

1996-97

The Parliament of the
Commonwealth of Australia

THE SENATE

As read a third time

**Telecommunications Legislation
Amendment Bill 1997**

No. , 1997

**A Bill for an Act to amend the law relating to
telecommunications, and for related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
Schedule 1—Amendment of the Telecommunications Act 1997 in relation to telecommunication interception and related matters		3
Schedule 2—Other amendments of telecommunications legislation		30
	<i>Telecommunications Act 1997</i>	30
	<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997</i>	38
	<i>Trade Practices Act 1974</i>	38

1 THIS bill originated in the Senate; and,
2 having this day passed, is now ready for
3 presentation to the House of
4 Representatives for its concurrence.

5 HARRY EVANS
6 *Clerk of the Senate*
7 The Senate
8 30 October 1997

9 **A Bill for an Act to amend the law relating to**
10 **telecommunications, and for related purposes**

11 The Parliament of Australia enacts:

12 **1 Short title**

13 This Act may be cited as the *Telecommunications Legislation*
14 *Amendment Act 1997*.

15 **2 Commencement**

- 16 (1) Subject to subsections (2), (3) and (4), this Act commences on the
17 day on which it receives the Royal Assent.
- 18 (2) Item 25 of Schedule 2 is taken to have commenced on 3 May 1997,
19 immediately after the commencement of subsection 40(4) of the

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Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997.

(3) Item 26 of Schedule 2 commences, or is taken to have commenced, immediately before the commencement of item 15 of Schedule 3 to the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*.

(4) Items 27, 28, 29, 30 and 31 of Schedule 2 are taken to have commenced on 30 April 1997, immediately after the commencement of Schedule 1 to the *Trade Practices Amendment (Telecommunications) Act 1997*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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2 **Schedule 1—Amendment of the**
3 **Telecommunications Act 1997 in**
4 **relation to telecommunication**
5 **interception and related matters**
6

7 **1 Section 7**

8 Insert:

9 *agency* means:

- 10 (a) the Australian Federal Police; or
11 (b) a police force or service of a State or of a Territory; or
12 (c) the National Crime Authority; or
13 (d) the New South Wales Crimes Commission; or
14 (e) the Independent Commission Against Corruption of New
15 South Wales; or
16 (f) the Criminal Justice Commission of Queensland; or
17 (g) the Australian Security Intelligence Organization; or
18 (h) the Police Integrity Commission; or
19 (i) a prescribed authority established by or under a law of the
20 Commonwealth, a State or a Territory.

21 *agency co-ordinator* has the meaning given by section 7A.

22 *IC plan* means an instrument of a kind described in section 329:

- 23 (a) that is lodged in accordance with section 330 or 331; or
24 (b) that is so lodged and subsequently amended in accordance
25 with section 332C or 332D.

26 *interception related information* means information about a matter
27 that is the subject of an obligation under Division 2 of Part 15.

28 **2 After section 7**

29 Insert:

1 **7A Agency co-ordinator**

2 (1) In this Act:

3 *agency co-ordinator* means:

- 4 (a) if paragraph (b) does not apply—the Secretary to the
5 Attorney-General’s Department in his or her capacity as
6 agency co-ordinator; or
7 (b) if the Attorney-General determines in writing that a person or
8 body is to act as the agency co-ordinator—the person or body
9 in the capacity of that person or body as agency co-ordinator.

10 (2) Unless the context otherwise requires, an act done by or in relation
11 to the agency co-ordinator is taken to be an act done by or in
12 relation to the agency co-ordinator on behalf of all the agencies.

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

15 **3 After subsection 105(5)**

16 Insert:

17 (5A) The ACA must monitor, and report each financial year to the
18 Minister on, the operation of Parts 14 and 15 and on the costs of
19 compliance with the requirements of those Parts.

20 **4 Subsections 105(6) and (7)**

21 Omit “or (5)”, substitute “, (5) or (5A)”.

22 **5 Subsection 313(7)**

23 Repeal the subsection, substitute:

24 (7) A reference in this section to giving help includes a reference to
25 giving help by way of the provision of interception services,
26 including services in executing an interception warrant under the
27 *Telecommunications (Interception) Act 1979*.

28 Note: Additional obligations concerning interception capability, special
29 assistance capability or agency specific delivery capability are, or may
30 be, imposed on a carrier or carriage service provider under Part 15.

1 **6 Subsection 314(2)**

2 After “the requirement”, insert “(except to the extent that the
3 compliance involves costs that are, in accordance with the principles set
4 out in subsection (3A), required to be borne by the person)”.

5 **7 Subsection 314(3)**

6 Omit “The person”, substitute “Subject to subsection (3A), the person”.

7 **8 After subsection 314(3)**

8 Insert:

9 (3A) Any agreement or determination under subsection (3) setting out
10 the terms and conditions on which a person is required to provide
11 help to an agency must, so far as it relates to the cost of providing
12 the help, reflect the following principles:

- 13 (a) the principle that, to the extent that the provision of the help
14 involves an interception capability or a special assistance
15 capability that is required of the person under Division 2 of
16 Part 15 and relates to the transmission of interception related
17 information, for the purposes of that agency, to a delivery
18 point fixed under section 314A in respect of that agency—the
19 cost of the help is to be borne by the person;
- 20 (b) the principle that, to the extent that the provision of the help
21 involves an interception capability or a special assistance
22 capability that is required of the person under Division 2 of
23 Part 15 and relates to the transmission of interception related
24 information from such a delivery point to another place
25 specified by the agency—the cost of the help is to be borne
26 by the agency;
- 27 (c) the principle that, to the extent that the provision of the help
28 involves an agency specific delivery capability that is
29 required of the person under Division 4 of Part 15 in relation
30 to that agency—the cost of the help is to be borne by the
31 agency.

1 (3B) Nothing in subsection (3A) affects, by implication, the question of
2 allocation of costs in providing help to a person or body other than
3 an agency.

4 **9 After section 314**

5 Insert:

6 **314A Delivery points**

- 7 (1) Each carrier or carriage service provider must, as soon as
8 practicable after the commencement of this section:
9 (a) nominate, in respect of a carriage service of that carrier or
10 provider and of each agency, at least one place in Australia as
11 the location of a point (a *delivery point*) from which
12 interception related information can most conveniently be
13 transmitted to that agency; and
14 (b) inform the agency co-ordinator of the place or places
15 nominated for each agency.
- 16 (2) The agency co-ordinator may, at any time, notify the carrier or
17 provider that an agency does not agree to the location of a delivery
18 point nominated in respect of that carriage service and that agency
19 and, upon being so notified, the carrier or provider must nominate
20 another location for that delivery point in the place of that first-
21 mentioned location and inform the co-ordinator.
- 22 (3) If the location of that delivery point is still unsatisfactory to the
23 agency, the agency co-ordinator must:
24 (a) inform the carrier or provider to that effect; and
25 (b) refer the disagreement to the ACA for a determination under
26 subsection (4).
- 27 (4) The ACA, after hearing the views of the carrier or provider and the
28 views of the agency concerning the best location of that delivery
29 point in relation to that carriage service and that agency, must
30 determine the location of that delivery point for the purposes of this
31 section.

