitlement to universal service subsidy for the claim period; and
    - (ii) how that entitlement has been worked out; and
  - (b) in the case of a digital data service provider—details of:
    - (i) the person's digital data cost for the claim period; and
    - (ii) how that amount has been worked out.The claim must include such other information (if any) as is required by the approved form.
- (4) The approved form may require verification, by a statutory declaration, of statements in the claim.
- (5) A copy of a determination made under subsection (1) must be published in the *Gazette*.

Note: It is an offence to make a false or misleading statement in connection with the operation of this Act (see Part 7.4 of the *Criminal Code*).

### **20K Audit report of claim**

- (1) A claim must be accompanied by a report of an approved auditor that:
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- (a) is in a form approved in writing by the ACMA; and
  - (b) states that the auditor has audited the claim; and
  - (c) contains a determination, in the terms specified in the form, of the auditor's opinion; and
  - (d) states that the auditor has been given sufficient information and assistance in order to audit the claim; and
  - (e) includes all other statements and information required by the form to be included.
- (2) However, the Minister may, by making a written determination, modify the requirements in subsection (1), including by omitting, adding or substituting requirements.
- (3) This section does not apply to a person if the ACMA gives written notice to the person to that effect.
- (4) A copy of a determination under subsection (2) must be published in the *Gazette*.

**20L ACMA to publish claims or a summary of claims**

- (1) Within 14 days after the end of the period for making claims for levy credit for a claim period, the ACMA must publish on the Internet or by any other means that the ACMA considers appropriate:
- (a) a copy of each claim made under section 20J in respect of the claim period; or
  - (b) a summary of all the claims made under that section in respect of the claim period.
- (2) In this section:

*claim* includes a variation of a claim.

**20M ACMA may inquire into correctness of claim**

The ACMA may make whatever inquiries it thinks necessary or desirable in order to determine:

- (a) whether or not a claim by a universal service provider for a levy credit for a claim period correctly states the provider's entitlement to universal service subsidy for the period; or



- (b) whether or not a claim by a digital data service provider for a levy credit for a claim period correctly states the amount of the digital data cost of the provider for the period.

### **20N ACMA to assess levy credit**

- (1) The ACMA must make a written assessment, in respect of each person who submits a claim for levy credit for a claim period in accordance with section 20J, of the person's levy credit for that period.

Note: The assessment may be included in the same document as any other assessment the ACMA makes under this Part (see section 20Y).

- (2) The assessment must set out:
  - (a) if the person is a universal service provider for the claim period—the universal service subsidy to which the person is entitled for that period; and
  - (b) if the person is a digital data service provider for the claim period—the person's digital data cost for that period.
- (3) The assessment must be based on:
  - (a) the claim lodged by the person; and
  - (b) the information and documents obtained by the ACMA because of its inquiries into the correctness of the claim; and
  - (c) any other information or documents that the ACMA has and that it thinks relevant to making the assessment.
- (4) The ACMA must give a copy of the assessment to the person concerned.

### **20P Principles for assessing and adjusting claims**

- (1) The Minister may determine in writing principles that are to be applied in assessing (including adjusting) claims for a levy credit. The principles apply from the date specified in the determination.
- (2) Before making the determination, the Minister must invite all affected carriers and carrier service providers to make submissions within a specified period to the Minister about the proposed principles. The period specified must be reasonable.

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- (3) The ACMA must apply the principles (if any) made by the Minister under this section in making assessments under this Part.
- (4) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Subdivision C—Entitlement to levy distributions and liability for levy**

**20Q No levy payable unless at least one claim for a levy credit is made**

If no claim for a levy credit for a claim period has been made under section 20J within the period for making such claims, no person is liable to pay an amount of levy in respect of that period.

**20R Levy debit of a participating person**

- (1) For each claim period, the ACMA must work out a levy debit for each participating person for the last eligible revenue period that ended before the start of the claim period.
- (2) The *levy debit* is the amount worked out using the formula:  
$$\text{Levy contribution factor} \times \text{Total levy credits}$$
where:  
*levy contribution factor* means the person's levy contribution factor for that eligible revenue period worked out under section 20H.  
*total levy credits* means the total of all the levy credits to which persons are entitled for that claim period.
- (3) The Minister may, by written determination, modify the formula in subsection (2).  
Note: The Minister may, for example, increase the amount of total levy credits to take account of the possibility of defaults in the payment of levy for a claim period.
- (4) A determination under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **20S Levy debit balance**

If a person's levy debit (if any) under section 20R for a claim period exceeds the person's assessed levy credit (if any) under section 20N for the claim period, then:

- (a) the person has a levy debit balance for the period; and
- (b) the amount of that balance is the amount of the excess.

### **20T Levy credit balance**

If a person's assessed levy credit (if any) under section 20N for a claim period exceeds the person's levy debit under subsection 20R for the claim period, then:

- (a) the person has a levy credit balance for the period; and
- (b) the amount of that balance is the amount of the excess.

### **20U ACMA to make written assessment**

- (1) For each claim period, the ACMA must make a written assessment setting out:
  - (a) the matters in subsections (2), (3) and (4); and
  - (b) the total of all levy credits to which persons are entitled for the claim period.
- (2) For each participating person for the last eligible revenue period that ended before the start of the claim period, the assessment must set out:
  - (a) the person's levy debit under section 20R for the claim period; and
  - (b) the person's levy debit balance (if any) under section 20S for the claim period; and
  - (c) if the person has a levy debit balance—the levy payable by the person on that balance.

Note: Section 20Z sets out when the levy is payable.

- (3) For each universal service provider for the claim period, the assessment must set out:
  - (a) the universal service subsidy to which the ACMA assesses the provider is entitled for the claim period; and

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- (b) the provider's levy credit balance (if any) under section 20T for the claim period; and
  - (c) if the provider has a levy credit balance—the amount payable to the provider under section 21C for the claim period.
- (4) For each digital data service provider for the claim period, the assessment must set out:
  - (a) the provider's digital data cost for the claim period; and
  - (b) the provider's levy credit balance (if any) under section 20T for the claim period; and
  - (c) if the provider has a levy credit balance—the amount payable to the provider under section 21C for the claim period.
- (5) The assessment must be made on the basis of:
  - (a) the assessments under section 20N of levy credits for the claim period; and
  - (b) the assessments under section 20F of eligible revenue for each participating person for the last eligible revenue period that ended before the start of the claim period; and
  - (c) any other information or documents that the ACMA has and that it thinks relevant to making the assessment.
- (6) The ACMA must act expeditiously in preparing its assessment. However, a failure to comply with this subsection does not affect the validity of the assessment.

**20V Publication of assessment**

As soon as practicable after making an assessment under section 20U for a claim period, the ACMA must:

- (a) cause a copy of the assessment to be published in the *Gazette*; and
- (b) give a copy of the assessment to each of the persons referred to in subsections 20U(2), (3) and (4).

**20W Variation of assessments**

- (1) The ACMA may vary an assessment made under this Part by making such alterations and additions as it thinks necessary, even if levy credits or levy has been paid in respect of an assessment.

- (2) Unless the contrary intention appears, an amended assessment is taken, for the purposes of this Part, to be an assessment under section 20F, 20N or 20U (as the case may be).

#### **20X ACMA may accept statements**

Despite anything in this Part, the ACMA may, for the purposes of making an assessment under this Part, partly or completely accept a statement in a claim for levy credit or an eligible revenue return.

#### **20Y Multiple assessments in the same document**

The ACMA may include in the same document more than one assessment made under this Part.

#### **Subdivision D—Collection and recovery of levy**

#### **20Z When levy payable**

- (1) Levy assessed under section 20U becomes due and payable on:
- (a) the 28th day; or
  - (b) such later day as is determined in writing by the ACMA; after the ACMA gives a copy of the assessment to the participating person in respect of which the levy has been assessed.
- (2) A copy of a determination under paragraph (1)(b) must be published in the *Gazette*.

#### **20ZA Levy a debt due to the Commonwealth**

Levy may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

#### **20ZB Validity of assessment**

The validity of an assessment under this Division is not affected by a contravention of this Act.

#### **20ZC Evidence of assessment**

- (1) This section applies if:

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- (a) a copy of the *Gazette* is produced that sets out what purports to be a copy of an assessment made under section 20U; or
  - (b) a document that purports to be such a copy is produced.
- (2) Except so far as the contrary is established, it must be presumed:
- (a) that the copy of the *Gazette* sets out, or that the document is, as the case may be, a copy of such an 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.

**20ZD Onus of establishing incorrectness of assessment**

In any proceeding, the onus of establishing that an assessment under section 20U is incorrect is on the party making that assertion.

**20ZE Refund of overpayment of levy**

If there is an overpayment of levy, the overpayment is to be refunded.

**20ZF Cancellation of certain exemptions from levy**

- (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 levy.
- (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 levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*.

**20ZG Commonwealth not liable to levy**

- (1) The Commonwealth is not liable to pay levy.
- (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.

**20ZH Performance bonds and guarantees**

- (1) The Minister may, by written determination, require a person who has a liability to pay levy, or an anticipated liability to pay levy, to obtain, in accordance with the determination, performance bonds or guarantees in respect of the person's liability or anticipated liability.
- (2) The person must comply with the determination.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) In this section:  
*performance bond* has the meaning given by the determination.

## Division 14—The Universal Service Account and distributions of levy

### 21 Universal Service Account

- (1) The Universal Service Account that was, immediately before the commencement of this section, in existence because of section 82 of the unamended Act continues in existence under and subject to the provisions of this Act.
- (2) The Universal Service Account is a Special Account within the meaning of the FMA Act.
- (3) The Universal Service Account is to be administered by the ACMA.
- (4) If there is a change to who is to administer the Universal Service Account in accordance with subsection (3), the Minister may determine in writing arrangements to deal with any issues of a transitional nature that may arise as a result of the change.
- (5) A copy of a determination under subsection (4) must be published in the *Gazette*.
- (6) In this section:

**FMA Act** means the *Financial Management and Accountability Act 1997*.

**unamended Act** means this Act as in force immediately before the commencement of Schedule 1 to the *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000*.

### 21A Credits to Universal Service Account

There must be credited to the Universal Service Account:

- (a) amounts equal to amounts of levy paid from time to time under this Part; and
- (c) amounts equal to amounts that were overpaid under section 21C and have been recovered; and



- (d) amounts equal to amounts of penalty paid from time to time under section 23D.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

### **21B Purposes of Universal Service Account**

- (1) Amounts standing to the credit of the Universal Service Account may be expended:
- (a) in payment of any amounts payable under section 21C; and
  - (b) in payment of any refunds under section 20ZE; and
  - (c) in refunding any amounts credited to the Universal Service Account in error; and
  - (d) in making distributions in accordance with section 21D; and
  - (e) in reimbursing the Commonwealth for:
    - (i) the costs or expenses incurred by the Commonwealth or the ACMA in administering the *Telecommunications (Universal Service Levy) Act 1997* and this Division during any period; and
    - (ii) without limiting subparagraph (i), costs or expenses incurred in connection with recovering levy; and
    - (iii) costs incurred by the Commonwealth during the period in collecting, compiling, analysing and publishing information about the operation of that Act and this Division.
- (2) For the purposes of paragraph (1)(e), the Minister administering the *Financial Management and Accountability Act 1997* may, from time to time, determine the amount of a reimbursement to be made to the Commonwealth in relation to a period on such basis as he or she thinks appropriate.
- (3) Despite subsection (2), the total of the amounts reimbursed under paragraph (1)(e) must not exceed the total of the amounts credited to the Universal Service Account under paragraph 21A(b) (including any interest earned on those amounts).

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**21C Levy distribution**

- (1) If a person has a levy credit balance for a claim period because of section 20T, an amount equal to the amount of that balance is payable to the person by the Commonwealth. The Universal Service Account is debited accordingly.
- (2) No amount is payable under subsection (1) for a claim period unless and until the ACMA has made an assessment under section 20U for that claim period.
- (3) If the total of the amounts payable to persons under subsection (1) is more than the balance of the Universal Service Account, after paying any refunds that are due under section 20ZE, the ACMA must:
  - (a) work out the amount payable to each person as a proportion of the total amounts payable; and
  - (b) ensure that any payments by the Commonwealth in respect of amounts standing to the credit of the Universal Service Account are made in accordance with those proportions (rounding amounts to whole dollars as the ACMA considers appropriate).
- (4) However, if the Minister determines in writing a different method for making payments by the Commonwealth in respect of amounts standing to the credit of the Universal Service Account than the method provided in subsection (3), the ACMA must act in accordance with that determination.
- (5) A determination under subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) A person's levy credit balance for the claim period is reduced by the amount (worked out under this section) that is paid to the person.
- (7) This section continues to apply until each person's levy credit balance for the period is reduced to nil.

**21D Distribution of remaining balance of the Universal Service Account**

- (1) The ACMA may distribute to persons who are or were participating persons any balance standing to the credit of the Universal Service Account that remains after all payments payable by the Commonwealth in respect of debits from the Account for a claim period have been paid.
- (2) The Minister may determine in writing rules for making those distributions. The ACMA must comply with those rules.
- (3) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**21E Recovery of overpayments**

- (1) For the purposes of this section, an ***overpaid amount*** is so much of an amount paid under section 21C as represents an overpayment.
- (2) An overpaid amount is a debt due to the Commonwealth.
- (3) An overpaid amount may be recovered by the Commonwealth by action in a court of competent jurisdiction.
- (4) If a person is liable to pay an overpaid amount, the overpaid amount may be deducted from one or more other amounts that are payable to the person under this Part, and if it is so deducted, the other amounts are taken to have been paid in full to the person.

## **Division 15—Disclosure of information**

### **22 Public may request information**

- (1) A person may request the ACMA to make available to the person:
  - (a) specified information or documents on the basis of which the ACMA may make, or has made, its assessment under section 20U for a claim period; or
  - (b) specified information about how the ACMA may work out, or has worked out, the matters that such an assessment will set out, or sets out, because of subsection 20U(2), (3) or (4).
- (2) The ACMA must comply with a request as provided in section 22B. This subsection has effect subject to subsection (3).
- (3) The ACMA must not make available under this section:
  - (a) information (other than information prescribed for the purposes of this paragraph):
    - (i) that was obtained from, or relates to, a universal service provider, or a digital data service provider, for a claim period; and
    - (ii) the making available of which under this section can reasonably be expected to cause substantial damage to that provider; or
  - (b) information prescribed for the purposes of this paragraph; or
  - (c) so much of a document as sets out information of a kind referred to in paragraph (a) or (b).

### **22A Request for information that is unavailable under section 22**

- (1) For the purposes of this section, each of the following persons is an *eligible person*:
  - (a) a person who is a universal service provider for a claim period;
  - (b) a person who is a digital data service provider for a claim period;
  - (c) a person who is a participating person for a claim period.

