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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Telecommunications Competition Bill**

**2002**

**No. , 2002**

*(Communications, Information Technology and the Arts)*

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

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

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Telecommunications Competition Act 2002*.

## **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

# Schedule 1—Amendment of the Telecommunications Act 1997

## Part 1—Pre-selection in favour of carriage service providers

### 1 Section 5

Omit “ACA may require certain carriers and carriage service providers to provide *pre-selection*”, substitute “ACCC may require certain carriers and carriage service providers to provide *pre-selection*”.

### 2 Section 348

Omit “ACA”, substitute “ACCC”.

### 3 Section 349

Omit “ACA” (wherever occurring), substitute “ACCC”.

### 4 Subsection 349(6)

Omit “ACCC”, substitute “ACA”.

### 5 Section 352

Omit “ACA” (wherever occurring), substitute “ACCC”.

### 6 At the end of section 352

Add:

- (4) Before making a declaration under this section, the ACCC must consult the ACA.

Note: For review of a decision of the ACCC to refuse to make a declaration, see section 352A.

### 7 After section 352

Insert:

#### **352A Review by the Australian Competition Tribunal of certain decisions under section 352**

##### *Scope*

- (1) This section applies to a decision of the ACCC under section 352 to refuse to make a declaration.

##### *Review by Australian Competition Tribunal*

- (2) A person whose interests are affected by the decision may apply in writing to the Australian Competition Tribunal for a review of the decision.
- (3) An application under subsection (2) must be made within 21 days after the ACCC made the decision.
- (4) If an application is made under subsection (2), the Australian Competition Tribunal must review the decision.

##### *Functions and powers of Australian Competition Tribunal*

- (5) On a review of the decision, the Australian Competition Tribunal may make a decision:
- (a) affirming the decision of the ACCC; or

(b) both:

- (i) setting aside the decision of the ACCC; and
- (ii) in substitution for the decision so set aside, making a declaration under section 352;

and, for the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the ACCC.

(6) A decision by the Australian Competition Tribunal:

- (a) affirming a decision of the ACCC; or
- (b) setting aside a decision of the ACCC; or
- (c) made in substitution for a decision of the ACCC;

is taken, for the purposes of this Act (other than this section), to be a decision of the ACCC.

*Conduct of review*

(7) For the purposes of a review by the Australian Competition Tribunal, the member of the Australian Competition Tribunal presiding at the review may require the ACCC to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(8) For the purposes of a review, the Australian Competition Tribunal may have regard to any information given, documents produced or evidence given to the ACCC in connection with the making of the decision.

Note: Division 2 of Part IX of the *Trade Practices Act 1974* applies to proceedings before the Australian Competition Tribunal.

(9) Division 1 of Part IX of the *Trade Practices Act 1974* does not apply in relation to a review by the Australian Competition Tribunal of the decision.

## **8 Subsection 353(2)**

Omit “ACA’s”, substitute “ACCC’s”.

## **9 Paragraph 1(n) of Schedule 4**

Repeal the paragraph.

## **10 Transitional—section 349 of the *Telecommunications Act 1997***

(1) This item applies to a determination if:

- (a) the determination was made by the ACA under section 349 of the *Telecommunications Act 1997*; and
- (b) the determination was in force immediately before the commencement of this item.

(2) The determination has effect, after the commencement of this item, as if:

- (a) it had been made by the ACCC under that section (as amended by this Part); and
- (b) any requirement imposed by that section (as amended by this Part) in relation to the making of the determination had been satisfied.

**11 Transitional—section 352 of the *Telecommunications Act 1997***

- (1) This item applies to a declaration if:
  - (a) the declaration was made by the ACA under section 352 of the *Telecommunications Act 1997*; and
  - (b) the declaration was in force immediately before the commencement of this item.
- (2) The declaration has effect, after the commencement of this item, as if:
  - (a) it had been made by the ACCC under that section (as amended by this Part); and
  - (b) any requirement imposed by that section (as amended by this Part) in relation to the making of the declaration had been satisfied.