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- 1 (5) In determining the location of a delivery point, the carrier or
2 provider and the agency or, failing agreement, the ACA, must have
3 regard to:
- 4 (a) the configuration of the carriage service in respect of which
5 the delivery point is required to be decided; and
 - 6 (b) the relative costs to the carrier and the agency of any
7 particular point that is chosen as that delivery point; and
 - 8 (c) the reasonable needs of the agency; and
 - 9 (d) the reasonable commercial requirements of the carrier or
10 provider; and
 - 11 (e) the location of any delivery points already existing in relation
12 to that agency or other agencies.
- 13 (6) It is not a requirement that a place where an interception takes
14 place is the place nominated as the location of a delivery point if, in
15 accordance with the criteria set out in subsection (5), another more
16 suitable location exists.
- 17 (7) If the carrier or provider and an agency do not agree on the location
18 of a delivery point, then, until the ACA determines the location of
19 that delivery point, the place last nominated by the carrier or
20 provider is to be treated as that delivery point.
- 21 (8) If:
- 22 (a) the location of a delivery point has been determined by the
23 ACA in respect of a carriage service and an agency; and
 - 24 (b) as a result of a material change in the circumstances of the
25 carrier or carriage service provider concerned, the location of
26 that point becomes unsuitable;
- 27 the carrier or provider:
- 28 (c) may nominate another place as the location of that delivery
29 point in respect of that carriage service and that agency; and
 - 30 (d) must inform the agency co-ordinator of the place so
31 nominated.
- 32 (9) If:
- 33 (a) the location of a delivery point has been determined by the
34 ACA in respect of a carriage service and an agency; and
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- 1 (b) as a result of a material change in the circumstances of the
2 agency, the location of that point becomes unsuitable; and
3 (c) the agency, either directly or through the agency
4 co-ordinator, requests the carrier or provider to nominate
5 another place as the location of that delivery point;
6 the carrier or provider concerned must:
7 (d) nominate another place as the location of that delivery point
8 in respect of that carriage service and that agency; and
9 (e) inform the agency co-ordinator of the place nominated.
10 (10) Subsections (2) to (7) apply in relation to a nomination under
11 subsection (8) or (9) as if it were a nomination under subsection
12 (1).

13 **10 Part 15**

14 Repeal the Part, substitute:

15 **Part 15—Co-operation with agencies**

16 **Division 1—Introduction**

17 **317 Simplified outline**

18 The following is a simplified outline of this Part:

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| <ul style="list-style-type: none">• Carriers and carriage service providers must comply with obligations concerning interception capability and special assistance capability.• Exemption from compliance with these obligations may be granted in certain circumstances.• Carriers and certain nominated carriage service providers must comply with the obligations to prepare and submit an annual interception capability plan. |
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- Carriers and certain nominated carriage service providers must notify ACA of technological changes affecting the provision of help under Part 14 in connection with a requirement under Division 2 of this Part.
- Carriers and certain nominated carriage service providers must comply with obligations concerning agency specific delivery capability.
- Carriers, carriage service providers and agencies are required to meet different costs associated with the provision of various capabilities related to interception.
- The Minister is to conduct a review of the cost-effectiveness of interception.

13 **318 Definition**

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In this Part:

nominated carriage service provider means a carriage service provider who is declared by the Attorney-General under section 331 to be a nominated carriage service provider.

18 **319 Meaning of *interception***

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For the purposes of this Part, *interception* of a communication passing over a controlled network or controlled facility consists of:

- (a) listening to; or
- (b) recording;

such a communication, by any means, in its passage over that network or facility without the knowledge of the person making the communication.

1 **320 Meaning of interception capability, special assistance capability**
2 **and agency specific delivery capability**

- 3 (1) This section sets out the meaning of 3 important concepts used in
4 this Part, namely:
5 (a) interception capability (relating to obligations under Division
6 2); and
7 (b) special assistance capability (relating to obligations under
8 Division 2); and
9 (c) agency specific delivery capability (relating to obligations
10 under Division 4).

11 These concepts do not overlap.

- 12 (2) In this Part, *interception capability*, in relation to a carriage service
13 that involves, or will involve, the use of a controlled network or
14 controlled facility, means the capability of the network or facility
15 to enable a communication passing over it to be intercepted.

16 Note: The specific requirement of interception capability that applies to a
17 particular carriage service is to be found either in a determination
18 made under section 322 (see also section 323) or in section 324.

- 19 (3) In this Part, *special assistance capability*, in relation to a carriage
20 service that involves, or will involve, the use of a controlled
21 network or controlled facility, means the capability of the network
22 or facility to render certain assistance to agencies. The assistance
23 must:

- 24 (a) not relate to interception capability or the actual execution of
25 an interception of a communication; and
26 (b) be related to a matter set out in an international standard or
27 guidelines mentioned in subsection 322(4).

28 Note: The specific requirement of special assistance capability that applies
29 to a particular carriage service is to be found in a determination made
30 under section 322 (see also section 323).

- 31 (4) In this Part, *agency specific delivery capability*, in relation to a
32 particular agency and to a carriage service that involves, or will
33 involve, the use of a controlled network or a controlled facility,
34 means the capability of the carrier or provider of the service, for
35 the purpose of providing help to the agency under Part 14, to meet
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1 specific delivery requirements notified by the agency under section
2 332J.

3 **Division 2—Obligations concerning interception and**
4 **special assistance capabilities and exemption**
5 **from those obligations**

6 **Subdivision A—Introduction**

7 **321 Purpose of Division**

8 The purpose of this Division is to:

- 9 (a) provide for the Attorney-General's power to make
10 determinations in relation to interception capabilities or
11 special assistance capabilities; and
12 (b) provide for obligations concerning interception capabilities or
13 special assistance capabilities where the Attorney-General's
14 determination is applicable; and
15 (c) provide for obligations concerning interception capabilities
16 where the Attorney-General's determination is not
17 applicable; and
18 (d) provide for exemptions from the obligations referred to in
19 paragraph (b) or (c).