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- (2) An eligible person may request the ACMA to make available to it specified information or documents of a kind referred to in subsection 22(1) that subsection 22(3) prevents the ACMA from making available to the eligible person under section 22.
- (3) The ACMA must comply with a request as provided for in section 22B. This section has effect subject to subsection (4).
- (4) The ACMA must not, under this section, make available to an eligible person (the *first eligible person*) information, or so much of a document as sets out information:
- (a) that was obtained from, or relates to, another eligible person; and
  - (b) the making available of which to the first eligible person can reasonably be expected to cause substantial damage to the other eligible person's commercial or other interests;
- unless the ACMA is satisfied:
- (c) that the information could be obtained by the first eligible person lawfully, and without the other eligible person's consent, from a source other than the ACMA; or
  - (d) in the case of a request under paragraph 22(1)(a) or (b)—that:
    - (i) the first eligible person has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, the ACMA made the assessment concerned; and
    - (ii) having regard to the policy principles in section 8A, the first eligible person's interest in being able to examine that basis and those methods in order to see how its liability to pay levy, or its entitlement to a payment under section 21C, as the case requires, has been assessed outweighs the other eligible person's interest in avoiding the damage referred to in paragraph (b); or
  - (e) in the case of a request under paragraph 22(1)(c)—that:
    - (i) the first eligible person has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, the ACMA made the decision to make the determination concerned; and
    - (ii) having regard to the policy principles in section 8A, the first eligible person's interest in being able to examine that decision outweighs the other eligible person's
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interest in avoiding the damage referred to in paragraph (b).

- (5) In determining the question referred to in paragraph (4)(b), the ACMA must have regard to:
- (a) whether any undertakings have been given under subsection (6) and, if so, the nature of those undertakings; and
  - (b) such other matters (if any) as the ACMA considers relevant.
- (6) For the purposes of this section, a person may give the ACMA a written undertaking that, if specified information, or the whole or a part of a specified document, is made available to the person under this section, the person will not disclose the information, or the contents of the document, except to one or more specified persons.
- Note: Information, documents or persons may be specified by name, by inclusion in a class or in any other way.
- (7) If a person gives an undertaking under subsection (6), the person must comply with the undertaking.

**22B How the ACMA is to comply with a request**

- (1) The ACMA may comply with a request by a person under section 22 or 22A by:
- (a) communicating information to the person in writing or in some other form; or
  - (b) making documents available for inspection by the person or by an employee, agent or professional adviser of the person; or
  - (c) giving to the person copies of, extracts from, or summaries of, documents.
- (2) In this section:

*document* includes a part of a document.

**22C Minister's information-gathering powers**

- (1) This section applies if the Minister has reason to believe that a carrier or carriage service provider has information that is relevant

to the exercise of the Minister's powers, or performance of the Minister's functions, under this Part.

- (2) The Minister may give written notice to the carrier or provider requiring the carrier or provider to give the information to the Minister, within the period and in the manner specified in the notice.
- (3) The carrier or provider must comply with the notice.
- (4) A notice under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**22D Minister may modify way in which this Division applies**

- (1) The Minister may determine in writing that this Division applies to information subject to such modifications as are specified in the determination.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) In this section:  
*modifications* includes omissions, additions and substitutions.

## Division 16—Other matters

### 23 ACMA must maintain Register/s

- (1) The ACMA is to maintain a Register or Registers in which the ACMA includes a copy of each of the following documents (indicating whether the document is currently in force):
  - (a) a determination made under section 11C, (contestable service obligations);
  - (b) a determination made under section 14 (alternative arrangements for fulfilling the universal service obligation);
  - (c) an approved policy statement for a primary universal service provider or a competing universal service provider;
  - (d) an approved standard marketing plan for a primary universal service provider or a competing universal service provider;
  - (e) an approved ATS marketing plan for a primary universal service provider or a competing universal service provider;
  - (f) an approved digital data service plan for a digital data service provider.
- (2) The Register or Registers may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005*:
  - (a) inspect the Register or Registers; and
  - (b) make a copy of, or take extracts from, the Register or Registers.
- (4) For the purposes of this section, if a Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACMA gives the person a printout of some or all of the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACMA may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.



### **23A Delegation to the ACMA**

- (1) The Minister may delegate one or more of his or her powers under this Part to an SES employee, or an acting SES employee, of the ACMA. The delegation must be in writing.
- (2) The delegation may be made subject to specified conditions.
- (3) A notice of a delegation made under this section must be published in the *Gazette*, including details of the delegation.

### **23B Effect of failure to publish notices in the *Gazette***

A failure by the Minister or the ACMA to publish a notice in the *Gazette* as required by a provision of this Act does not affect the validity of anything else done in accordance with this Act.

### **23C Offence of failing to lodge eligible revenue return**

- (1) A person is guilty of an offence if:
  - (a) the person is required under section 20 to give the ACMA an eligible revenue return for an eligible revenue period; and
  - (b) the person fails to do so; and
  - (c) the ACMA has not made an assessment under section 20U that includes an estimate of the person's eligible revenue for the eligible revenue period.

This is an offence of strict liability.

Maximum penalty: 50 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 3: The maximum penalty for a body corporate is 250 penalty units. See subsection 4B(3) of the *Crimes Act 1914*.

- (2) A person who is guilty of an offence under subsection (1) is guilty of a separate offence in respect of each day on which the failure continues (including the day of a conviction for the offence or any later day).

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- (3) Despite anything in section 583 of the *Telecommunications Act 1997*, that section does not apply to an offence under subsection (1).

**23D Penalty for late payment of levy**

- (1) If any amount of levy assessed under section 20U that is payable by a person remains unpaid after the day by which it must be paid, the person is liable to a penalty on the unpaid amount for each day until all of the levy has been paid.
- (2) The 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 penalty that a person is liable to pay under subsection (2).
- (4) The penalty for a day is due and payable to the ACMA at the end of that day and may be recovered by the ACMA, on the Commonwealth's behalf, as a debt due to the Commonwealth.
- (5) Amounts of penalty received are to be paid to the Commonwealth.
- (6) If the amount of the penalty is not an amount of whole dollars, the penalty is rounded to the nearest dollar (rounding 50 cents upwards).
- (7) As soon as practicable after a person fails to pay an amount of levy by the time by which it must be paid, the ACMA must, in writing, notify the person that the person is liable to a penalty under this section. However, a failure to do so does not affect the person's liability.
- (8) A determination made for the purposes of subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Part 3—The National Relay Service**

### **Division 1—Introduction**

#### **93 Simplified outline**

The following is a simplified outline of this Part:

- Provision is made for the National Relay Service (NRS).
- The NRS provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service.

#### **94 Definitions**

In this Part:

*levy quarter* means a quarter for which NRS levy is payable.

*National Relay Service* or *NRS* has the meaning given by subsection 95(1).

*NRS contract* means a contract under which the whole, or a part, of the National Relay Service is provided.

*NRS levy* means the levy payable in accordance with this Part.

*NRS provider* means a person who provides the whole, or a part, of the National Relay Service.

*NRS service plan* means a plan referred to in subsection 95(2).

*participating person* for a levy quarter has the meaning given by section 94A.

*quarter* means a period of 3 months ending on 30 September, 31 December, 31 March or 30 June.

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**taxpayer**, for a quarter, means a person who is liable to pay NRS levy for the quarter.

**94A Who is a *participating person*?**

- (1) For the purposes of this Part, a person is a ***participating person*** for a quarter if:
  - (a) the person was a carrier at any time during the quarter; or
  - (b) the Minister makes a written determination that carriage service providers are participating persons for the quarter and the person was a carriage service provider at any time during the quarter.
- (2) However, a person is not a ***participating person*** for a quarter if:
  - (a) the person's gross telecommunications revenue for the eligible revenue period to which the most recent eligible revenue assessment relates is less than the amount determined in writing by the Minister for the purposes of this paragraph; or
  - (b) the person is of a kind, determined in writing by the Minister for the purposes of this paragraph, to be exempt from this section.
- (3) A determination made for the purposes of paragraph (1)(b), or paragraph (2)(a) or (b), is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) In this section:

***gross telecommunications revenue*** for an eligible revenue period has the meaning given by the determination made for the purposes of paragraph (2)(a).

## **Division 2—The National Relay Service**

### **95 The National Relay Service (the NRS)**

- (1) A reference in this Part to the National Relay Service (or *NRS*) is a reference to a service that:
  - (a) provides persons who are deaf, or who have a hearing and/or speech impairment, with access to a standard telephone service on terms, and in circumstances, that are comparable to those on which other Australians have access to a standard telephone service; and
  - (b) either:
    - (i) is provided by a person under a contract with the Commonwealth; or
    - (ii) is provided by 2 or more persons under contracts with the Commonwealth (with each of the persons providing a part of the service).
- (2) Each NRS contract must provide for the relevant NRS provider to prepare service plans for so much of the NRS as is covered by the contract. The service plan must include at least the following matters:
  - (a) timetables for the supply of so much of the NRS as is covered by the contract;
  - (b) performance standards to be met by the NRS provider.
- (3) The Minister must arrange for each NRS service plan to be published in whatever manner the Minister considers appropriate.

### **96 Publication of costs of providing the NRS**

- (1) Before the start of each levy quarter, each NRS provider must give the Minister a written estimate of the total cost of the provider in providing the NRS (or part of the NRS) during the quarter. The estimate must be prepared in accordance with the relevant NRS contract. The Minister must cause to be published in the *Gazette* the total amount notified to the Minister under this subsection for the quarter.

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- (2) On or before the 21st day of the third month after the end of each levy quarter, each NRS provider must give the Minister a written statement of the total cost of the provider in providing the NRS (or part of the NRS) during the quarter. The statement must be prepared in accordance with the relevant NRS contract. The Minister must cause to be published in the *Gazette* the total amount notified to the Minister under this subsection for the quarter.

**97 ACMA reports and advice about NRS service plans**

- (1) The ACMA must monitor all significant matters relating to the performance by each NRS provider of the provider's obligations under an NRS service plan.
- (2) As soon as practicable after the end of each financial year, the ACMA must give a written report to the Minister about the performance by each NRS provider during the financial year of the provider's obligations under an NRS service plan.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (4) In addition to the report under subsection (2), the ACMA must give the Minister such reports or advice as the Minister requires in relation to the NRS service plan.
- (5) A reference in this section to a *financial year* is a reference to the 1999-2000 financial year or a later financial year.

## Division 3—The NRS levy

### 98 Levy quarters

NRS levy is payable for each of the quarters in a financial year, starting with the 1999-2000 financial year.

### 99 Persons liable to pay levy (taxpayers)

NRS levy for a levy quarter is payable by each person who:

- (a) is a participating person for the quarter; and
- (b) is covered by the most recent eligible revenue assessment made before the start of the quarter.

Note: The *most recent eligible revenue assessment* is defined in section 101C.

### 100 Amount of levy

- (1) The *total levy* for a quarter (the *current quarter*) is calculated as follows:
  - (a) the starting point is the estimated NRS cost for the current quarter (the *current estimate*);
  - (b) if there is a levy shortfall for the second last quarter before the current quarter, then that shortfall is added to the current estimate;
  - (c) if there is a levy surplus for the second last quarter before the current quarter, then that surplus is deducted from the current estimate.
- (2) Each taxpayer's NRS contribution amount for the current quarter is calculated as follows:

$$\text{Total levy} \times \frac{\text{Taxpayer's eligible revenue}}{\text{Total eligible revenue of all the taxpayers}}$$

Note: Levy is imposed on the NRS contribution amount by the *NRS Levy Imposition Act 1998*.

- (2A) The Minister may, by written determination, modify the formula in subsection (2).

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(2B) A determination under subsection (2A) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(3) In this section:

*actual NRS cost*, for a quarter, means the amount published for the quarter under subsection 96(2).

*eligible revenue*, for a taxpayer for a quarter, means the taxpayer's eligible revenue as shown in the most recent eligible revenue assessment made before the start of the quarter.

Note: The *most recent eligible revenue assessment* is defined in section 101C.

*estimated NRS cost*, for a quarter, means the amount published for the quarter under subsection 96(1).

*levy shortfall*, for a quarter, means the amount by which the estimated NRS cost for the quarter falls short of the actual NRS cost for the quarter.

*levy surplus*, for a quarter, means the amount by which the estimated NRS cost for the quarter exceeds the actual NRS cost for the quarter.

**100A Variation of taxpayer's NRS contribution amount**

- (1) The ACMA may vary a taxpayer's NRS contribution amount for a quarter by making such alterations and additions as it thinks necessary, even if NRS levy on the contribution amount has been paid.
- (2) If there has been an overpayment of NRS levy, the overpayment is to be refunded.

**101 Payment of levy**

- (1) NRS levy is payable to the ACMA on behalf of the Commonwealth.
- (2) A person who is liable to pay NRS levy for a quarter must pay it to the ACMA on or before the seventh day of the second month in the quarter.



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Section 101A

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- (3) Unpaid NRS levy may be recovered as a debt in a court of competent jurisdiction, by the ACMA acting on behalf of the Commonwealth.

**101A Penalty for late payment of levy**

- (1) If any amount of levy that a person is liable to pay under section 99 remains unpaid after the day by which it must be paid, the person is liable to a penalty on the unpaid amount for each day until all of the levy has been paid.
- (2) The 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 penalty that a person is liable to pay under subsection (2).
- (4) The penalty for a day is due and payable to the ACMA at the end of that day and may be recovered by the ACMA, on the Commonwealth's behalf, as a debt due to the Commonwealth.
- (5) Amounts of penalty received are to be paid to the Commonwealth.
- (6) If the amount of the penalty is not an amount of whole dollars, the penalty is rounded to the nearest dollar (rounding 50 cents upwards).
- (7) As soon as practicable after a person fails to pay an amount of levy by the time by which it must be paid, the ACMA must, in writing, notify the person that the person is liable to a penalty under this section. However, a failure to do so does not affect the person's liability.
- (8) A determination made for the purposes of subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**101B Performance bonds and guarantees**

- (1) The Minister may, by written determination, require a person who has a liability to pay levy, or an anticipated liability to pay levy, under section 99 to obtain, in accordance with the determination, performance bonds or guarantees in respect of the person's liability or anticipated liability.

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- (2) The person must comply with the determination.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) In this section:
  - performance bond* has the meaning given by the determination.

**101C Meaning of *most recent eligible revenue assessment***

In this Division:

*most recent eligible revenue assessment* means the assessment most recently made by the ACMA under one of the following sections:

- (a) section 193 of the *Telecommunications Act 1997* as in force immediately before the commencement of item 15 of Schedule 4 to the *Telecommunications Legislation Amendment Act 1999*;
- (b) section 64 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* as in force immediately before the commencement of Schedule 1 to the *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000*;
- (c) section 20F of this Act.