20 **Subdivision B—Obligations**

21 **322 Attorney-General may make determinations**

- 22 (1) The Attorney-General may make written determinations in relation
23 to interception capabilities or special assistance capabilities
24 applicable to a carriage service that involves, or will involve, the
25 use of:
26 (a) a controlled network of a carrier or carriage service provider;
27 or
28 (b) a controlled facility of a carrier or carriage service provider.
- 29 (2) A determination:

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- 1 (a) must specify an international standard or guidelines (the
2 ***international standard***), or the relevant part of the
3 international standard, on which the determination is based;
4 and
- 5 (b) must provide for interception capability or special assistance
6 capability by adopting, applying or incorporating the whole
7 or a part of the international standard, with only such
8 modifications as are necessary to facilitate the application of
9 the standard or the relevant part of the standard in Australia
10 (including any transitional arrangement in relation to an
11 existing carriage service that might be required); and
- 12 (c) must be expressed to be a determination in relation to:
13 (i) interception capability only; or
14 (ii) special assistance capability only; or
15 (iii) both interception capability and special assistance
16 capability; and
- 17 (d) if the determination is expressed to be a determination in
18 relation to both interception capability and special assistance
19 capability—must specify in the determination the part of the
20 determination that relates to interception capability and the
21 part of the determination that relates to special assistance
22 capability; and
- 23 (e) must be accompanied by a copy of the international standard
24 or of the relevant part of the international standard.
- 25 (3) A determination is a disallowable instrument for the purposes of
26 section 46A of the *Acts Interpretation Act 1901*.
- 27 (4) For the purposes of subsection (2), the international standard or
28 guidelines specified in a determination:
- 29 (a) must deal primarily with the requirements of agencies in
30 relation to the interception of communications passing over a
31 telecommunications network and related matters; and
- 32 (b) may be a part of an international agreement or arrangement
33 or a proposed international agreement or arrangement.
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1 **323 Obligations of persons covered by a determination**

2 (1) If a determination under section 322 applies to a carriage service
3 that involves, or will involve, the use of a controlled network or
4 controlled facility of a person who is a carrier or carriage service
5 provider, the person must ensure that the supply of the service by
6 that person complies with the determination.

7 (2) Without limiting subsection (1), if the person is required to have
8 interception capability or special assistance capability in relation to
9 a carriage service under the determination, the person is required to
10 ensure that that capability is developed, installed and maintained.

11 Note: A person may be exempted from the requirements of this section
12 under a provision of Subdivision C.

13 **324 Obligations of persons not covered by a determination in**
14 **relation to particular carriage service**

15 (1) This section applies to a carriage service that involves, or will
16 involve, the use of a controlled network or controlled facility of a
17 person who is a carrier or carriage service provider if the service is
18 not covered by any determination under section 322 that is
19 expressed to be a determination in relation to:

- 20 (a) interception capability only; or
21 (b) both interception capability and special assistance capability.

22 (2) The person must ensure that the network or facility has the
23 interception capability to enable a communication passing over the
24 network or facility to be intercepted in accordance with a warrant
25 issued under the *Telecommunications (Interception) Act 1979*.

26 (3) Without limiting subsection (2), the obligation under that
27 subsection in relation to the possession of an interception capability
28 includes the obligation to ensure that that capability is developed,
29 installed and maintained.

30 Note 1: A person may be exempted from the requirements of this section
31 under a provision of Subdivision C.

Note 2: A person may be required to comply with the special assistance
capability requirements under a determination made under section 322
as well as the interception capability requirements under this section.

Subdivision C—Exemptions

325 The Minister may grant exemption

- (1) The Minister may, with the written agreement of the
Attorney-General, exempt a specified person from all or any of the
obligations imposed on the person under Subdivision B in so far as
those obligations relate to a specified carriage service.

Note: Because of the operation of subsection 46(2) of the *Acts Interpretation
Act 1901* an exemption under subsection (1) may be granted in respect
of a specified class of person.

- (2) The exemption must be in writing.
- (3) The exemption may be:
- (a) unconditional; or
 - (b) subject to such conditions as are specified in the exemption.

326 The agency co-ordinator may grant exemption

- (1) The agency co-ordinator may exempt a specified person from all or
any of the obligations imposed on the person under Subdivision B
in so far as those obligations relate to a specified carriage service.

Note: Because of the operation of subsection 46(2) of the *Acts Interpretation
Act 1901* an exemption under subsection (1) may be granted in respect
of a specified class of person.

- (2) The exemption must be in writing.
- (3) The exemption may be:
- (a) unconditional; or
 - (b) subject to such conditions as are specified in the exemption.

1 **327 ACA may grant exemption when authorising trial services**

- 2 (1) The ACA may exempt a specified person from all or any of the
3 obligations imposed on the person under Subdivision B in so far as
4 those obligations relate to a carriage service that is a trial service.

5 Note: Because of the operation of subsection 46(2) of the *Acts Interpretation*
6 *Act 1901* an exemption under subsection (1) may be granted in respect
7 of a specified class of person.

- 8 (2) The ACA must not grant an exemption unless the ACA, after
9 consulting any agencies that the ACA considers appropriate, is
10 satisfied that the exemption is unlikely to create a risk to national
11 security or law enforcement.

- 12 (3) The exemption must be in writing.

- 13 (4) The exemption may be:

14 (a) unconditional; or

15 (b) subject to such conditions as are specified in the exemption.

16 **Division 3—Interception capability plans**

17 **328 Purpose of Division**

18 The purpose of this Division is to outline the nature of interception
19 capability plans, the circumstances in which carriers and nominated
20 carriage service providers are required to prepare such plans and
21 the means by which such plans are considered and adjusted.

22 **329 Nature of an interception capability plan**

- 23 (1) An interception capability plan (*IC plan*) of a carrier or nominated
24 carriage service provider is a written instrument setting out:

25 (a) a statement of the policies of the carrier or provider in
26 relation to interception generally and of its strategies for
27 compliance with its legal obligation to provide interception
28 capabilities in relation to carriage services that involve, or
29 will involve, the use of a controlled network, or controlled
30 facility, of the carrier or provider; and

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- 1 (b) a statement of any relevant developments in the business of
2 the carrier or provider that are proposed and that, if
3 implemented, is likely to affect those interception
4 capabilities, within the period of 5 years from the start of the
5 plan; and
6 (c) a list of employees of the carrier or provider with
7 responsibility for interception and other relevant matters; and
8 (d) a description of the strategies of the carrier or provider for
9 minimising long term costs associated with interception; and
10 (e) any other matters determined by the Minister to be relevant to
11 the IC plan.
- 12 (2) For the purposes of paragraph (1)(e), a determination by the
13 Minister that a matter is a relevant matter:
14 (a) must be made by written instrument; and
15 (b) is a disallowable instrument for the purposes of section 46A
16 of the *Acts Interpretation Act 1901*.
- 17 (3) On receipt by it of an IC plan of a carrier or nominated carriage
18 service provider, the ACA, the agency co-ordinator and each
19 agency that receives the plan:
20 (a) must treat the plan as confidential; and
21 (b) must ensure that it is not disclosed to any person or body not
22 referred to in this subsection without the written permission
23 of the carrier or provider.