## **Division 4—The NRS Account**

### **102 The NRS Account**

- (1) There is continued in existence the NRS Account.

Note: The Account was established by subsection 5(3) of the *Financial Management Legislation Amendment Act 1999*.

- (2) The NRS Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.
- (3) The purpose of the NRS Account is to make payments to NRS providers under NRS contracts.
- (4) The following amounts must be credited to the NRS Account:
- (a) amounts of NRS levy that are paid to the Commonwealth;
  - (b) interest from the investment of an amount standing to the credit of the NRS Account.

## Part 4—Continued access to untimed local calls

### 103 Simplified outline

The following is a simplified outline of this Part:

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

### 104 Requirement to provide an untimed local call option

If a carriage service provider charges an eligible customer for eligible local calls made using a standard telephone service supplied to the customer, the provider must give the customer an untimed local call option.

Note 1: *Eligible customer* is defined by section 110.

Note 2: *Eligible local call* is defined by section 106.

Note 3: *Untimed local call option* is defined by section 105.

### 105 Untimed local call option

- (1) For the purposes of this Part, if a carriage service provider charges an eligible customer for eligible local calls made using a standard telephone service supplied to the customer, the provider gives the customer an untimed local call option if, and only if, the service is supplied to the customer on terms and conditions under which:
  - (a) the customer may choose, on connection of the service, to have the charges for eligible local calls that are made using the service worked out on an untimed basis; and
  - (b) if the customer chooses as mentioned in paragraph (a)—the carriage service provider must not work out the charges for such calls in any other way except with the customer's written consent; and
  - (c) if the customer:
    - (i) does not choose as mentioned in paragraph (a); or
    - (ii) consents to having the charges for such calls worked out otherwise than on an untimed basis;

the customer may later give the carriage service provider a written notice to the effect that the customer wishes the charges for such calls to be worked out on an untimed basis; and

- (d) if the customer gives the carriage service provider such a notice—the carriage service provider:
  - (i) must, in respect of the earliest practicable period beginning after it receives the notice, work out the charges for such calls on an untimed basis; and
  - (ii) must not, in respect of a period after the period referred to in subparagraph (i), work out the charges for such calls in any other way except with the customer's written consent.

Note 1: *Eligible customer* is defined by section 110.

Note 2: *Untimed basis* is defined by subsection (2).

- (2) For the purposes of this section, charges for eligible local calls are worked out on an untimed basis if, and only if, the charges for those calls are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.

### **106 Eligible local calls**

- (1) For the purposes of the application of this Part to a carriage service provider who charges for a call made using a standard telephone service supplied to an eligible customer in a particular standard zone, being an eligible customer who is a residential/charity customer, if the call:
  - (a) is made between points in the applicable zone in relation to the provider and in relation to the customer; and
  - (b) is either:
    - (i) of a kind that, immediately before 20 September 1996, a general carrier offered to supply, or supplied, on an untimed basis between points in that standard zone; or
    - (ii) made using a standard telephone service supplied to the customer in fulfilment of the universal service obligation;

the call is an *eligible local call* unless the call involves the use, by at least one party to the call, of a public mobile

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telecommunications service, or a satellite service, that is not supplied to that party in fulfilment of the universal service obligation.

Note 1: *Eligible customer* is defined by section 110.

Note 2: *Standard zone* is defined by section 108.

Note 3: *Applicable zone* is defined by section 109.

Note 4: *Untimed basis* is defined by subsection (3).

- (2) For the purposes of the application of this Part to a carriage service provider who charges for a call made using a standard telephone service supplied to an eligible customer in a particular standard zone, being an eligible customer who is not a residential/charity customer, if the call:
- (a) is a voice call or, if a voice call is not practical for a particular end-user with a disability, a call that is equivalent to a voice call; and
  - (b) is made between points in the applicable zone in relation to the provider and in relation to the customer; and
  - (c) is either:
    - (i) of a kind that, immediately before 20 September 1996, a general carrier offered to supply, or supplied, on an untimed basis between points in that standard zone; or
    - (ii) made using a standard telephone service supplied to the customer in fulfilment of the universal service obligation;

the call is an *eligible local call* unless the call involves the use, by at least one party to the call, of a public mobile telecommunications service, or a satellite service, that is not supplied to that party in fulfilment of the universal service obligation.

Note 1: *Eligible customer* is defined by section 110.

Note 2: *Standard zone* is defined by section 108.

Note 3: *Applicable zone* is defined by section 109.

Note 4: *Untimed basis* is defined by subsection (3).

- (3) For the purposes of this section, calls of a particular kind are supplied on an untimed basis if, and only if, the charges for the calls of that kind are worked out by reference to the number of

such calls made during a particular period, regardless of how long each call lasted.

(4) In this section:

**general carrier** means a person who held a general telecommunications licence under the *Telecommunications Act 1991* immediately before 20 September 1996.

**residential/charity customer** means:

- (a) a residential customer; or
- (b) a customer that is:
  - (i) a charitable body or organisation; or
  - (ii) a welfare body or organisation.

**satellite service** means a carriage service, where customer equipment used in connection with the supply of the service communicates directly with a satellite-based facility.

### **107 Benefits for customers outside standard zones**

- (1) For the purposes of this section, if a customer of a carriage service provider is in Australia, but is not in a standard zone, the customer is a **designated customer**.
- (2) The regulations may formulate a scheme to give benefits to designated customers, where the benefits:
  - (a) relate to charges for calls made using a standard telephone service supplied to the customer; and
  - (b) are comparable to the benefits given to eligible customers under section 104 (which deals with the requirement to provide an untimed local call option).
- (3) For the purposes of subsection (2), a comparison of benefits is to have regard to (among other things), the ability to make calls to essential business and community services on an untimed basis.
- (4) Regulations made for the purposes of subsection (2) may impose requirements on carriage service providers.
- (5) A carriage service provider must comply with any applicable requirements imposed by regulations made for the purposes of subsection (2).

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- (6) The Minister must take all reasonable steps to ensure that, at all times after the commencement of this section, regulations are in force for the purposes of subsection (2).
- (6A) However, subsection (6) does not apply if obligations arising under one or any combination of the following:
- (a) one or more agreements;
  - (b) this Act or the *Telecommunications Act 1997*;
  - (c) one or more disallowable instruments under this Act (other than regulations under subsection (2)) or the *Telecommunications Act 1997*;
- have the effect of providing a scheme to give benefits of a kind mentioned in subsection (2).
- (7) For the purposes of this section, charges for particular calls are worked out on an untimed basis if, and only if, the charges for those calls are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.

**108 Standard zones**

- (1) For the purposes of this Part, if:
- (a) immediately before 1 July 1991, Telecom supplied, or offered to supply, to persons within a particular area within Australia, a carriage service that was, immediately before that date, a standard telephone service (within the meaning of the *Telecommunications Act 1991*); and
  - (b) under the terms and conditions on which Telecom supplied, or would supply, that service to persons in that area, the charges for calls of a particular kind between points within that area made using the service were, or would be, worked out on an untimed basis;

that area is a *standard zone*.

Note: *Untimed basis* is defined by subsection (2).

- (2) For the purposes of this section, charges for calls of a particular kind are worked out on an untimed basis if, and only if, the charges for the calls of that kind are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.



(3) In this section:

*Telecom* means the Australian Telecommunications Corporation, as it existed immediately before 1 July 1991.

### **109 Applicable zones**

- (1) A reference in this Part to the *applicable zone* in relation to a carriage service provider and in relation to an eligible customer, being a customer in a particular standard zone, is a reference to whichever of the following is applicable:
- (a) if:
    - (i) the provider is a universal service provider for the customer; and
    - (ii) there is in force a written notice given to the ACMA by the provider nominating a specified area as a nominated area; and
    - (iii) the customer is in the nominated area and chooses to adopt that nominated area as the applicable zone in relation to the provider and in relation to the customer;  
the nominated area;
  - (b) if:
    - (i) the provider is a universal service provider for the customer; and
    - (ii) paragraph (a) does not apply;  
the standard zone;
  - (c) if:
    - (i) the provider is not a universal service provider for the customer; and
    - (ii) there is in force a written notice given to the ACMA by the provider nominating a specified area as a nominated area; and
    - (iii) the customer is in the nominated area;  
the nominated area;
  - (d) if:
    - (i) the provider is not a universal service provider for the customer; and
    - (ii) paragraph (c) does not apply;  
the standard zone.
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- (2) To avoid doubt, an area nominated under subsection (1) may overlap a standard zone.
- (3) For the purposes of this section, if:
  - (a) a customer of a carriage service provider is in a particular area; and
  - (b) the provider is a universal service provider for that area; the provider is a universal service provider for the customer.

**110 Eligible customer**

For the purposes of this Part, if a customer of a carriage service provider is in a standard zone, the customer is an *eligible customer*.

**111 Points**

For the purposes of the application of this Part to a mobile-type carriage service, a *point* includes a mobile or potentially mobile point.

**112 Application of this Part**

This Part does not apply in relation to a contract for the supply of a standard telephone service if:

- (a) the contract was entered into before the commencement of section 231 of the *Telecommunications Act 1997*; and
- (b) the contract would not have complied with Part 8 of that Act if the contract had been entered into immediately after the commencement of that section.

## **Part 5—Customer service guarantee**

### **113 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA may make performance standards to be complied with by carriage service providers in relation to customer service.
- If a carriage service provider contravenes a performance standard, the carriage service provider is liable to pay damages to the customer for the contravention.
- The amount of damages payable for a particular contravention is equal to the relevant amount specified in the scale of damages determined by the ACMA.
- The Telecommunications Industry Ombudsman may issue an evidentiary certificate in relation to a contravention of a performance standard.

### **114 Interpretation**

(1) In this Part:

*customer* includes prospective customer.

*damages* includes punitive damages.

(2) In determining the meaning that an expression has when used in a provision of the *Telecommunications Act 1997*, or in a provision of this Act other than this Part, subsection (1) is to be disregarded.

### **115 Performance standards**

(1) The ACMA may, by written instrument, make standards to be complied with by carriage service providers in relation to:

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- (a) the making of arrangements with customers about the period taken to comply with requests to connect customers to specified kinds of carriage services; and
  - (b) the periods that carriage service providers may offer to customers when making those arrangements; and
  - (c) the compliance by carriage service providers with the terms of those arrangements; and
  - (d) the period taken to comply with requests to rectify faults or service difficulties relating to specified kinds of carriage services, where the rectification follows the making of a customer report about a fault or service difficulty; and
  - (e) the keeping of appointments to meet customers, or representatives of customers, where the appointment relates to:
    - (i) a connection of a kind covered by paragraph (a); or
    - (ii) a rectification of a kind covered by paragraph (d); and
  - (f) any other matter concerning the supply, or proposed supply, of a carriage service to a customer.
- (2) A standard under this section that relates to a particular kind of carriage service does not apply to a particular carriage service provider in connection with the supply of that kind of service at a particular location unless the carriage service provider:
- (a) supplies that kind of service at that location; or
  - (b) offers to supply that kind of service at that location.
- (3) The ACMA must not make a standard under this section unless it is directed to do so by the Minister under section 124.
- (4) A standard under this section may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (5) A standard under this section takes effect:
- (a) if the instrument making the standard specifies a day for the purpose—on that day; or
  - (b) otherwise—on the day on which the standard was notified in the *Gazette*.

- (6) A standard under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **116 Damages for breach of performance standards**

- (1) If:
- (a) a carriage service provider contravenes a standard in force under section 115; and
  - (b) the contravention relates to a particular customer;
- the carriage service provider is liable to pay damages to the customer for the contravention.
- (2) The amount of damages payable for a particular contravention is equal to the relevant amount specified in the scale in force under section 117.
- (3) However, if:
- (a) the carriage service provider:
    - (i) credits an amount to an account that the customer has with the provider; or
    - (ii) pays an amount to the customer; and
  - (b) the credit or payment was made as a result of a right or remedy that:
    - (i) was available to the customer otherwise than under this Division; and
    - (ii) arose out of the same event or transaction as the contravention;
- the amount of damages payable for the contravention is to be reduced (but not below zero) by the amount of the credit or payment.
- (4) The customer may recover the amount of the damages by action against the carriage service provider in a court of competent jurisdiction.
- (5) The liability of the carriage service provider under this section may be discharged:
- (a) by giving the customer a credit in an account the customer has with the carriage service provider; or
  - (b) in any other manner agreed between the carriage service provider and the customer.
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- (6) An action under this section must be instituted within 2 years after:
  - (a) in the case of a contravention that continued throughout a period—the time when the contravention began; or
  - (b) in any other case—the time when the contravention occurred.
- (7) If the customer dies, a reference in this section to the *customer* includes a reference to the legal personal representative of the customer.

**117 Scale of damages for breach of performance standards**

- (1) The ACMA may, by written instrument, specify a scale of damages for contraventions of standards under section 115.
- (2) The scale must:
  - (a) specify categories of contraventions; and
  - (b) specify a dollar amount as the amount of damages payable for contraventions covered by each of those categories.
- (3) A dollar amount specified in accordance with paragraph (2)(b) must not exceed \$25,000.
- (4) A category may be specified by reference to contraventions that continue over a specified number of days.
- (5) Subsection (4) does not, by implication, limit the ways in which a category may be specified.
- (6) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**117A Time for payment of damages for breach of performance standards**

*Decision whether to accept liability for damages*

- (1) If, at a particular time, a carriage service provider first has reason to believe that an event has occurred that is reasonably likely to result in the carriage service provider being liable to pay damages to a particular customer under section 116, then, within 14 days after that time, the carriage service provider must decide whether to accept that liability.

- (2) In making a decision under subsection (1), the carriage service provider must have regard to whether there is any reasonable basis for the carriage service provider to dispute the liability.
- (3) If a carriage service provider makes a decision under subsection (1) to accept, or not to accept, a liability to pay damages to a particular customer, the carriage service provider must give the customer written notification of the decision within 14 weeks after the decision is made.

*Crediting customer account*

- (4) If:
  - (a) a carriage service provider makes a decision under subsection (1) to accept a liability to pay damages to a particular customer; and
  - (b) the liability is to be discharged by giving the customer a credit in an account the customer has with the carriage service provider;the liability must be discharged within the period of 14 weeks after the decision is made and:
  - (c) if it is practicable for the carriage service provider to give the customer the credit within that 14-week period and in time for the customer to be notified of the credit in the first bill sent to the customer during that period—by giving the customer the credit in time for the customer to be notified of the credit in that bill; or
  - (d) if paragraph (c) does not apply, but it is practicable for the carriage service provider to give the customer the credit within that 14-week period and in time for the customer to be notified of the credit in the second bill sent to the customer during that period—by giving the customer the credit in time for the customer to be notified of the credit in that bill.

*Other manner of discharging liability*

- (5) If:
  - (a) a carriage service provider makes a decision under subsection (1) to accept a liability to pay damages to a particular customer; and

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- (b) the liability is not to be discharged by giving the customer a credit in an account the customer has with the carriage service provider;

the liability must be discharged within 14 weeks after the decision is made.

*Customer*

- (6) If the customer dies, a reference in this section to the *customer* includes a reference to the legal personal representative of the customer.

*Transitional*

- (7) The reference in subsection (1) to a *particular time* is a reference to a particular time after the end of the period of 12 months beginning on the date of commencement of this section.

**118 Remedial directions—compliance with performance standards**

- (1) This section applies if a carriage service provider is subject to a standard in force under section 115.
- (2) The ACMA may give the provider a written direction:
  - (a) requiring the provider to take specified action directed towards ensuring that the provider does not contravene, or is unlikely to contravene, the standard; or
  - (b) requiring the provider to take such action as will ensure that the extent of the provider's compliance with the standard reaches or exceeds a specified goal or target.

Note: Under section 124, the Minister may give the ACMA directions in relation to the exercise of its powers under this Part.

- (3) The following are examples of the kinds of direction that may be given to a carriage service provider under subsection (2):
  - (a) a direction that the provider implement effective administrative systems for monitoring compliance with a standard in force under section 115;
  - (b) a direction that the provider take such action as is necessary to ensure that the extent of the provider's compliance with a standard in force under section 115, in so far as that standard



relates to the keeping of appointments to meet customers in rural areas, reaches or exceeds a specified goal or target.

- (4) Before giving a direction under subsection (2), the ACMA must consult the Telecommunications Industry Ombudsman. However, this rule does not apply if the Minister, under section 124, required the ACMA to give the direction.
- (5) A carriage service provider must not contravene a direction under subsection (2).
- (6) A direction under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **118A Right of contribution**

- (1) If:
    - (a) a carriage service provider (the ***first provider***) contravenes a standard in force under section 115; and
    - (b) the contravention relates to a particular customer; and
    - (c) the first provider is liable, under section 116, to pay damages (the ***primary damages***) to the customer for the contravention; and
    - (d) the contravention is wholly or partly attributable to one or more acts or omissions of another carriage service provider (the ***second provider***); and
    - (e) the first provider has discharged the liability for the primary damages;the second provider is liable to pay damages (the ***secondary damages***) to the first provider for the acts or omissions.
  - (2) The amount of the secondary damages for the acts or omissions is:
    - (a) if the contravention is wholly attributable to the acts or omissions—an amount equal to the primary damages; or
    - (b) if the contravention is partly attributable to the acts or omissions—such amount (not exceeding the primary damages) as the court thinks fair and reasonable.
  - (3) If the second provider makes a payment to the first provider as a result of a right or remedy that:
    - (a) was available to the first provider otherwise than under this section; and
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- (b) arose out of the same acts or omissions;  
the amount of the secondary damages payable for the acts or omissions is to be reduced (but not below zero) by the amount of the payment.
- (4) The first provider may recover the amount of the secondary damages by action against the second provider in a court of competent jurisdiction.
- (5) An action under this section must be instituted within 2 years after the first provider discharged the liability for the primary damages.
- (6) If the customer dies, a reference in this section to the *customer* includes a reference to the legal personal representative of the customer.
- (7) Paragraph (1)(a) does not apply to a contravention that occurs before the end of the period of 6 months beginning on the date of commencement of this section.

**119 Evidentiary certificate issued by the Telecommunications Industry Ombudsman**

- (1) The Telecommunications Industry Ombudsman may issue a written certificate:
- (a) stating that a specified carriage service provider has contravened a standard in force under section 115; and
- (b) setting out particulars of that contravention.
- (2) In any proceedings under this Part, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be a certificate and to have been properly given.
- (4) Subsection (1) does not apply to the Telecommunications Industry Ombudsman unless the Telecommunications Industry Ombudsman gives the Minister a written notice consenting to the conferral of the powers conferred by that subsection.

- (5) If no notice is in force under subsection (4), subsection (1) has effect as if the reference in that subsection to the Telecommunications Industry Ombudsman were a reference to the ACMA.
- (6) The Minister must cause a copy of a notice under subsection (4) to be published in the *Gazette*.
- (7) The continuity of a notice under subsection (4) is not affected by:
  - (a) a change in the occupancy of the position of Telecommunications Industry Ombudsman; or
  - (b) a vacancy in the position of Telecommunications Industry Ombudsman that does not continue for more than 4 months.

### **120 Waiver of customer service guarantee**

- (1) The ACMA may, by written instrument, make provision for customers of carriage service providers to waive, in whole or in part, their protection and rights under this Part in relation to a particular carriage service supplied, or proposed to be supplied, by the carriage service provider concerned.
- (2) If such a waiver is made, then, to the extent of the waiver, the carriage service provider is not bound by, and need not comply with, any standards in force under section 115 in relation to the supply of that service to that customer.
- (3) A waiver must be made in accordance with the rules set out in the instrument.
- (4) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **121 Savings of other laws and remedies**

- (1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- (2) This Part does not limit, restrict or otherwise affect any right or remedy a person would have if this Part had not been enacted.
- (3) This Part does not limit, restrict or otherwise affect the operation of the Telecommunications Industry Ombudsman scheme. In

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particular, this Part does not affect a customer's right to complain to the Telecommunications Industry Ombudsman.

- (4) Subsection (3) does not, by implication, limit subsection (2).

**122 Breach of performance standard is not an offence**

A contravention of a standard in force under section 115 is not an offence.

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

Clause 1 of Schedule 2 to the *Telecommunications Act 1997* does not apply to a contravention of a standard in force under section 115.

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

**124 Minister may direct the ACMA about the use of its powers under this Part**

- (1) The Minister may give the ACMA written directions about how the ACMA is to exercise its powers under this Part.
- (2) The ACMA must comply with a direction under this section.
- (3) This section does not affect the Minister's power to give the ACMA directions under other provisions about other matters.
- (4) A direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The Minister must not give the ACMA a direction under section 14 of the *Australian Communications and Media Authority Act 2005* about how the ACMA is to exercise its powers under this Part.

**125 Review of performance standards following Ministerial direction**

- (1) This section applies to a direction under section 124 that requires the ACMA to make a standard under section 115.

- (2) If the Minister revokes a direction, the ACMA must revoke the section 115 standard that is in force because of the direction.
- (3) If the Minister varies a direction, the ACMA must either:
  - (a) vary the section 115 standard that is in force because of the direction so that the standard complies with the varied direction; or
  - (b) revoke the section 115 standard and determine a new section 115 standard that so complies.
- (4) If a section 115 standard is in force because of a direction:
  - (a) the ACMA may vary the standard on its own initiative, but only in such a way that the varied standard still complies with the direction; and
  - (b) the ACMA may, on its own initiative, revoke the standard and determine a new section 115 standard that so complies.
- (5) A revocation or variation of a section 115 standard must be in writing.
- (6) An instrument of revocation or variation of a section 115 standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## Part 6—The Telecommunications Industry Ombudsman

### 126 Simplified outline

The following is a simplified outline of this Part:

- Certain carriers and carriage service providers must enter into the Telecommunications Industry Ombudsman scheme.
- The membership of the scheme must be open to all carriers and carriage service providers.
- Carriers and carriage service providers must comply with the scheme.

### 127 Eligible carriage service providers

For the purposes of this Part, an *eligible carriage service provider* is:

- (a) a carriage service provider who supplies:
  - (i) a standard telephone service, where any of the customers are residential customers or small business customers; or
  - (ii) a public mobile telecommunications service; or
  - (iii) a carriage service that enables end-users to access the Internet; or
- (b) a carriage service intermediary who arranges for the supply of a service referred to in subparagraph (a)(i), (ii) or (iii).

### 128 Telecommunications Industry Ombudsman scheme

- (1) Each carrier and each eligible carriage service provider must, in association with other carriers and other eligible carriage service providers, enter into a scheme providing for a Telecommunications Industry Ombudsman.

Note: Section 129 provides for exemptions from subsection (1) of this section.

- (2) The scheme is to be known as the ***Telecommunications Industry Ombudsman scheme***.
- (3) To avoid doubt, there is only one Telecommunications Industry Ombudsman scheme, namely, the scheme operated by Telecommunications Industry Ombudsman Limited (ABN 46 057 634 787).
- (4) The scheme must provide for the Telecommunications Industry Ombudsman to:
  - (a) investigate; and
  - (b) make determinations relating to; and
  - (c) give directions relating to;complaints about carriage services by end-users of those services.
- (4A) An end-user of a carriage service is not liable to pay any fee or charge (however described) to the provider of the carriage service in respect of a complaint made by the end-user about the carriage service.
- (5) The following is an example of such a complaint: a complaint about billing, or the manner of charging, for the supply of carriage services.
- (6) The scheme must not provide for the Telecommunications Industry Ombudsman to investigate complaints about:
  - (a) the levels at which tariffs charged for the supply of carriage services are set; or
  - (b) the content of a content service.
- (7) The membership of the scheme must be open to all:
  - (a) carriers; and
  - (b) carriage service providers.

### **129 Exemptions from requirement to join scheme**

- (1) The ACMA may, by notice in the *Gazette*, declare that a specified carrier or eligible carriage service provider is exempt from the requirement set out in subsection 128(1). The declaration has effect accordingly.

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Note: Carriers or providers may be specified by name, by inclusion in a particular class or in any other way.

- (2) In deciding whether a carrier or provider should be exempt from the requirement set out in subsection 128(1), the ACMA must have regard to the following matters:
  - (a) the extent to which the carrier or provider deals with residential customers in relation to the supply of carriage services;
  - (b) the extent to which the carrier or provider deals with proprietors of small businesses in relation to the supply of carriage services;
  - (c) the potential for complaints under the Telecommunications Industry Ombudsman scheme about services supplied by the carrier or provider.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.
- (4) Before making a declaration under this section, the ACMA must consult the Telecommunications Industry Ombudsman.

**130 Direction to join scheme**

- (1) The ACMA may give a carriage service provider a written notice directing the provider to enter into the Telecommunications Industry Ombudsman scheme.
- (2) The provider must comply with the direction.
- (3) In deciding whether to give a direction to a provider under this section, the ACMA must have regard to the following matters:
  - (a) the extent to which the provider deals with residential customers in relation to the supply of carriage services;
  - (b) the extent to which the provider deals with proprietors of small businesses in relation to the supply of carriage services;
  - (c) the potential for complaints under the Telecommunications Industry Ombudsman scheme about the services supplied by the provider.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACMA may have regard.



- (5) Before giving a direction under this section, the ACMA must consult the Telecommunications Industry Ombudsman.

### **131 Determination that a class of carriage service providers must join scheme**

- (1) The ACMA may make a written determination that the members of a specified class of carriage service providers must enter into the Telecommunications Industry Ombudsman scheme.
- (2) A copy of the determination must be published in the *Gazette*.
- (3) In deciding whether to make a determination under this section in relation to a class of carriage service providers, the ACMA must have regard to the following matters:
- (a) the extent to which members of that class deal with residential customers in relation to the supply of carriage services;
  - (b) the extent to which members of that class deal with proprietors of small businesses in relation to the supply of carriage services;
  - (c) the potential for complaints under the Telecommunications Industry Ombudsman scheme about services supplied by members of that class.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACMA may have regard.
- (5) Before making a determination under this section, the ACMA must consult the Telecommunications Industry Ombudsman.

### **132 Members of scheme must comply with scheme**

A carrier or carriage service provider who is a member of the Telecommunications Industry Ombudsman scheme must comply with the scheme.

### **133 Register of members of scheme**

- (1) The Telecommunications Industry Ombudsman is to maintain a Register of the names of the members of the Telecommunications Industry Ombudsman scheme.

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- (2) The Register may be maintained by electronic means.
- (3) The Telecommunications Industry Ombudsman must ensure that the Register is open for inspection, at all reasonable times, by members of the public.

## **Part 7—Protection for residential customers against failure by carriage service providers to provide standard carriage services**

### **134 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA may determine that certain payments received by a carriage service provider from residential customers are protected payments.
- The ACMA may formulate schemes aimed at ensuring that if:
  - (a) a residential customer of a carriage service provider makes a protected payment to the provider; and
  - (b) the provider fails to supply a standard telephone service to the customer;the customer is protected.
- A protection scheme may be enforced by the Federal Court on the application of the ACMA or a residential customer.

### **135 Scope of Part**

- (1) This Part applies to a carriage service provider if the provider supplies, or proposes to supply, a standard telephone service to residential customers.
- (2) A carriage service provider is exempt from this Part if the provider was a carrier (within the meaning of the *Telecommunications Act 1991*) immediately before 1 July 1997.

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- (3) The ACMA may, by notice in the *Gazette*, declare that a specified provider is exempt from this Part. The declaration has effect accordingly.

Note: Providers may be specified by name, by inclusion in a particular class or in any other way.

- (4) In deciding whether a person should be exempt from this Part, the ACMA must have regard to the following matters:
- (a) the duration of the prior period (if any) during which the person carried on business in Australia as a carriage service provider;
  - (b) the scale of the person's prior operations in Australia as a carriage service provider;
  - (c) the person's business record;
  - (d) if the person is a partnership—the business record of each of the partners;
  - (e) if the person is an incorporated company—the business record of each individual, by whatever name called and whether or not a director of the company, who is concerned, or takes part, in the management of the company.
- (5) Subsection (4) does not, by implication, limit the matters to which the ACMA may have regard.

**136 Standard residential customer**

- (1) For the purposes of this Part, if a residential customer, or a proposed residential customer, of a carriage service provider is supplied, or proposed to be supplied, with a standard telephone service by the provider, then:
- (a) the customer is a *standard residential customer* of the provider; and
  - (b) the service is a *standard carriage service*.
- (2) Subsection (1) does not apply to a standard telephone service if:
- (a) the service is a public mobile telecommunications service; and
  - (b) the service is neither supplied, nor proposed to be supplied, to the customer in fulfilment of the universal service obligation.

### **137 Protected payments**

- (1) The ACMA may make a written determination that a specified payment made, or liable to be made, to a carriage service provider by a standard residential customer of that provider is a ***protected payment*** for the purposes of this Part. The determination has effect accordingly.

Note: Payments may be specified by name, by inclusion in a particular class or in any other way.