24 **330 Carriers' obligations in relation to IC plans**

- 25 (1) A carrier must lodge an IC plan with the ACA and the agency
26 co-ordinator:
27 (a) unless paragraph (b) applies—by 1 January of each year that
28 follows the commencement of this Part; and
29 (b) if the carrier becomes a carrier (whether before or after the
30 commencement of this Part) on a day occurring less than 90
31 days before the next following 1 January—within 90 days of
32 the day of so becoming a carrier and by each 1 January
33 thereafter.

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- 1 (2) Despite subsection (1), a carrier who lodges a first IC plan less than
2 120 days before the next following 1 January is not obliged under
3 this section to lodge another IC plan before the first anniversary of
4 that next following 1 January.

5 **331 Nominated carriage service providers' obligations in relation to**
6 **IC plans**

- 7 (1) A carriage service provider nominated under subsection (3) must
8 lodge an IC plan with the ACA and the agency co-ordinator:
9 (a) unless paragraph (b) applies—by 1 January of each year that
10 follows the commencement of this Part; and
11 (b) if the nominated carriage service provider becomes a
12 nominated carriage service provider on a day occurring less
13 than 90 days before the next following 1 January—within 90
14 days after the day of that nomination and by each 1 January
15 thereafter.
- 16 (2) Despite subsection (1), a nominated carriage service provider who
17 lodges a first IC plan less than 120 days before the next following 1
18 January is not obliged under this section to lodge another IC plan
19 before the first anniversary of that next following 1 January.
- 20 (3) For the purposes of this section, the Attorney-General may, by
21 determination in writing, declare a carriage service provider to be a
22 nominated carriage service provider.

23 **332 Lodgment of IC plans**

24 An IC plan is taken to have been lodged with the ACA or the
25 agency co-ordinator when the plan, or a copy of the plan, is
26 received at an office of the ACA or of the agency co-ordinator (as
27 the case requires) by an officer authorised to receive it.

28 **332A Commencement of IC plans**

- 29 (1) Each IC plan that is required to be lodged under section 330 or 331
30 has effect on and from the date of its lodgment with the ACA.

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- 1 (2) Each IC plan, as amended in accordance with section 332C or
2 332D, has effect on and from the date of its lodgment with the
3 ACA.

4 **332B Compliance with IC plans and amended IC plans**

- 5 From the date of effect of:
- 6 (a) an IC plan lodged under section 330 or 331; or
7 (b) an IC plan amended in accordance with section 332C or
8 332D;
- 9 the carrier or provider whose plan it is must ensure that its business
10 activities are consistent with the plan, or with the plan as so
11 amended.

12 **332C Consideration of IC plans**

- 13 (1) Within:
- 14 (a) 60 days after receipt by the agency co-ordinator of the IC
15 plan from a carrier or nominated carriage service provider; or
16 (b) such longer periods as the ACA, in the circumstances of the
17 case, specifies to be a reasonable period for the purpose;
18 the co-ordinator must:
- 19 (c) give agencies that, in the opinion of the co-ordinator, are
20 likely to be interested in the plan, an opportunity to comment
21 on the plan; and
22 (d) give the carrier or provider concerned copies of any agency
23 comments received in respect of the plan; and
24 (e) if any agency comment requests an amendment of the plan
25 (an *amendment request*)—request that the carrier or provider
26 respond to each such amendment request within 30 days (the
27 *response period*) after giving the carrier or provider the
28 agency comments referred to in paragraph (b).
- 29 (2) The carrier or provider may respond to an amendment request
30 either:
- 31 (a) by indicating its acceptance of the request and amending its
32 IC plan appropriately; or
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- 1 (b) by indicating that it does not accept the request and providing
2 its reasons for that non-acceptance.
- 3 (3) If the response of the carrier or provider to an amendment request
4 involves the preparation of an amended IC plan, that plan must be
5 lodged with the ACA and the agency co-ordinator within the
6 response period.
- 7 (4) If the carrier or provider does not, in the carrier or provider's
8 response, accept an amendment request, the agency co-ordinator
9 must:
- 10 (a) refer all the original comments, the amended IC plan (if any),
11 the response and the agencies' further comments to the ACA;
12 and
- 13 (b) request the ACA to determine whether any amendment, or
14 further amendment, of the IC plan is required;
- 15 unless, within 30 days after the end of the response period, the co-
16 ordinator is satisfied that the agencies accept the amended IC plan
17 (if any) and the response.
- 18 (5) When the ACA has completed its consideration of the question
19 whether any amendment of an IC plan, or of an IC plan as
20 amended, is required, the ACA must determine, in writing:
- 21 (a) that the IC plan as originally lodged, or as amended, is
22 satisfactory; or
- 23 (b) if, in the opinion of the ACA:
- 24 (i) particular comments made by the agencies and not
25 addressed in the IC plan as originally lodged, or as
26 amended, are reasonable; but
- 27 (ii) the carrier or provider's response to those comments is
28 not reasonable;
- 29 that the plan as so lodged, or as so amended, should be
30 amended in a specified manner to take account of those
31 comments.
- 32 (6) On receipt of a determination under paragraph (5)(b), the carrier or
33 provider concerned must:
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- 1 (a) amend its IC plan, or its IC plan as already amended, to take
2 account of that determination; and
3 (b) lodge the plan, amended to take account of the determination,
4 with the ACA; and
5 (c) notify the Minister, the agency co-ordinator and, if the
6 agency co-ordinator is not the Attorney-General, the
7 Attorney-General, that it has lodged such a plan.
- 8 (7) The Minister, the agency co-ordinator, the Attorney-General or any
9 agency may, at any time after the notification under paragraph
10 (6)(c), request the carrier or provider to provide a copy of the plan
11 lodged under paragraph (6)(b).

12 **332D Consequences of changed business plans**

- 13 (1) If, because of changes to the business plans of a carrier or
14 nominated carriage service provider, an IC plan lodged by that
15 carrier or provider ceases, during the period before another such IC
16 plan is due to be lodged, to constitute an adequate IC plan in
17 relation to that carrier or provider, the carrier or provider must,
18 subject to subsection (2) and having regard to those changed plans:
19 (a) prepare an amended IC plan; and
20 (b) lodge the amended IC plan with the ACA and agency
21 co-ordinator forthwith.
- 22 (2) Subsection (1) applies only if the change in business plans:
23 (a) has, or is likely to have, a material adverse effect on the
24 ability of the carrier or provider to comply with its
25 obligations under Division 2; and
26 (b) does not take place within 120 days of the last day on which
27 the next IC plan could be lodged by the carrier or provider
28 concerned.
- 29 (3) If an amended IC plan is lodged under subsection (1), the amended
30 plan is itself subject to consideration in accordance with section
31 332C.

1 **Division 4—Requirement arising from proposed**
2 **technological changes**

3 **332E Purpose of Division**

4 The purpose of the Division is:

- 5 (a) to require carriers and nominated carriage service providers
6 to give notice of the particulars of any new technology, or
7 change to existing technology, whose implementation may
8 affect the capacity of the carrier or provider to provide help
9 to agencies under Part 14 in relation to a matter that is the
10 subject of an obligation under Division 2 of this Part; and
11 (b) to give agencies a reasonable opportunity to consult those
12 carriers and providers concerning the likely effect of that new
13 technology or that change on that capacity; and
14 (c) to give individual agencies, through the agency co-ordinator,
15 a reasonable opportunity to specify delivery requirements
16 suitable to those individual agencies that are required if that
17 new technology or that change is implemented.

18 **332F Carrier or provider to notify impending technological change**

- 19 (1) If, at any time, a carrier or a nominated carriage service provider
20 becomes aware that the implementation by the carrier or provider
21 of:
22 (a) a new technology; or
23 (b) a change to existing technology;
24 is likely to have a material adverse effect on the capacity of the
25 carrier or provider to provide help to agencies under Part 14 in
26 relation to a matter that is the subject of an obligation under
27 Division 2 of this Part, the carrier or provider must notify the ACA
28 in writing of its intention to implement that new technology or that
29 change.
30 (2) A notification provided under subsection (1) must include a
31 description of the new technology or change in technology
32 proposed.

-
- 1 (3) A carrier or provider who has notified the ACA of a new
2 technology or of a change to existing technology must not
3 implement that new technology or that change:
- 4 (a) until the agencies have had an opportunity to consult with the
5 carrier or provider in accordance with section 332G; and
- 6 (b) if, as a result of that consultation, the agency co-ordinator
7 informs the carrier or provider on behalf of an agency of
8 particular delivery requirements of that agency that are
9 related to that new technology, or to that change—until the
10 carrier or provider is able to meet the obligations imposed by
11 subsection 332J(6) in respect of those requirements.

12 **332G ACA to give agencies a reasonable opportunity to consult on**
13 **new technology**

- 14 (1) As soon as practicable after the ACA has been notified by a carrier
15 or nominated carriage service provider of an intention to
16 implement a new technology or a change in an existing technology,
17 the ACA must, in whatever manner it thinks appropriate
18 (including, for example, by an arrangement with the agency co-
19 ordinator), ensure:
- 20 (a) that agencies likely to be interested in the proposed
21 implementation are notified of it; and
- 22 (b) that, for a specified period (the *consultation period*) that the
23 ACA determines is reasonable in the circumstances, those
24 agencies have an opportunity to consult with the carrier or
25 provider concerned on the likely effect of the proposed
26 implementation on the capacity of the carrier or provider to
27 provide help in relation to a matter that is the subject of an
28 obligation under Division 2 of this Part.
- 29 (2) On receipt by it of the notification of a carrier or provider of an
30 intention to implement a new technology or a change to existing
31 technology, the ACA, the agency co-ordinator (if the co-ordinator
32 is involved) and each agency that receives notification of the
33 proposed implementation from the ACA or the co-ordinator:
- 34 (a) must treat the proposed implementation as confidential; and

-
- 1 (b) must ensure that it is not disclosed to any person or body not
2 referred to in this subsection without the written permission
3 of the carrier or provider.

4 **332H Extensions to consultation periods**

- 5 (1) The ACA may, if the ACA thinks it reasonable to do so, on the
6 written request of an agency, extend the consultation period.
- 7 (2) If the ACA does extend the consultation period:
- 8 (a) the period is taken to have been extended for all agencies
9 involved in the consultation; and
- 10 (b) the ACA must ensure that the carrier or provider concerned
11 and, either directly or through the co-ordinator, each agency
12 involved in the consultation, are notified of the extension.

13 **332J Delivery requirements arising from implementation of new or**
14 **altered technology**

- 15 (1) If, in the course of its consultations concerning new technology or
16 a change to existing technology, an agency decides that the carrier
17 or provider concerned should meet specific delivery requirements
18 of that agency in providing help to the agency under Part 14 in
19 relation to a matter that is the subject of an obligation under
20 Division 2 of this Part and that involves that new technology or
21 that change, it must, within the consultation, notify those delivery
22 requirements to the agency co-ordinator.
- 23 (2) The delivery requirements of an agency that may be notified under
24 subsection (1) constitute all or any of the following:
- 25 (a) the format in which information covered by an obligation
26 under Division 2 of this Part is to be delivered to the agency;
27 and
- 28 (b) the place to which, and manner in which, the information
29 covered by that obligation is to be delivered; and
- 30 (c) any ancillary information that should accompany the
31 information covered by that obligation.

-
- 1 (3) If only one agency notifies the agency co-ordinator of delivery
2 requirements involving that new technology or that altered
3 technology, the agency co-ordinator must notify the carrier or
4 provider of the delivery requirements of that agency.
- 5 (4) If different delivery requirements are notified to the agency
6 co-ordinator by different agencies, the co-ordinator must, unless
7 the requirements are mutually inconsistent, on behalf of the
8 agencies, notify the carrier or provider of the delivery requirements
9 of each of the agencies.
- 10 (5) If different delivery requirements notified to the agency
11 co-ordinator are, in the opinion of the co-ordinator, mutually
12 inconsistent, the co-ordinator must, after consulting the agencies
13 concerned:
- 14 (a) determine delivery requirements for each agency that, in the
15 opinion of the co-ordinator, constitutes the fairest
16 compromise between the conflicting requirements; and
- 17 (b) notify each agency concerned of that determination; and
- 18 (c) on behalf of each agency concerned, notify the carrier or
19 provider of its determination.
- 20 (6) If delivery requirements are notified to a carrier or provider under
21 this section, that carrier or provider must take all practical steps to
22 ensure that the carriage service concerned has a capability (an
23 ***agency specific delivery capability***) to meet those delivery
24 requirements.
- 25 (7) Without limiting subsection (6), the obligation under that
26 subsection in relation to an agency specific delivery capability
27 includes the obligation to ensure the development, installation and
28 maintenance of, the capability.
- 29 Note: This obligation is additional to the obligation to provide an
30 interception capability and any special assistance capability, imposed
31 on the carrier or provider under Division 2.