- (2) The payment must be received, or proposed to be received, by the provider directly or indirectly in connection with its business as a carriage service provider.
- (3) The following are examples of payments that may be specified in the determination:
- (a) payments for line rental;
  - (b) payments for equipment rental;
  - (c) payments by way of connection fees;
  - (d) a pre-payment for a standard carriage service.
- (4) For each protected payment, the determination must specify, or specify a means of ascertaining, a period for the purposes of this subsection. That period is called the ***minimum service period*** for the payment.
- (5) The minimum service period for a protected payment:
- (a) must begin when the payment is made; and
  - (b) must not run for longer than 2 years.
- (6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **138 Compliance with protection schemes for protected payments**

- (1) Before demanding or receiving a protected payment, a carriage service provider must give the ACMA a written election to be bound by a specified scheme formulated under this Part.
- (2) If a carriage service provider gives the ACMA such an election, the provider is bound by, and must comply with, the scheme specified in the election.

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- (3) If an election under this section is in force in relation to a particular scheme (the *original scheme*), the provider may give the ACMA a written notice varying the election by omitting the original scheme and substituting another scheme formulated under this Part. The variation takes effect at the time specified in the notice.
- (4) Despite the variation, the original scheme continues to apply, in relation to protected payments made before the variation took effect, as if the variation had not been made.

### **139 Protection schemes for protected payments—alternative supply of standard carriage services**

- (1) The ACMA may, by written instrument, formulate a scheme that requires a carriage service provider bound by the scheme to enter into and maintain a legally enforceable arrangement aimed at ensuring that, if:
  - (a) a residential customer of the provider makes a protected payment to the provider; and
  - (b) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer;  
the customer:
    - (c) is supplied, during the remainder of the period, with standard carriage services that are equivalent to the standard carriage services that the provider has not supplied; and
    - (d) is not required to pay more for the supply of those equivalent services than the customer would have had to pay had the provider supplied them.
- (2) A scheme formulated under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **140 Protection schemes for protected payments—third party guarantee**

- (1) The ACMA may, by written instrument, formulate a scheme that:
  - (a) makes a carriage service provider that is bound by the scheme liable, in the event that:

- (i) a residential customer of the provider makes a protected payment to the provider; and
    - (ii) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer;to reimburse the payment on a pro-rata basis in proportion to that part or parts of the period during which the provider fails to supply the services to the customer; and
  - (b) requires the provider to obtain a guarantee from a third person in respect of the provider's discharge of that liability.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **141 Protection schemes for protected payments—insurance cover**

- (1) The ACMA may, by written instrument, formulate a scheme that:
- (a) makes a carriage service provider that is bound by the scheme liable, in the event that:
    - (i) a residential customer of the provider makes a protected payment to the provider; and
    - (ii) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer;to reimburse the payment on a pro-rata basis in proportion to that part or parts of the period during which the provider fails to supply the services to the customer; and
  - (b) requires the provider to take out and maintain an insurance policy to indemnify residential customers against a total or partial failure to discharge that liability.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **142 Protection schemes for protected payments—holding of payments in trust accounts**

- (1) The ACMA may, by written instrument, formulate a scheme that:
- (a) makes a carriage service provider that is bound by the scheme liable, in the event that:

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- (i) a residential customer of the provider makes a protected payment to the provider; and
  - (ii) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer;  
to reimburse the payment on a pro-rata basis in proportion to that part or parts of the period during which the provider fails to supply the services to the customer; and
  - (b) requires the provider to hold protected payments it receives in trust accounts; and
  - (c) prohibits the provider from transferring any or all of the money in such an account to its beneficial ownership except in accordance with the draw-down rules set out in the scheme.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**143 Waiver of protection by customers**

- (1) A scheme formulated under this Part may provide for standard residential customers of a carriage service provider to waive their protection and rights under the scheme in relation to a particular protected payment made to the provider.
- (2) If such a waiver is made, the provider is not bound by, and need not comply with, the scheme in relation to that payment.
- (3) A waiver must be made in accordance with the rules set out in the scheme concerned.
- (4) Rules mentioned in subsection (3) may require a carriage service provider to inform a customer about the consequences of a waiver.
- (5) Subsection (4) does not, by implication, limit the matters that may be dealt with by:
  - (a) a code registered under Part 6 of the *Telecommunications Act 1997*; or
  - (b) a standard under Part 6 of the *Telecommunications Act 1997*.



#### **144 Incidental rules**

- (1) A scheme formulated under this Part may require carriage service providers to comply with such ancillary or incidental rules (if any) as are set out in the scheme.
- (2) Those rules include (but are not limited to) requiring carriage service providers to inform their standard residential customers about matters relating to the implementation of the scheme.

#### **145 Enforcement of protection schemes**

- (1) This section applies if a carriage service provider is bound by a scheme formulated under this Part.
- (2) If:
  - (a) the ACMA; or
  - (b) a standard residential customer of the provider;thinks that the provider has:
  - (c) failed to discharge a liability of the provider under the scheme; or
  - (d) otherwise breached the scheme;the ACMA or the customer may apply to the Federal Court for an order under subsection (3).
- (3) If the Federal Court is satisfied that the provider has:
  - (a) failed to discharge a liability of the provider under the scheme; or
  - (b) otherwise breached the scheme;the Court may make all or any of the following orders:
  - (c) an order directing the provider to discharge a liability under the scheme;
  - (d) an order directing the provider to comply with the scheme;
  - (e) an order directing the provider to compensate any person who has suffered loss or damage as a result of the breach;
  - (f) any other order that the Court thinks appropriate.
- (4) The Federal Court may discharge or vary an order granted under this section.
- (5) This section does not, by implication, limit other remedies.

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- (6) A reference in this section to a *carriage service provider* includes a reference to:
- (a) in a case where the provider is an individual or a partnership—the provider’s trustee in bankruptcy; or
  - (b) in a case where the provider is a body corporate or a partnership—each of the following:
    - (i) a receiver, receiver and manager, or other controller, of property of the body or partnership;
    - (ii) an administrator of the body or partnership;
    - (iii) an administrator of a deed of arrangement entered into by the body or partnership;
    - (iv) a liquidator or provisional liquidator of the body or partnership;
    - (v) a trustee or other person administering a compromise or arrangement made between the body or partnership and any other person or persons.

## **Part 8—Provision of emergency call services**

### **146 Simplified outline**

The following is a simplified outline of this Part:

- The ACMA may impose requirements on any or all of the following:
    - (a) carriers;
    - (b) carriage service providers;
    - (c) emergency call persons;
- in relation to emergency call services.

### **147 Provision of emergency call services**

- (1) The ACMA must make a written determination imposing requirements on any or all of the following:
  - (a) carriers;
  - (b) carriage service providers;
  - (c) emergency call persons;in relation to emergency call services.
- (2) In making a determination under this section, the ACMA must have regard to the following:
  - (a) the objective that a carriage service provider who supplies a standard telephone service should provide each end-user of that standard telephone service with access, free of charge, to an emergency call service, unless the ACMA considers that it would be unreasonable for such access to be provided;
  - (b) the objective that, if a carriage service provider who supplies a standard telephone service is required to provide each end-user of that standard telephone service with access to an

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emergency call service operated by a recognised person, the recognised person should:

- (i) receive and handle calls made by those end-users to the relevant emergency service number; and
  - (ii) if appropriate—transfer such calls to an appropriate emergency service organisation; and
  - (iii) if appropriate—give information in relation to such calls to an appropriate emergency service organisation;
- (c) the objective that emergency service organisations should not be charged for services provided by a recognised person who operates an emergency call service, being services by way of:
- (i) receiving and handling calls to an emergency service number; or
  - (ii) transferring such calls to an emergency service organisation; or
  - (iii) giving information in relation to such calls to an emergency service organisation;
- (d) the objective that emergency service organisations should not be charged for the following carriage services:
- (i) carriage services used to connect calls made to an emergency service number;
  - (ii) carriage services used to transfer such calls to an emergency service organisation;
  - (iii) carriage services used to give information in relation to such calls to an emergency service organisation;
- (e) the objective that, as far as practicable, a common system is used to:
- (i) transfer calls made to an emergency service number to an emergency service organisation; and
  - (ii) give information in relation to such calls to an emergency service organisation;
- (f) the objective that calls made to an emergency service number are transferred to an appropriate emergency service organisation with the minimum of delay;
- (g) the objective that, from the perspective of an ordinary end-user of a standard telephone service, there appears to be a single national emergency call system;
- (h) the objective that reasonable community expectations for the handling of calls to emergency service numbers are met;
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- (i) the objective that carriage services used to make calls to an emergency service number should, as far as practicable, provide the emergency call person concerned with automatic information about:
    - (i) the location of the caller; and
    - (ii) the identity of the customer of the service being used by the caller;
  - (j) the objective that carriers should provide carriage service providers with access to:
    - (i) controlled carriage services of the carriers; and
    - (ii) controlled networks of the carriers; and
    - (iii) controlled facilities of the carriers;in order that the providers can comply with their obligations under the determination;
  - (k) the objective that carriage service providers should provide other carriage service providers with access to:
    - (i) controlled carriage services of the first-mentioned providers; and
    - (ii) controlled networks of the first-mentioned providers; and
    - (iii) controlled facilities of the first-mentioned providers;in order that the other providers can comply with their obligations under the determination;
  - (l) the objective that a determination should be consistent with the following:
    - (i) Principle 11 of the Information Privacy Principles set out in section 14 of the *Privacy Act 1988*;
    - (ia) National Privacy Principle 2 (as defined in the *Privacy Act 1988*);
    - (ib) each approved privacy code (as defined in the *Privacy Act 1988*), if any, that binds a participant in a section of the telecommunications industry;
    - (ii) codes registered under Part 6 of the *Telecommunications Act 1997*;
    - (iii) standards determined under Part 6 of the *Telecommunications Act 1997*.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.
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- (4) A determination under this section may deal with ancillary or incidental matters, including the protection of the privacy of information transmitted in connection with a call to an emergency service number.
- (5) A determination under this section may deal with performance standards, including (but not limited to) performance standards relating to:
  - (a) the answering of calls to emergency service numbers; and
  - (b) delays in transferring calls made to an emergency service number to the appropriate emergency service organisation; and
  - (c) the handling of complaints about emergency call services.
- (6) Subsections (4) and (5) do not, by implication, limit subsection (1).
- (7) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (8) In making a determination under this section, the ACMA may apply, adopt or incorporate (with or without modification) any matter contained in a code or standard proposed or approved by a body or association, either:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.

This subsection does not, by implication, limit section 589 of the *Telecommunications Act 1997*.
- (9) Before making a determination under this section, the ACMA must consult representatives of each of the following groups:
  - (a) carriers;
  - (b) carriage service providers;
  - (c) recognised persons who operate an emergency call service;
  - (d) emergency service organisations;
  - (e) consumers of standard telephone services.
- (10) A carriage service provider may provide the access referred to in paragraph (2)(a) itself or by arranging with another person for the access to be provided.
- (11) In this section:

***emergency service organisation*** means:

- (a) a police force or service; or
- (b) a fire service; or
- (c) an ambulance service; or
- (d) a service specified in the numbering plan for the purposes of this paragraph; or
- (e) a service for despatching a force or service referred to in paragraph (a), (b), (c) or (d).

### **148 Compliance with determination**

- (1) A person on whom a requirement is imposed by a determination in force under section 147 must comply with the determination.
- (2) Subsection (1) has effect subject to sections 149 and 151.
- (3) 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).
- (4) Subsections (1) and (3) are ***civil penalty provisions***.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. This provision is a civil penalty provision for the purposes of that Act.

### **149 Access to emergency call services**

- (1) This section applies if:
  - (a) an emergency call service is operated by a recognised person; and
  - (b) a determination under section 147 requires a carriage service provider who supplies a standard telephone service to provide each end-user of that standard telephone service with access to that emergency call service; and

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- (c) a determination under section 147 requires the recognised person to:
  - (i) receive and handle calls made by those end-users to the relevant emergency service number; and
  - (ii) if appropriate—transfer such calls to an appropriate emergency service organisation; and
  - (iii) if appropriate—give information in relation to such calls to an appropriate emergency service organisation.
- (2) The recognised person must comply with the requirement mentioned in paragraph (1)(c) on such terms and conditions as are:
  - (a) agreed between the following parties:
    - (i) the carriage service provider;
    - (ii) the recognised person; or
  - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subsection (4) does not, by implication, limit subsection (3).
- (6) A determination made in an arbitration under this section must not be inconsistent with a Ministerial pricing determination in force under section 150.

**150 Ministerial pricing determinations**

- (1) The Minister may make a written determination setting out principles dealing with price-related terms and conditions relating to requirements of a kind referred to in subsection 149(1). The determination is to be known as a *Ministerial pricing determination*.



(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(3) In this section:

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

### **151 Access to be provided**

(1) This section applies if a determination under section 147 requires a person to provide access as mentioned in paragraph 147(2)(j) or (k).

(2) The person must provide that access in accordance with the requirements set out in the determination and on such terms and conditions as are:

(a) agreed between the following parties:

(i) the person;

(ii) the carriage service provider to whom access is required to be provided; or

(b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

(3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.

(4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.

(5) Subsection (4) does not, by implication, limit subsection (3).

## Part 9—Price control arrangements for Telstra

### 152 Simplified outline

The following is a simplified outline of this Part:

- This Part provides for price control arrangements for carriage services, content services and facilities supplied by Telstra.

### 153 Definitions

In this Part:

**carrier charge** means:

- (a) a charge for a carriage service, or a content service, supplied by Telstra; or
- (b) a charge for a facility supplied by Telstra.

**charge** includes:

- (a) any charge or fee (whether payable periodically, in instalments or otherwise); and
- (b) a nil charge or nil fee; and
- (c) in relation to a carriage service, includes:
  - (i) any charge or fee (including of a kind referred to in paragraph (a) or (b)) for or in relation to a facility used, or intended for use, in relation to the supply of the service; and
  - (ii) any other charge or fee (including of a kind referred to in paragraph (a) or (b)) for or in relation to the supply of the service.

### 154 Minister may determine price control arrangements

- (1) The Minister may determine in writing that specified carrier charges are subject to price control arrangements.
- (2) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**155 Effect of price control arrangements**

- (1) Where a carrier charge is subject to price control arrangements, the Minister may determine in writing:
  - (a) price-cap arrangements and other price control arrangements that are to be applied in relation to the charge; or
  - (b) principles in accordance with which Telstra is to make alterations to the charge;or both.
- (2) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) To avoid doubt, price-cap arrangements and other price control arrangements determined under this section may relate to charges for untimed local calls in particular areas.
- (4) A determination under this section may make different provision with respect to different customers. This section does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (5) Telstra must comply with a determination under this section.