1 **Division 5—Allocation of costs in relation to interception,**
2 **special assistance, and agency specific delivery**
3 **capabilities**

4 **332K Purpose of Division**

5 This Division sets out the principles for the allocation between a
6 carrier or carriage service provider and an agency of the costs of
7 developing, installing and maintaining:

- 8 (a) an interception capability required in accordance with
9 Division 2; and
10 (b) a special assistance capability required in accordance with
11 Division 2; and
12 (c) an agency specific delivery capability required in accordance
13 with Division 4.

14 Note: The actual cost of the provision of help to an agency in particular
15 circumstances, including the cost of the execution of a warrant under
16 the *Telecommunications (Interception) Act 1979*, is dealt with under
17 Part 14.

18 **332L Distribution of the costs of interception, special assistance, and**
19 **agency specific delivery capabilities**

- 20 (1) The capital and ongoing costs of developing, installing and
21 maintaining an interception capability, or a special assistance
22 capability, imposed on a carrier or carriage service provider under
23 Division 2 in respect of a specified carriage service of a carrier or a
24 carriage service provider are required to be borne by the carrier or
25 provider.
26 (2) The capital and ongoing costs, worked out in accordance with
27 section 332N, of developing, installing and maintaining an agency
28 specific delivery capability imposed on a carrier or carriage service
29 provider under Division 4 are to be borne by the agency concerned.

1 **332M Exception to the cost distribution set out in section 332L**

- 2 (1) The Attorney-General may make a written determination to the
3 effect that a digital telephone service:
4 (a) that operates on the standard known as the Global System for
5 Mobile; and
6 (b) that is offered by a carrier or carriage service provider
7 specified in the determination;
8 is a service to which this section applies.
- 9 (2) Despite subsection 332L(1), the capital and ongoing costs incurred
10 on or after 1 July 1997 of developing, installing and maintaining an
11 interception capability or a special assistance capability in relation
12 to a service to which this section applies are to be borne not by the
13 carrier or provider concerned but by the agencies on the same basis
14 as was provided under the *Telecommunications Act 1991* as in
15 force before that date.

16 **332N Working out costs of agency specific delivery capabilities**

- 17 (1) Each carrier or carriage service provider who is obliged to ensure
18 the development, installation and maintenance of an agency
19 specific delivery capability must ensure that that capability is
20 developed, installed and maintained on such terms and conditions:
21 (a) as are agreed in writing between the carrier or provider and
22 the agency concerned; or
23 (b) in the absence of such an agreement—as are determined by
24 the ACA.
- 25 (2) The terms and conditions on which a carrier or provider is to
26 provide an agency specific delivery capability must be consistent
27 with the following principles:
28 (a) the principle that the most cost effective means of ensuring
29 the development, installation and maintenance of that
30 capability is employed;
31 (b) the principle that the carrier or provider is to incur the costs
32 (whether of a capital nature or otherwise) relating to the
33 development, installation and maintenance of that capability;
-

-
- 1 (c) the principle that the carrier or provider may, over time,
2 recover from an agency such of those costs as are required,
3 under section 332L, to be borne by that agency.
- 4 (3) Nothing in subsection (2) prevents a carrier or provider from
5 entering into an agreement with more than one agency.
- 6 (4) The agreement should also provide that if the working out of the
7 costs to a particular agency of developing, installing and
8 maintaining an agency specific delivery capability is the subject of
9 a disagreement between the carrier or provider and that agency:
10 (a) the agency may request the ACA to arbitrate the matter; and
11 (b) if it does so, those costs are to be as determined by the ACA.
- 12 (5) The regulations may make provision in relation to the conduct of
13 an arbitration by the ACA under this section.
- 14 (6) The existence of a cost dispute in relation to an agency specific
15 delivery capability does not affect the obligations of the carrier or
16 provider in respect of that capability while that dispute is being
17 resolved.
- 18 (7) If, as a result of the arbitration of a cost dispute between the carrier
19 or provider and an agency, the ACA concludes that a lesser rate of
20 charge would have been available, the carrier or provider:
21 (a) must allow the agency credit for any costs already charged to
22 the extent that they were worked out at a rate that exceeds
23 that lesser rate; and
24 (b) must adjust its means of working out future costs;
25 to take account of that conclusion.
- 26 (8) For the purposes of this section, any reference in this section to
27 terms and conditions agreed between a carrier or provider and an
28 agency includes a reference to terms and conditions agreed
29 between the carrier or provider and:
30 (a) in the case of an agency of the State—the State, on behalf of
31 the agency; and
32 (b) in the case of an agency of the Commonwealth—the
33 Commonwealth, on behalf of the agency.
-

1 **332P Examination of lower cost options**

- 2 (1) In undertaking an arbitration under section 332N, the ACA may on
3 its own initiative or at the request of an agency, by notice in writing
4 given to a carrier or carriage service provider, require the carrier or
5 provider:
6 (a) to examine, at the expense of the carrier or provider, the
7 possibility of a lower cost option than the one designated by
8 the carrier or provider for providing an agency specific
9 delivery capability; and
10 (b) to report to the ACA, within a period specified in the notice,
11 on the results of that examination.
- 12 (2) If a carrier or provider receives a notice under subsection (1), the
13 carrier or provider must, within the period specified in the notice:
14 (a) carry out the examination concerned; and
15 (b) report in writing to the ACA on the results of the
16 examination.

17 **332Q ACA may require independent audit of costs**

- 18 (1) In undertaking an arbitration under section 332N, the ACA may,
19 by notice in writing, require a carrier or carriage service provider to
20 arrange for an audit of the costs claimed to have been incurred by
21 the carrier or provider in relation to the provision to an agency of
22 an agency specific delivery capability.
- 23 (2) Subject to subsection (3), the audit is to be carried out by an
24 auditor selected by the carrier or provider and approved by the
25 ACA.
- 26 (3) If the auditor selected by a carrier or provider is not approved by
27 the ACA, the ACA may require that the audit be carried out by an
28 auditor selected by the ACA or by the ACA itself.
- 29 (4) Unless the audit is carried out by the ACA itself, the ACA may, in
30 the notice requiring the audit, specify the period within which the
31 auditor is to report to the ACA.

-
- 1 (5) If a carrier or provider receives a notice under this section, the
2 carrier or provider:
3 (a) must co-operate in full with the person or body carrying out
4 the audit; and
5 (b) must bear the costs of the audit.

6 **Division 6—Review of cost-effectiveness of interception**

7 **332R Minister to conduct review etc.**

- 8 (1) Before 1 July 1999, the Minister, in consultation with the Attorney-
9 General, must:
10 (a) cause a review to be conducted to assess the longer term
11 cost-effectiveness of the arrangements provided for in Parts
12 14 and 15 that relate to the funding of telecommunications
13 interception; and
14 (b) prepare a written report on the review.
15 (2) The Minister must cause a copy of the report to be laid before each
16 House of the Parliament within 15 sitting days of that House after
17 the day on which the report is made.