**156 Alteration of charges subject to price control arrangements**

- (1) Where Telstra proposes to alter a carrier charge that is subject to price control arrangements, the following provisions have effect.
- (2) Where, under the applicable determinations under section 155, the consent of the ACCC is not required to the proposed alteration, Telstra may make the proposed alteration.
- (3) Where, under the applicable determinations under section 155, the consent of the ACCC is required to the proposed alteration, Telstra must not make the proposed alteration unless the following paragraphs have been complied with:
  - (a) if those determinations require the giving to the ACCC of a period of notice before the proposed alteration is made—that period has ended or the ACCC has waived the giving of the notice;

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- (b) if those determinations require the giving to the ACCC of particular information not later than a particular time before the alteration is made:
  - (i) the information was so given; or
  - (ii) some only of the information was so given and the ACCC has waived the giving of the remainder of the information; or
  - (iii) the ACCC has waived the giving of the information;
- (c) subject to paragraph (d), either:
  - (i) the ACCC has consented to the proposed alteration; or
  - (ii) the period within which the ACCC is required under those determinations to give or refuse its consent to the proposed alteration has ended and the ACCC did not before the end of that period refuse its consent to the proposed alteration;
- (d) if, before the end of the period within which, but for this paragraph, the ACCC would be required under the applicable determinations to give or refuse its consent to the proposed alteration, the ACCC requested Telstra to provide further information about the proposed alteration, the first-mentioned period is taken to be extended by a period equal to the number of days commencing on the day on which the request was made and ending on the day on which the further information was provided.

**157 Carrier charges subject to notification and disallowance**

- (1) The Minister may determine in writing that specified carrier charges are subject to notification and disallowance.
- (2) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**158 Alteration of charges subject to notification and disallowance**

- (1) If Telstra proposes to alter a carrier charge that is subject to notification and disallowance, Telstra must, by written notice, inform the Minister of the alteration at least 30 days before it is to take effect.

- (2) The Minister may, within 30 days after receiving the notice:
  - (a) by writing request the ACCC to give a written report as to whether the proposed alteration should be disallowed in the public interest; and
  - (b) direct Telstra in writing not to make the alteration until the Minister has received and considered the report.
- (3) The ACCC must give the report to the Minister within 30 days after receiving the request.
- (4) If the Minister, after taking the ACCC's report into account, is of the opinion that the proposed alteration is not in the public interest, he or she may, by written notice given to Telstra within 30 days after receiving the report, direct Telstra not to make the alteration.
- (5) Telstra must comply with a direction under subsection (4).

## Part 9A—Telephone sex services

### 158A Simplified outline

The following is a simplified outline of this Part.

- This Part prohibits unacceptable conduct by telephone sex service providers, and carriage service providers, in relation to telephone sex services.
- Conduct is unacceptable if the customer:
  - (a) has not agreed in writing to the supply of telephone sex services; and
  - (b) has not been issued with a Personal Identification Number or some other means of limiting access by other persons to the telephone sex service.
- If a carriage service provider engages in unacceptable conduct in relation to a telephone sex service, charges for the service must not be included in a bill sent by or on behalf of the carriage service provider to the customer concerned.
- The supply of other goods and services must not be tied to the supply of a telephone sex service.
- The regulations may prohibit or regulate the supply, advertising or promotion of a specified telephone sex service.

### 158B Unacceptable conduct in relation to a telephone sex service

- (1) A telephone sex service provider or a carriage service provider must not engage in unacceptable conduct in relation to a telephone sex service (within the meaning of subsection (2)).

Note: *Telephone sex service provider* is defined by section 158K.

- (2) For the purposes of this Part, if:

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- (a) a telephone sex service provider uses a standard telephone service to supply a telephone sex service to an end-user in Australia; and
- (b) the supply is by way of a voice call; and
- (c) a person (the *relevant customer*) is a customer of a carriage service provider in relation to the voice call; and
- (d) a charge for the supply of the telephone sex service is expected to be included in a bill sent by or on behalf of the carriage service provider to the relevant customer;

the telephone sex service provider and the carriage service provider are taken to have *engaged in unacceptable conduct* in relation to the telephone sex service unless:

- (e) the relevant customer has agreed in writing to the use of the standard telephone service to supply telephone sex services in general; and
- (f) the telephone sex service provider has reason to believe that:
  - (i) the relevant customer has been issued with a Personal Identification Number that provides a means of limiting access by other persons to telephone sex services supplied using the standard telephone service; or
  - (ii) the relevant customer has been provided with some other means of limiting access by other persons to telephone sex services supplied using the standard telephone service; and
- (g) the telephone sex service provider has reason to believe that:
  - (i) if subparagraph (f)(i) applies—the end-user of the telephone sex service has used the Personal Identification Number referred to in that subparagraph to access the telephone sex service; or
  - (ii) if subparagraph (f)(ii) applies—the end-user of the telephone sex service has used the other means referred to in that subparagraph to access the telephone sex service; and
- (h) the voice call is made to a number with an approved prefix.

Note 1: *Telephone sex service* is defined by section 158J.

Note 2: *Approved prefix* is defined by section 158H.

- (3) Subsection (1) is a *civil penalty provision*.

Section 158B

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Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (1) is a civil penalty provision for the purposes of that Act.

*Charge for supply of telephone sex service not to be included in bill*

- (4) If a carriage service provider engages in unacceptable conduct in relation to a telephone sex service (within the meaning of subsection (2)), a charge for the supply of the telephone sex service must not be included in a bill sent by or on behalf of the carriage service provider to the relevant customer.
- (5) Subsection (4) is a ***civil penalty provision***.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (4) is a civil penalty provision for the purposes of that Act.

*Agreements*

- (6) An agreement referred to in paragraph (2)(e) has no effect for the purposes of this section if it deals with a matter other than the use of a standard telephone service to supply telephone sex services.

*Defence*

- (7) In any proceedings against a carriage service provider under Part 31 of the *Telecommunications Act 1997* that arise out of this section and relate to a telephone sex service supplied using a standard telephone service supplied by the carriage service provider, it is a defence if the carriage service provider establishes:
- (a) that it did not know; and
  - (b) that it could not, with reasonable diligence, have ascertained; that the standard telephone service was, or was to be, used by a telephone sex service provider to supply the telephone sex service.
- (8) For the purposes of subsection (7), in determining whether a carriage service provider could, with reasonable diligence, have ascertained whether a standard telephone service supplied by the carriage service provider was, or was to be, used by a telephone sex service provider to supply a telephone sex service, the following matters are to be taken into account:



- (a) whether any inquiries were made of persons who proposed to use standard telephone services to supply commercial services by way of voice calls;
- (b) whether persons who use standard telephone services to supply commercial services by way of voice calls are under any contractual obligation to notify the carriage service provider of the nature of those commercial services;
- (c) whether the carriage service provider monitors, or arranges for the monitoring, of advertisements that are:
  - (i) for commercial services supplied by way of voice calls made using standard telephone services; and
  - (ii) published in mass-circulation newspapers or mass-circulation magazines circulated in Australia;
- (d) any other relevant matters.

### **158C Supply of goods or services not to be tied to the supply of telephone sex services**

- (1) A person (the *first person*) must not:
  - (a) supply, or offer to supply, goods or services; or
  - (b) supply, or offer to supply, goods or services at a particular price; or
  - (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the first person;on condition that the person to whom the first person supplies or offers or proposes to supply the goods or services will agree to the supply of one or more telephone sex services.
- (2) Subsection (1) is a *civil penalty provision*.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (1) is a civil penalty provision for the purposes of that Act.
- (3) An expression used in this section and in section 47 of the *Trade Practices Act 1974* has the same meaning in this section as it has in that section.

Section 158D

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**158D Regulations may prohibit or regulate certain telephone sex services**

- (1) The regulations may prohibit or regulate any or all of the following:
- (a) the supply of a specified telephone sex service;
  - (b) the taking of specified calls to a specified telephone sex service;
  - (c) the use of a standard telephone service to supply a specified telephone sex service;
  - (d) the use of a standard telephone service to carry specified calls to a specified telephone sex service;
  - (e) the advertising of a specified telephone sex service;
  - (f) the promotion of a specified telephone sex service.

Note: A telephone sex service or call may be specified by name, by inclusion in a specified class or in any other way.

- (2) Regulations made for the purposes of subsection (1) may make provision with respect to a matter by conferring on the ACMA a power to make a decision of an administrative character.

*Compliance*

- (3) The following provisions have effect:
- (a) a telephone sex service provider or a carriage service provider must not contravene regulations in force for the purposes of paragraph (1)(a), (b), (c) or (d);
  - (b) a person must not contravene regulations in force for the purposes of paragraph (1)(e) or (f).

- (4) Subsection (3) is a *civil penalty provision*.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (3) is a civil penalty provision for the purposes of that Act.

**158E Aiding, abetting etc.**

- (1) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection 158B(1) or (4), 158C(1) or 158D(3); or

- (b) induce, whether by threats or promises or otherwise, a contravention of subsection 158B(1) or (4), 158C(1) or 158D(3); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection 158B(1) or (4), 158C(1) or 158D(3); or
  - (d) conspire with others to effect a contravention of subsection 158B(1) or (4), 158C(1) or 158D(3).
- (2) Subsection (1) is a *civil penalty provision*.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (1) is a civil penalty provision for the purposes of that Act.

### **158F Evidentiary certificate—telephone sex service**

- (1) The ACMA may issue a written certificate stating that a specified service is, or was, a telephone sex service.
- (2) In any proceedings under the *Telecommunications Act 1997* that relate to this Part, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be a certificate and to have been properly given.

### **158G Onus of proof—agreement and limiting access**

In any proceedings against a person under the *Telecommunications Act 1997* that relate to this Part, it is to be presumed, unless the contrary is established, that paragraphs 158B(2)(e), (f) and (g) are not applicable.

### **158H Approved prefix**

- (1) For the purposes of this Part, each of the following is an *approved prefix*:
  - (a) 1901 or, if there is in force a written determination made by the Minister or the ACMA specifying another prefix for the purposes of this paragraph, that other prefix;

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- (b) if there is in force a written determination made by the Minister or the ACMA specifying a prefix for the purposes of this paragraph—that prefix.
- (2) A determination under paragraph (1)(a) or (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**158J Telephone sex service**

- (1) For the purposes of this Part, a *telephone sex service* is a commercial service supplied using a standard telephone service, where:
  - (a) the supply is by way of a voice call made using the standard telephone service; and
  - (b) having regard to:
    - (i) the way in which the service is advertised or promoted; and
    - (ii) the content of the service;it would be concluded that a majority of persons who call the service are likely to do so with the sole or principal object of deriving sexual gratification from the call.
- (2) However, a service is not a telephone sex service if it is a therapeutic or counselling service provided by a person registered or licensed as a medical practitioner, or as a psychologist, under a law of a State or Territory.

**158K Telephone sex service provider**

For the purposes of this Part, if a person uses, or proposes to use, a standard telephone service to supply one or more telephone sex services, the person is a *telephone sex service provider*.

**158L Voice call**

- (1) To avoid doubt, a reference in this Part to a *voice call* includes a reference to a call that involves a recorded or synthetic voice.
- (2) In determining the meaning of a provision of the *Telecommunications Act 1997*, or a provision of this Act other than this Part, subsection (1) is to be disregarded.

**158M Savings of other laws**

This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

**158N Transitional**

- (1) This Part does not apply to a telephone sex service that is supplied before the end of the period of 6 months beginning on the date of commencement of this section.
- (2) However, an agreement referred to in paragraph 158B(2)(e) may be entered into before, at or after the commencement of this section.

## Part 10—Miscellaneous

### 159 Direction to Telstra to comply with this Act

- (1) The Minister may, by written notice given to Telstra, direct Telstra to take specified action directed towards ensuring that Telstra complies with this Act.
- (2) Before giving a direction under subsection (1), the Minister must consult Telstra.
- (3) To avoid doubt:
  - (a) subsection (1) does not, by implication, limit a power conferred on the Minister, the ACMA or the ACCC by or under any other provision of a law; and
  - (b) subsection (1) is not limited by a power conferred on the Minister, the ACMA or the ACCC by or under any other provision of a law.
- (4) Telstra must comply with a direction under subsection (1).

### 159A Review of operation of Parts 2 and 5 of this Act

- (1) The Minister must cause a review of the operation of Parts 2 and 5 of this Act to be commenced within 3 years after the *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000* receives the Royal Assent.
- (1A) The review must include an opportunity for the public to make written submissions.
- (2) The review must consider:
  - (a) the operation of Parts 2 and 5; and
  - (b) whether those Parts best promote the objects of this Act and of Part 2 (as set out in section 3 of the *Telecommunications Act 1997* and section 8A of this Act; and

- (ba) whether the contestability regime, and the ability of providers to offer alternative telecommunications services, has resulted in an improvement in technologies and services available to people in rural and remote Australia compared with what is on offer to people in metropolitan Australia; and
  - (c) any other matters the Minister considers relevant.
- (3) The Minister must cause a copy of a report of the review to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

### **160 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties, not exceeding 10 penalty units, for offences against the regulations.





**Table of Acts**

**Notes to the *Telecommunications (Consumer Protection and Service Standards) Act 1999***

**Note 1**

The *Telecommunications (Consumer Protection and Service Standards) Act 1999* as shown in this compilation comprises Act No. 50, 1999 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*, see Act No. 45, 2005.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	50, 1999	5 July 1999	Part 3: 1 July 1999 Remainder: 2 Aug 1999	
<i>Telecommunications Laws Amendment (Universal Service Cap) Act 1999</i>	42, 1999	11 June 1999	Schedule 2: (a)	—
<i>Telecommunications (Consumer Protection and Service Standards) Amendment Act 2000</i>	33, 2000	19 Apr 2000	19 Apr 2000	Sch. 1 (items 4, 5)
<i>Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 1) 2000</i>	95, 2000	30 June 2000	Schedule 1: 1 July 2000 Remainder: Royal Assent	Sch. 1 (items 81–85)
<i>Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000</i>	142, 2000	29 Nov 2000	Schedules 1, 2 and Schedule 3 (items 1–9, 12, 14, 15): 1 July 2000 Schedule 3 (items 10, 11, 13): 1 Jan 2001 Remainder: Royal Assent	Sch. 2, Sch. 3 (items 7, 9) and Sch. 5

Notes to the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Privacy Amendment (Private Sector) Act 2000</i>	155, 2000	21 Dec 2000	Schedule 3: Royal Assent Remainder: 21 Dec 2001	—
<i>Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001</i>	5, 2001	20 Mar 2001	S. 4 and Schedule 1 (items 163–165): (b)	S. 4
<i>Communications and the Arts Legislation Amendment Act 2001</i>	46, 2001	5 June 2001	5 June 2001	—
<i>Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001</i>	121, 2001	24 Sept 2001	Schedule 2 (item 167): (c)	—
<i>Communications Legislation Amendment Act (No. 1) 2003</i>	114, 2003	27 Nov 2003	Schedule 2: 27 Mar 2003 Remainder: 28 Nov 2003	Sch. 5 (item 13)
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 429–437, 496): Royal Assent	S. 4 and Sch. 1 (item 496)
<i>Telecommunications (Consumer Protection and Service Standards) Amendment (National Relay Service) Act 2005</i>	24, 2005	21 Mar 2005	Schedule 1 (item 9): (d) Remainder: Royal Assent	—
<i>Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005</i>	45, 2005	1 Apr 2005	Schedule 1 (items 161–165) and Schedule 4: 1 July 2005 (e) Schedule 2: (e)	Sch. 4

## Act Notes

- (a) The *Telecommunications (Consumer Protection and Service Standards) Act 1999* was amended by Schedule 2 only of the *Telecommunications Laws Amendment (Universal Service Cap) Act 1999*, subsection 2(3) of which provides as follows:
- (3) Schedule 2 commences, or is taken to have commenced, immediately after the commencement of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.
- Part 2 commenced on 1 July 1999.
- (b) The *Telecommunications (Consumer Protection and Service Standards) Act 1999* was amended by Schedule 1 (items 163–165) only of the *Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the latest of the following times:
- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.
- (c) Schedule 2 (item 167) of the *Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001* provided for the amendment of subsection 90(3)(d) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. The last-mentioned section was repealed by the *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000* before a date was fixed for the commencement of Schedule 2 (item 167).
- (d) Subsection 2(1) (item 3) of the *Telecommunications (Consumer Protection and Service Standards) Amendment (National Relay Service) Act 2005* provides as follows:
- (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
Provision(s)	Commencement	Date/Details
3. Schedule 1, Part 2	Immediately after the commencement of item 437 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act 2005</i> .	Does not commence
	However, the provision(s) covered by this table item do not commence at all if:	
	(a) item 437 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act 2005</i> commences before the day on which this Act receives the Royal Assent; or	
	(b) item 437 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act 2005</i> does not commence.	