18 **11 Application**

19 Except as provided for under section 332M:

- 20 (a) Part 14 of the *Telecommunications Act 1997* as amended by
21 this Act applies in relation to costs of providing help to
22 agencies under that Part; and
23 (b) Part 15 of that Act as so amended applies in relation to costs
24 of developing, installing and maintaining interception
25 capabilities, special assistance capabilities and agency
26 specific delivery capabilities under that Part;
27 only to the extent that those costs are incurred after the
28 commencement of this item.

1
2 **Schedule 2—Other amendments of**
3 **telecommunications legislation**
4

5 *Telecommunications Act 1997*

6 **1 Section 104**

7 Add at the end:

- 8
9
10
- | |
|--|
| <ul style="list-style-type: none">• The ACA may be directed by the Minister to monitor, and report on, specified matters relating to the performance of carriers and carriage service providers. |
|--|

11 Note: The heading to section 105 is amended by adding at the end “—**annual report**”.

12 **2 At the end of Part 5**

13 Add:

14 **105A Monitoring of performance—additional report**

- 15 (1) The ACA must monitor, and report to the Minister on, specified
16 matters relating to the performance of carriers and carriage service
17 providers in accordance with any written direction given by the
18 Minister to the ACA.
- 19 (2) The ACA must give a report under subsection (1) to the Minister:
20 (a) if paragraph (b) does not apply—as soon as practicable after
21 the end of a period specified in the direction; or
22 (b) if the direction requires the report to be given before a
23 specified time—before that time.

24 **3 Paragraph 245(b)**

25 Omit “or (ii)”, substitute “, (ii) or (iii)”.

26 **4 Paragraphs 350(1)(b) and (2)(b)**

27 Repeal the paragraphs.

1 **5 After sections 406**

2 Insert:

3 **406A Application of Division to agent of manufacturer or importer**

4 For the purposes of this Act and to avoid doubt, a reference in this
5 Division to a manufacturer or importer of customer equipment or
6 customer cabling includes a reference to a person who is authorised
7 in writing by such a manufacturer or importer to act in Australia as
8 an agent of the manufacturer or importer (as the case may be) for
9 the purposes of this Division.

10 **6 Subsection 407(1)**

11 Omit “manufactures or imports”, substitute “is a manufacturer or
12 importer of”.

13 **7 Paragraph 408(5)(d)**

14 After “the manufacturer”, insert “or importer”.

15 **8 Paragraph 413(1)(a)**

16 Omit “has manufactured or imported”, substitute “is a manufacturer or
17 importer of”.

18 **9 Transitional provision—labelling requirements**

19 (1) In this item:

20 *ACA* means the Australian Communications Authority.

21 *section 407 instrument* means an instrument made under section
22 407 of the Telecommunications Act.

23 *Telecommunications Act* means the *Telecommunications Act*
24 1997.

25 *transitional period* means the period beginning when the first
26 section 407 instrument came into force and ending immediately
27 before the commencement of this item.

- 1 (2) For the purposes of the operation of the Telecommunications Act
2 in relation to the transitional period, that Act, and any section 407
3 instrument in force during that period, have effect as if:
4 (a) a reference to a person who manufactures or imports
5 customer equipment or customer cabling; or
6 (b) a reference to a manufacturer or importer of customer
7 equipment or customer cabling;
8 were also a reference to a person who, at any time during the
9 transitional period, was authorised (whether because of actual or
10 apparent authority) to act in Australia as an agent of a manufacturer
11 or importer of customer equipment or customer cabling for the
12 purposes of Division 7 of Part 21 of the Telecommunications Act.

13 **10 Subsection 458(3)**

14 Omit “(1)”, substitute “(2)”.

15 **11 Clause 4 of Schedule 1**

16 Add at the end:

- 17 (2) A carrier must at all times have a current industry development
18 plan.
19 (3) For the purposes of subclause (2), a carrier has a current industry
20 development plan if the carrier has given the plan to the Industry
21 Minister and the Industry Minister has approved the plan.

22 **12 Subclause 8(1) of Schedule 1**

23 Omit “giving the Industry Minister an industry development plan, a”,
24 substitute “the Industry Minister has approved a carrier’s industry
25 development plan, the”.

26 **13 Subclause 9(1) of Schedule 1**

27 Repeal the subclause, substitute:

- 28 (1) A carrier may vary an industry development plan if the carrier has
29 given a copy of the proposed variation to the Industry Minister and
30 the Industry Minister has approved it.

1 (1A) As soon as practicable after varying an industry development plan
2 under subclause (1), a carrier must make a summary of the
3 variation available to the public.

4 **14 Clause 11 of Schedule 1**

5 Repeal the clause, substitute:

6 **11 Formulation of plan or variation—Commonwealth government**
7 **policy about industry development**

8 (1) The Industry Minister may, by notice published in the *Gazette*,
9 declare that a particular Commonwealth government policy (the
10 ***declared policy***) is relevant in formulating an industry development
11 plan or a variation of an industry development plan.

12 (2) The notice:

13 (a) may include the whole or a summary of the declared policy;
14 and

15 (b) if the whole of the declared policy is not included in the
16 notice—must state where and when a copy of the declared
17 policy can be obtained.

18 (3) An applicant for a carrier licence must have regard to the declared
19 policy when formulating an industry development plan.

20 (4) A carrier must have regard to the declared policy when formulating
21 a variation of an industry development plan.

22 **15 Paragraph 5(1)(b) of Schedule 3**

23 Repeal the paragraph, substitute:

24 (b) do anything on the land that is necessary or desirable for that
25 purpose, including, for example:

26 (i) making surveys, taking levels, sinking bores, taking
27 samples, digging pits and examining the soil; and

28 (ii) felling and lopping trees and clearing and removing
29 other vegetation and undergrowth; and

30 (iii) closing, diverting or narrowing a road or bridge; and

- 1 (iv) installing a facility in, over or under a road or bridge;
2 and
3 (v) altering the position of a water, sewerage or gas main or
4 pipe; and
5 (vi) altering the position of an electricity cable or wire.

6 **16 Paragraph 5(2)(b) of Schedule 3**

7 Repeal the paragraph, substitute:

- 8 (b) do anything on the entered land that is necessary or desirable
9 for that purpose, including, for example:
10 (i) making surveys and taking levels; and
11 (ii) felling and lopping trees and clearing and removing
12 other vegetation and undergrowth; and
13 (iii) closing, diverting or narrowing a road or bridge; and
14 (iv) installing a facility in, over or under a road or bridge;
15 and
16 (v) altering the position of a water, sewerage or gas main or
17 pipe; and
18 (vi) altering the position of an electricity cable or wire.

19 **17 Paragraph 17(6)(a) of Schedule 3**

20 After "Division", insert "2 (which deals with inspection of land), 3
21 (which deals with installation of facilities) or".

22 **18 After subclause 17(6)**

23 Insert:

- 24 (6A) Subclause (1) does not apply if:
25 (a) the carrier intends to engage in an activity under Division 2, 3
26 or 4 in relation to the installation, proposed installation or
27 maintenance of a temporary defence facility; and
28 (b) the carrier considers that compliance with subclause (1) is
29 impracticable in the circumstances.

1 (6B) For the purposes of this clause, a *temporary defence facility* is a
2 facility of the kind that is mentioned in paragraph 6(1)(c) of this
3 Schedule.

4 **19 Subclause 18(1)**

5 After “Division”, insert “2”.

6 **20 After subclause 18(3) of Schedule 3**

7 Insert:

8 (3A) Subclauses (1) and (2) do not apply if:

- 9 (a) the carrier intends to engage in an activity under Division 2, 3
10 or 4 in relation to the installation, proposed installation or
11 maintenance of a temporary defence facility; and
12 (b) the carrier considers that compliance with subclause (1) is
13 impracticable in the circumstances.

14 (3B) For the purposes of this clause, a *temporary defence facility* is a
15 facility of the kind mentioned in paragraph 6(1)(c) of this
16 Schedule.

17 **21 Paragraph 18(4)(a) of Schedule 3**

18 After “Division”, insert “2 (which deals with inspection of land), 3
19 (which deals with installation of facilities) or”.

20 **22 After subclause 19(2) of Schedule 3**

21 Insert:

22 (2A) Subclause (1) does not apply if:

- 23 (a) the carrier intends to engage in an activity under Division 2, 3
24 or 4 in relation to the installation, proposed installation or
25 maintenance of a temporary defence facility; and
26 (b) the carrier considers that compliance with subclause (1) is
27 impracticable in the circumstances.

28 (2B) For the purposes of this clause, a *temporary defence facility* is a
29 facility of the kind mentioned in paragraph 6(1)(c) of this
30 Schedule.

1 **23 Paragraph 19(3)(a) of Schedule 3**

2 After "Division", insert "2 (which deals with inspection of land), 3
3 (which deals with installation of facilities) or".

4 **24 Subclauses 27(1) and (2) of Schedule 3**

5 Repeal the subclauses, substitute:

6 *Criteria*

- 7 (1) The ACA must not issue a facility installation permit that
8 authorises a carrier to carry out the installation of one or more
9 facilities unless the ACA is satisfied that:
- 10 (a) the telecommunications network to which the facilities relate
11 is, or is likely to be, of national significance; and
 - 12 (b) the facilities are, or are likely to be, an important part of the
13 telecommunications network to which the facilities relate;
14 and
 - 15 (c) any of the following conditions is satisfied:
 - 16 (i) the greater part of the infrastructure of the
17 telecommunications network to which the facilities
18 relate has already been installed;
 - 19 (ii) the greater part of the infrastructure of the
20 telecommunications network to which the facilities
21 relate has not been installed but each administrative
22 authority whose approval was required or would, apart
23 from Division 3, be required, for the installation of the
24 greater part of the infrastructure of the network has
25 given, or is reasonably likely to give, such approval;
 - 26 (iii) no part of the infrastructure of the telecommunications
27 network to which the facilities relate has been installed,
28 but each administrative authority whose approval was
29 required or would, apart from Division 3, be required,
30 for the installation of the greater part of the
31 infrastructure of the network has given, or is reasonably
32 likely to give, such an approval; and
 - 33 (d) the advantages that are likely to be derived from the
34 operation of the facilities in the context of the
-

-
- 1 telecommunications network to which the facilities relate
2 outweigh any form of degradation of the environment that is
3 likely to result from the installation of the facilities; and
4 (e) in a case where none of the facilities consists of a designated
5 overhead line—the conditions set out in subclause (2) are
6 satisfied; and
7 (f) in a case where any of the facilities consists of a designated
8 overhead line—all the conditions set out in subclause (2A)
9 are satisfied.

10 *Conditions relating to facilities other than designated overhead*
11 *lines*

- 12 (2) For the purposes of paragraph (1)(e), the following conditions are
13 specified:
14 (a) the carrier has made reasonable efforts to negotiate in good
15 faith with:
16 (i) each proprietor whose approval is required, or would,
17 apart from Division 3, be required, for carrying out the
18 installation; and
19 (ii) each administrative authority whose approval is
20 required, or would, apart from Division 3, be required,
21 for carrying out the installation; and
22 (b) one of the following subparagraphs applies:
23 (i) at least one approval that is referred to in subparagraph
24 (a)(i) has not been obtained within 20 business days
25 after the beginning of the negotiations concerned;
26 (ii) at least one approval that is referred to in subparagraph
27 (a)(ii) has not been obtained within 6 months after the
28 beginning of the negotiations concerned;
29 (iii) at least one approval that is referred to in paragraph (a)
30 has been refused.

31 *Conditions relating to facilities consisting of designated overhead*
32 *lines*

- 33 (2A) For the purposes of paragraph (1)(f), the following conditions are
34 specified:
-

- 1 (a) the carrier has made reasonable efforts to negotiate in good
2 faith with each proprietor whose approval is required, or
3 would, apart from Division 3, be required, for carrying out
4 the installation; and
5 (b) at least one of those approvals has not been obtained within
6 20 business days after the beginning of the negotiations
7 concerned; and
8 (c) each administrative authority whose approval is required, or
9 would, apart from Division 3, be required, for the installation
10 of the line has given such an approval.

11 ***Telecommunications (Transitional Provisions and***
12 ***Consequential Amendments) Act 1997***

13 **25 Subsection 40(4)**

14 Insert:

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

17 **26 Item 15 of Schedule 3**

18 Omit “55(1)(a)”, substitute “56(1)(a)”.

19 ***Trade Practices Act 1974***

20 **27 Paragraph 151AJ(5)(f)**

21 Omit “49(9)(d)”, substitute “47(9)(d)”.

22 **28 Paragraph 152AL(3)(b)**

23 After “505”, insert “of”.

24 **29 Subsection 152AM(5)**

25 After “505”, insert “of”.

26 **30 Paragraph 152AN(2)(a)**

27 After “498”, insert “of”.

- 1 **31 Paragraph 152CT(2)(d)**
- 2 Omit “a another”, substitute “another”.