- (e) Subsection 2(1) (items 2, 3 and 10) of the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005* provide as follows:
- (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.

## Act Notes

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<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2005
10. Schedule 4	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005

## Table of Amendments

### Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 1</b>	
S. 2 .....	am. No. 142, 2000
S. 4 .....	am. No. 45, 2005
S. 5 .....	am. Nos. 95 and 142, 2000
S. 7A.....	ad. No. 5, 2001
<b>Part 2</b>	
Part 2 .....	rs. No. 142, 2000
<b>Division 1</b>	
S. 8 .....	rs. No. 142, 2000 am. No. 45, 2005
Ss. 8A–8D .....	ad. No. 142, 2000
Ss. 8E, 8F .....	ad. No. 142, 2000 am. No. 45, 2005
S. 8G .....	ad. No. 142, 2000
<b>Division 2</b>	
<b>Subdivision A</b>	
S. 9 .....	rs. No. 142, 2000
Ss. 9A–9F .....	ad. No. 142, 2000
<b>Subdivision B</b>	
Ss. 9G, 9H, 9J.....	ad. No. 142, 2000
<b>Division 3</b>	
<b>Subdivision A</b>	
S. 10 .....	rs. No. 142, 2000
Ss. 10A–10G.....	ad. No. 142, 2000
<b>Subdivision B</b>	
Ss. 10H, 10J.....	ad. No. 142, 2000
<b>Division 4</b>	
S. 11 .....	rs. No. 142, 2000
S. 11A.....	ad. No. 142, 2000
Ss. 11B, 11C .....	ad. No. 142, 2000 am. No. 45, 2005
Ss. 11D, 11E .....	ad. No. 142, 2000
S. 11F.....	ad. No. 142, 2000 am. No. 45, 2005
<b>Division 5</b>	
<b>Subdivision A</b>	
S. 12 .....	rs. No. 142, 2000

## Table of Amendments

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision B</b>	
S. 12A.....	rs. No. 142, 2000 am. No. 45, 2005
S. 12B.....	ad. No. 142, 2000
S. 12C .....	ad. No. 142, 2000 am. No. 45, 2005
Ss. 12D, 12E .....	ad. No. 142, 2000
S. 12EA .....	ad. No. 142, 2000 am. No. 45, 2005
<b>Subdivision C</b>	
S. 12F.....	ad. No. 142, 2000 am. No. 45, 2005
S. 12G .....	ad. No. 142, 2000
Ss. 12H, 12J–12M .....	ad. No. 142, 2000 am. No. 45, 2005
<b>Subdivision D</b>	
S. 12P.....	ad. No. 142, 2000 am. No. 45, 2005
S. 12Q .....	ad. No. 142, 2000
Ss. 12R–12U.....	ad. No. 142, 2000 am. No. 45, 2005
<b>Subdivision E</b>	
S. 12V.....	ad. No. 142, 2000
Ss. 12W–12Z .....	ad. No. 142, 2000 am. No. 45, 2005
<b>Division 6</b>	
<b>Subdivision A</b>	
S. 13 .....	rs. No. 142, 2000
<b>Subdivision B</b>	
Ss. 13A–13E .....	ad. No. 142, 2000 am. No. 45, 2005
<b>Subdivision C</b>	
S. 13F.....	ad. No. 142, 2000 am. No. 45, 2005
S. 13G .....	ad. No. 142, 2000
Ss. 13H, 13J–13L .....	ad. No. 142, 2000 am. No. 45, 2005
<b>Subdivision D</b>	
S. 13M.....	ad. No. 142, 2000 am. No. 45, 2005
S. 13N .....	ad. No. 142, 2000
Ss. 13P–13R .....	ad. No. 142, 2000 am. No. 45, 2005

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## Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision E</b>	
S. 13S.....	ad. No. 142, 2000
Ss. 13T–13V .....	ad. No. 142, 2000 am. No. 45, 2005
<b>Division 7</b>	
S. 14 .....	rs. No. 142, 2000 am. No. 45, 2005
S. 14A.....	rs. No. 142, 2000
<b>Division 8</b>	
<b>Subdivision A</b>	
S. 15 .....	rs. No. 142, 2000
S. 15A.....	ad. No. 142, 2000
S. 15B.....	ad. No. 142, 2000 am. No. 45, 2005
<b>Subdivision B</b>	
Ss. 15C–15H.....	ad. No. 142, 2000
S. 15J .....	ad. No. 142, 2000
S. 15K.....	ad. No. 142, 2000 am. No. 45, 2005
S. 15L .....	ad. No. 142, 2000
S. 15M.....	ad. No. 142, 2000 am. No. 45, 2005
Ss. 15N, 15P .....	ad. No. 142, 2000
<b>Division 9</b>	
S. 16 .....	rs. No. 142, 2000
Heading to s. 16A .....	am. No. 45, 2005
S. 16A.....	ad. No. 142, 2000 am. No. 45, 2005
S. 16B.....	ad. No. 142, 2000
<b>Division 10</b>	
S. 17 .....	rs. No. 142, 2000
S. 17A.....	ad. No. 142, 2000
<b>Division 11</b>	
S. 18 .....	rs. No. 142, 2000
Ss. 18A–18E .....	ad. No. 142, 2000
<b>Division 12</b>	
S. 19 .....	rs. No. 142, 2000
Ss. 19A–19C .....	rs. No. 142, 2000
Ss. 19D, 19E .....	ad. No. 142, 2000

## Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 13</b>	
<b>Subdivision A</b>	
S. 20 .....	am. No. 95, 2000 rs. No. 142, 2000 am. No. 45, 2005
Notes to s. 20(1), (2) .....	rep. No. 95, 2000
Note to s. 20 .....	am. No. 5, 2001
S. 20A .....	ad. No. 142, 2000
S. 20B .....	ad. No. 142, 2000 am. No. 45, 2005
S. 20C .....	ad. No. 142, 2000
S. 20D .....	ad. No. 142, 2000 am. No. 45, 2005
Heading to s. 20E .....	am. No. 45, 2005
S. 20E .....	ad. No. 142, 2000 am. No. 45, 2005
Heading to s. 20F .....	am. No. 45, 2005
S. 20F .....	ad. No. 142, 2000 am. No. 45, 2005
Note to s. 20F(1) .....	am. No. 45, 2005
Ss. 20G, 20H .....	ad. No. 142, 2000 am. No. 45, 2005
<b>Subdivision B</b>	
S. 20J .....	ad. No. 142, 2000 am. No. 45, 2005
Note to s. 20J .....	am. No. 5, 2001
S. 20K .....	ad. No. 142, 2000 am. No. 45, 2005
Heading to s. 20L .....	am. No. 45, 2005
S. 20L .....	ad. No. 142, 2000 am. No. 45, 2005
Heading to s. 20M .....	am. No. 45, 2005
S. 20M .....	ad. No. 142, 2000 am. No. 45, 2005
Heading to s. 20N .....	am. No. 45, 2005
S. 20N .....	ad. No. 142, 2000 am. No. 45, 2005
Note to s. 20N(1) .....	am. No. 45, 2005
S. 20P .....	ad. No. 142, 2000 am. No. 45, 2005
<b>Subdivision C</b>	
S. 20Q .....	ad. No. 142, 2000
S. 20R .....	ad. No. 142, 2000 am. No. 45, 2005



## Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Ss. 20S, 20T .....	ad. No. 142, 2000
Heading to s. 20U .....	am. No. 45, 2005
Ss. 20U–20W .....	ad. No. 142, 2000 am. No. 45, 2005
Heading to s. 20X .....	am. No. 45, 2005
Ss. 20X, 20Y .....	ad. No. 142, 2000 am. No. 45, 2005
<b>Subdivision D</b>	
S. 20Z .....	ad. No. 142, 2000 am. No. 45, 2005
Ss. 20ZA, 20ZB .....	ad. No. 142, 2000
S. 20ZC .....	ad. No. 142, 2000 am. No. 45, 2005
Ss. 20ZD–20ZH .....	ad. No. 142, 2000
<b>Division 14</b>	
S. 21 .....	am. No. 95, 2000 rs. No. 142, 2000 am. No. 45, 2005
Note to s. 21(2) .....	rs. No. 95, 2000 rep. No. 142, 2000
S. 21A .....	ad. No. 142, 2000 am. No. 8, 2005
Note to s. 21A .....	ad. No. 8, 2005
S. 21B .....	ad. No. 142, 2000 am. Nos. 8 and 45, 2005
S. 21C .....	ad. No. 142, 2000 rs. No. 8, 2005 am. No. 45, 2005
S. 21D .....	ad. No. 142, 2000 am. Nos. 8 and 45, 2005
S. 21E .....	ad. No. 142, 2000
<b>Division 15</b>	
S. 22 .....	am. No. 95, 2000 rs. No. 142, 2000 am. No. 45, 2005
S. 22A .....	ad. No. 142, 2000 am. No. 45, 2005
Heading to s. 22B .....	am. No. 45, 2005
S. 22B .....	ad. No. 142, 2000 am. No. 45, 2005
Ss. 22C, 22D .....	ad. No. 142, 2000
<b>Division 16</b>	
Heading to s. 23 .....	am. No. 45, 2005

## Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 23 .....	am. No. 95, 2000 rs. No. 142, 2000 am. No. 45, 2005
Heading to s. 23A .....	am. No. 45, 2005
Ss. 23A–23C .....	ad. No. 142, 2000 am. No. 45, 2005
S. 23D .....	ad. No. 142, 2000 am. Nos. 8 and 45, 2005
S. 24 .....	rep. No. 142, 2000
S. 24A.....	ad. No. 95, 2000 rep. No. 142, 2000
Ss. 25, 26 .....	am. No. 95, 2000 rep. No. 142, 2000
S. 26A.....	am. No. 95, 2000 rep. No. 142, 2000
Notes to s. 26A(1), (2) .....	rep. No. 95, 2000
S. 26B.....	rep. No. 142, 2000
Ss. 26C, 26D .....	am. No. 95, 2000 rep. No. 142, 2000
S. 26E.....	rep. No. 142, 2000
S. 26F.....	ad. No. 95, 2000 rep. No. 142, 2000
Ss. 27, 28 .....	am. No. 95, 2000 rep. No. 142, 2000
Ss. 29–31 .....	rep. No. 142, 2000
S. 32 .....	am. No. 95, 2000 rep. No. 142, 2000
S. 33 .....	rep. No. 142, 2000
Ss. 34, 35 .....	am. No. 95, 2000 rep. No. 142, 2000
Ss. 36, 37 .....	rep. No. 142, 2000
Ss. 38, 39 .....	am. No. 95, 2000 rep. No. 142, 2000
S. 40 .....	rep. No. 142, 2000
Ss. 40A–40P .....	rep. No. 142, 2000
S. 41 .....	am. No. 95, 2000 rep. No. 142, 2000
S. 42 .....	rep. No. 142, 2000
S. 43 .....	am. No. 95, 2000 rep. No. 142, 2000
Ss. 44–46 .....	rep. No. 142, 2000
Ss. 46A–46F .....	rep. No. 142, 2000
Ss. 47, 48 .....	rep. No. 142, 2000

## Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Ss. 49–51 .....	am. No. 95, 2000 rep. No. 142, 2000
Ss. 52, 53 .....	rep. No. 142, 2000
S. 54 .....	am. No. 42, 1999 rep. No. 142, 2000
S. 55 .....	rep. No. 142, 2000
S. 56 .....	am. No. 42, 1999 rep. No. 142, 2000
Subhead to s. 57(2) .....	ad. No. 95, 2000 rep. No. 142, 2000
S. 57 .....	am. No. 42, 1999; No. 95, 2000 rep. No. 142, 2000
Note to s. 57(2) .....	ad. No. 95, 2000 rep. No. 142, 2000
Note to s. 57(9) .....	ad. No. 95, 2000 rep. No. 142, 2000
Ss. 58–60 .....	rep. No. 142, 2000
Note to s. 60(1) .....	ad. No. 95, 2000 rep. No. 142, 2000
S. 61 .....	rep. No. 142, 2000
S. 61AA .....	ad. No. 95, 2000 rep. No. 142, 2000
Ss. 61A, 61B .....	rep. No. 142, 2000
Ss. 62–92 .....	rep. No. 142, 2000
<b>Part 3</b>	
<b>Division 1</b>	
S. 94 .....	am. No. 114, 2003; No. 24, 2005
S. 94A .....	ad. No. 114, 2003
<b>Division 2</b>	
S. 95 .....	am. No. 24, 2005
S. 96 .....	am. No. 33, 2000 rs. No. 24, 2005
Heading to s. 97 .....	am. No. 45, 2005
S. 97 .....	am. No. 24, 2005 am. No. 45, 2005
<b>Division 3</b>	
S. 99 .....	rs. No. 142, 2000; No. 114, 2003
S. 100 .....	am. Nos. 33 and 142, 2000; No. 114, 2003
Note to s. 100(2) .....	am. No. 24, 2005
S. 100A .....	ad. No. 114, 2003 am. No. 45, 2005
S. 101 .....	am. No. 33, 2000; No. 45, 2005
S. 101A .....	ad. No. 142, 2000 am. Nos. 8 and 45, 2005

## Table of Amendments

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 101B.....	ad. No. 142, 2000
Heading to s. 101C .....	am. No. 114, 2003
S. 101C .....	ad. No. 142, 2000 am. No. 114, 2003; No. 45, 2005
<b>Division 4</b>	
Div. 4 of Part 3 .....	rs. No. 8, 2005
S. 102 .....	rs. No. 8, 2005 am. No. 24, 2005
<b>Part 4</b>	
S. 107 .....	am. No. 142, 2000
S. 109 .....	am. No. 95, 2000; No. 45, 2005
<b>Part 5</b>	
S. 113 .....	am. No. 45, 2005
S. 115 .....	am. No. 45, 2005
S. 117 .....	am. No. 45, 2005
S. 118 .....	am. No. 45, 2005
Note to s. 118(2) .....	am. No. 45, 2005
Ss. 119, 120 .....	am. No. 45, 2005
Heading to s. 124.....	am. No. 45, 2005
S. 124 .....	am. No. 45, 2005
S. 125 .....	am. No. 114, 2003; No. 45, 2005
<b>Part 6</b>	
S. 128 .....	am. No. 46, 2001; No. 114, 2003
Ss. 129–131 .....	am. No. 45, 2005
<b>Part 7</b>	
Ss. 134, 135.....	am. No. 45, 2005
Ss. 137–142.....	am. No. 45, 2005
S. 145 .....	am. No. 45, 2005
<b>Part 8</b>	
S. 146 .....	am. No. 45, 2005
S. 147 .....	am. No. 155, 2000; No. 45, 2005
<b>Part 9A</b>	
S. 158D .....	am. No. 45, 2005
S. 158F.....	am. No. 45, 2005
S. 158H .....	am. No. 45, 2005
<b>Part 10</b>	
S. 159 .....	am. No. 45, 2005
S. 159A.....	ad. No. 142, 2000

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Telecommunications (Consumer Protection and Service Standards) Amendment Act 2000* (No. 33, 2000)

**Schedule 1**

**4 Application**

- (1) The amendments of sections 96 and 101 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* apply to each levy quarter that commences after the day on which this Act receives the Royal Assent.
- (2) The amendments of section 100 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* apply to each levy quarter after the first levy quarter that commences after the day on which this Act receives the Royal Assent.

**5 Transitional**

Despite section 100 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the **total levy** for the first quarter that commences after the day on which this Act receives the Royal Assent is the estimated NRS cost for the quarter.

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*Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 1) 2000* (No. 95, 2000)

**Schedule 1**

**81 Definitions**

In this Part:

**amended Act** means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* as in force after the commencement.

**commencement** means the commencement of this Schedule.

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**Table A**

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*old Act* means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* as in force immediately before the commencement.

**82 New subsection 20(2B)**

Subsection 20(2B) of the amended Act applies in relation to an agreement referred to in that subsection, whether made before, on or after the commencement.

**83 New subsections 20(4) and (5) and old subsections 20(5) to (8)**

- (1) Subsection 20(4) of the amended Act applies in relation to declarations referred to in that subsection that are made on or after the commencement.
- (2) Subsection 20(5) of the amended Act applies in relation to declarations made before, on or after the commencement.
- (3) Subsection 20(5) of the old Act continues to apply in relation to a declaration made before the commencement as if the subsection had not been repealed.
- (4) Subsection 20(6) of the old Act continues to apply to a revocation made before the commencement as if the subsection had not been repealed.
- (5) If subsection 20(7) or (8) of the old Act applied to 2 declarations (an original declaration and a fresh declaration) made before the commencement, but the fresh declaration had not taken effect, and the original declaration had not ceased to have effect, under that subsection by the commencement, that subsection continues to apply to those declarations as if it had not been repealed.

**84 New subsections 26A(4) and (5) and old subsections 26A(4) to (7)**

- (1) Subsection 26A(4) of the amended Act applies in relation to declarations referred to in that subsection that are made on or after the commencement.
- (2) Subsection 26A(5) of the amended Act applies in relation to declarations made before, on or after the commencement.

**Table A**

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- (3) Subsection 26A(4) of the old Act continues to apply in relation to a declaration made before the commencement as if the subsection had not been repealed.
  - (4) Subsection 26A(5) of the old Act continues to apply to a revocation made before the commencement as if the subsection had not been repealed.
  - (5) If subsection 26A(6) or (7) of the old Act applied to 2 declarations (an original declaration and a fresh declaration) made before the commencement, but the fresh declaration had not taken effect, and the original declaration had not ceased to have effect, under that subsection by the commencement, that subsection continues to apply to those declarations as if it had not been repealed.

**85 New section 61AA**

Section 61AA of the amended Act applies in relation to the financial year in which the commencement occurs and later financial years.

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*Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000 (No. 142, 2000)*

**Schedule 2**

**1 Application of repealed Part 2**

Despite the repeal and substitution of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* by Schedule 1 to this Act, that Part continues to apply, after that Schedule commences in relation to the financial year that ended on 30 June 2000, as if that repeal and substitution had not happened.

**2 Things done under repealed Part 2**

- (1) If:
  - (a) something was done (other than something covered by item 3), before this Act received the Royal Assent, under or for the purposes of a provision of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and

## Table A

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- (b) immediately after the repeal and substitution of that Part by Schedule 1 to this Act, there is a provision in that Part that requires or allows the same, or an equivalent, thing to be done;

then, after the commencement of Schedule 1, the thing is taken to have been done under or for the purposes of the latter provision.

- (2) If the thing would have been done by another person or body, had it been done after the commencement of Schedule 1, then it is taken to have been done by that other person or body for the purposes of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

### 3 Effect of instruments made under repealed Part 2

- (1) For the purposes of this item, an *eligible instrument* means regulations, a declaration, a determination, a direction, a notice or any other instrument that was:
  - (a) made or given under a provision (the *original provision*) of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* in the table in subitem (3), or made or given for the purposes of such a provision; and
  - (b) in force immediately before this Act received the Royal Assent.
- (2) Despite the repeal and substitution of that Part by Schedule 1 to this Act, an eligible instrument has effect, after that Schedule commences, as if:
  - (a) it had been made or given under, or for the purposes of, the equivalent provision of that Part in the table in subitem (3); and
  - (b) any requirement for the making or giving of the eligible instrument had been satisfied.
- (3) This table sets out the original provisions, and their equivalent provisions, of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.



**Table A**

<b>Equivalent provisions of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i></b>		
<b>Item</b>	<b>This original provision (before this Act receives the Royal Assent):</b>	<b>... is equivalent, after Schedule 1 commences, to this provision:</b>
1	subparagraph 11(b)(iii)	subparagraph 9C(b)(iii)
2	section 12	section 9D
3	section 13	section 9E
4	section 14	section 9F
5	subsection 14A(1)	subsection 10F(1)
6	subsection 14A(5)	subsection 10G(1)
7	section 17	subsection 20B(1)
8	section 18	section 8F
9	subsection 19(3)	subsection 9(3)
10	subsection 19(5)	subsection 9A(2)
11	subsection 19A(8)	subsection 10D(1)
12	subsection 19B(1)	subsection 10H(1)
13	subsection 19C(1)	subsection 10J(1)
14	section 26A	section 15
15	subsection 38(2)	subsection 12Y(2)
16	subsection 40G(1)	subsection 15J(1)
17	subsection 40M(2)	subsection 15N(2)
18	subsection 42(1)	subsection 18A(1)
19	subsection 43(2)	subsection 18B(2)
20	subsection 46B(1)	subsection 19A(1)
21	subsection 46C(2)	subsection 19B(2)
22	section 61A	section 17
23	subsection 61B(1)	subsection 17A(1)

#### **4 References to certain terms in eligible instruments**

- (1) For the purposes of this item, an *eligible instrument* means regulations, a declaration, a determination, a direction, a notice or any other instrument that:

## **Table A**

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- (a) was in force immediately before this Act received the Royal Assent; and
  - (b) contains a reference to a term the definition of which is repealed by this Act.
- (2) For the purposes of the amendments made by Schedule 1 to this Act, the Minister or the ACA may determine in writing that a specified eligible instrument has effect, after that Schedule commences, as if a reference in the instrument to a specified term were a reference to another specified term.

Note: An instrument may be specified by name, by inclusion in a specified class or in any other way.

### **5 Treatment of draft universal service plans**

- (1) This item applies to a draft universal service plan given to the Minister under Division 4 of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, that the Minister has neither approved nor refused to approve, before this Act received the Royal Assent.
- (2) To the extent that the draft contains statements of the policy that the universal service provider concerned will apply in supplying equipment, goods or services, the draft is, after Schedule 1 to this Act commences, taken to be a draft policy statement for the purposes of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.
- (3) The remainder of the draft is, after Schedule 1 commences, taken to be a draft standard marketing plan for the purposes of that Act.

### **6 Treatment of approved universal service plans**

- (1) This item applies to an approved universal service plan under Division 4 of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* that was in force immediately before this Act received the Royal Assent.
- (2) To the extent that the plan contains statements of the policy that the universal service provider concerned will apply in supplying equipment, goods or services, the plan is, after Schedule 1 to this Act commences, taken to be an approved policy statement for the purposes of the

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**Table A**

*Telecommunications (Consumer Protection and Service Standards) Act 1999.*

- (3) The remainder of the plan is, after Schedule 1 commences, taken to be an approved standard marketing plan for the purposes of that Act.

**6A ACA advice under section 16A**

If, before 31 December 2000, the ACA has given an advice relating to universal service subsidies to the Minister, the advice is taken to have been given to the Minister in accordance with section 16A.

**7 Meaning of *eligible person***

After Schedule 1 to this Act commences, each of the following persons, in relation to a financial year that ended on or before 30 June 2000, is taken to be an *eligible person* for the purposes of section 22A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*:

- (a) a universal service provider;
- (b) a digital data service provider;
- (c) a participating carrier.

Note: Section 22A of that Act deals with requests for information.

**8 Application of requirement to maintain Register/s**

- (1) Section 23 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which requires the ACA to maintain a Register or Registers) does not apply to the ACA until:
- (a) 3 months after the day on which this Act receives the Royal Assent; or
  - (b) such later day as the Minister determines in writing for the purposes of this paragraph.
- (2) A copy of a determination made for the purposes of paragraph (1)(b) must be published in the *Gazette*.

**9 Transitional regulations**

The Governor-General may make regulations in relation to any matters of a transitional nature that may arise out of the amendments and repeals made by this Act.

## **Table A**

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### **Schedule 3**

#### **7 Application**

Despite the repeal and substitution of subsection 2(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* made by item 6, that subsection continues to apply, after this item commences in relation to the financial year that ended on 30 June 2000, as if that repeal and substitution had not happened.

#### **9 Application**

Despite the repeal and substitution of subsection 5(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* made by item 8, that subsection continues to apply, after this item commences in relation to the financial year that ended on 30 June 2000, as if that repeal and substitution had not happened.

### **Schedule 5**

#### **1 Meaning of former law**

In this Schedule:

*former law* means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* as in force immediately before the commencement of Schedule 1 to this Act.

#### **2 Levy distribution for 1999-2000 financial year**

Items 3 to 6 of this Schedule apply if section 86 of the former law prevents a payment being made out of the Universal Service Account for the 1999-2000 financial year because of either or both of the following:

- (a) the ACA has not yet made a written assessment under section 64 of the former law for that year;
- (b) not all participating carriers in respect of which levy was assessed have paid the levy.

Note: The operation of the former law for the 1999-2000 financial year is preserved by item 1 of Schedule 2 to this Act.

#### **3 Assessment based on estimate of eligible revenue**

- (1) If a participating carrier fails to give the ACA a return under section 62 of the former law for the 1999-2000 financial year, the ACA may:
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**Table A**

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- (a) estimate the carrier's eligible revenue for the year; and
  - (b) make a written assessment under section 64 of the former law of the carrier's eligible revenue for the year based on the estimate.
- (2) The ACA must give at least 14 days' notice to the carrier of the ACA's proposal to make the assessment based on the estimate, and of the amount of eligible return proposed to be assessed. The notice must be in writing.
  - (3) The ACA must not make an assessment based on an estimate after receiving a return for the year from the carrier concerned.
  - (4) However, if the ACA has made an assessment based on the estimate, the ACA is not required to change it if a return is later given to the ACA.

**4 Nil assessments**

The ACA may make an assessment under section 64 of the former law or item 3 of this Schedule that a participating carrier's eligible revenue for the 1999-2000 financial year is nil if, in the ACA's opinion, without such an assessment:

- (a) it is unlikely that the carrier would be able to pay any levy that would be payable; or
- (b) the carrier is unlikely to pay the levy unless the Commonwealth takes action to recover it and the cost of doing so would exceed the amount of the levy.

Note: However, the ACA could later amend a nil assessment under section 66 of the former law.

**5 Distributions before all levies have been paid**

Despite paragraph 86(b) of the former law, an amount is payable from the Universal Service Account for the 1999-2000 financial year even if all of the participating carriers in respect of which the levy was assessed have not yet paid the levy.

**6 Working out how much levy is payable**

- (1) If the total of the amounts payable to carriers out of the Universal Service Account is more than the balance of the Universal Service

**Table A**

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Account, after paying any refunds that are due under section 79 of the former law, the ACA must:

- (a) work out the amount payable to each carrier as a proportion of the total amounts payable; and
  - (b) ensure that any payments out of the Universal Service Account are made in accordance with those proportions (rounding amounts to whole dollars as the ACA considers appropriate).
- (2) However, if the Minister determines in writing a different method for making payments out of the Universal Service Account than the method provided in subitem (1), the ACA must act in accordance with that determination.
  - (3) A determination under subitem (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
  - (4) A carrier's levy credit balance for the 1999-2000 financial year is reduced by the amount (worked out under this item) that is paid to the carrier.
  - (5) This item continues to apply until each carrier's levy credit balance for the year is reduced to nil.

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*Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001* (No. 5, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
  - (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.
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**Table A**

*Communications Legislation Amendment Act (No. 1) 2003* (No. 114, 2003)

**Schedule 5**

**13 Application**

The amendments made by items 2 to 9 apply in respect of each levy quarter that begins on or after the date of commencement of this Schedule.

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*Financial Framework Legislation Amendment Act 2005* (No. 8, 2005)

**4 Saving of matters in Part 2 of Schedule 1**

(1) If:

- (a) a decision or action is taken or another thing is made, given or done; and
- (b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;

then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

(2) In this section:

**Part 2 Act** means an Act that is amended by an item in Part 2 of Schedule 1.

**Schedule 1**

**496 Saving provision—Finance Minister’s determinations**

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.