**12 Transitional—reconsideration and review of certain decisions under section 352 of the *Telecommunications Act 1997***

- (1) This item applies to a decision of the ACA to refuse to make a declaration under section 352 of the *Telecommunications Act 1997*, where the decision was made before the commencement of this item.
- (2) Despite the amendment of Schedule 4 to the *Telecommunications Act 1997* made by this Part:
  - (a) Part 29 of that Act; and
  - (b) Schedule 4 to that Act; and
  - (c) the *Administrative Appeals Tribunal Act 1975*;continue to apply, in relation to the decision, as if:
  - (d) the decision had been made by the ACCC instead of the ACA; and
  - (e) each reference in that Part and that Schedule to the ACA were a reference to the ACCC; and
  - (f) anything done by or in relation to the ACA under that Part or that Schedule, or under the *Administrative Appeals Tribunal Act 1975*, had been done by or in relation to the ACCC; and
  - (g) that amendment had not been made.
- (3) After the commencement of this item, the ACCC is, by force of this subitem, substituted for the ACA as a party to any proceedings in the Administrative Appeals Tribunal that:
  - (a) were pending immediately before the commencement of this item; and
  - (b) related to the decision.

**13 Transitional—section 353 of the *Telecommunications Act 1997***

- (1) This item applies to an opinion if:
  - (a) the opinion was formed by the ACA under subsection 353(2) of the *Telecommunications Act 1997*; and

- (b) the opinion was in existence immediately before the commencement of this item.
- (2) The opinion has effect, after the commencement of this item, as if it had been formed by the ACCC under that subsection (as amended by this Part).

## **Part 2—Industry development plans**

### **14 Part 2 of Schedule 1**

Repeal the Part.

### **15 Transitional—clauses 14 and 15 of Schedule 1 to the Telecommunications Act 1997**

- (1) For the purposes of this item, a *pre-commencement reporting period* is:
  - (a) a financial year that:
    - (i) began on or after 1 July 1997; and
    - (ii) ended before the commencement of this item; or
  - (b) if this item does not commence on a 1 July in any financial year—the period:
    - (i) beginning at the start of the financial year in which this item commenced; and
    - (ii) ending immediately before the commencement of this item.
- (2) Despite the amendment made by this Part, clauses 14 and 15 of Schedule 1 to the *Telecommunications Act 1997* continue to apply as if:
  - (a) each reference in those clauses to a financial year were a reference to a pre-commencement reporting period; and
  - (b) the amendment had not been made.

## **Part 3—Access to network information**

### **16 Paragraph 21(2)(a) of Schedule 1**

Before “information”, insert “timely and detailed”.

### **17 Paragraph 21(2)(b) of Schedule 1**

Before “traffic”, insert “timely and detailed”.

### **18 Subclause 21(3) of Schedule 1**

Repeal the subclause, substitute:

- (3) The first carrier is not required to comply with subclause (2) unless:
  - (a) a purpose of the access is to enable the second carrier to undertake planning, maintenance or reconfiguration of the second carrier’s telecommunications network; and
  - (b) the second carrier’s request is reasonable.



### **19 Subclause 22(2) of Schedule 1**

Before “information”, insert “timely and detailed”.

### **20 Subclause 22(3) of Schedule 1**

Repeal the subclause, substitute:

- (3) The first carrier is not required to comply with subclause (2) unless:
  - (a) a purpose of the access is to enable the second carrier to undertake planning, maintenance or reconfiguration of the second carrier’s telecommunications network; and
  - (b) the second carrier’s request is reasonable.

### **21 Subclause 23(2) of Schedule 1**

Omit “that is sufficient to enable the second carrier to undertake planning for the second carrier’s own telecommunications network”.

### **22 Subclause 23(4) of Schedule 1**

Repeal the subclause, substitute:

- (4) The first carrier is not required to comply with subclause (2) unless:
  - (a) a purpose of the provision of the information is to enable the second carrier to undertake planning for its own telecommunications network; and
  - (b) the second carrier’s request is reasonable.

### **23 Subclause 24(3) of Schedule 1**

Repeal the subclause, substitute:

- (3) The first carrier is not required to comply with subclause (2) unless:
  - (a) a purpose of the provision of the information is to enable the second carrier to undertake planning for its own telecommunications network; and
  - (b) the second carrier’s request is reasonable.

### **24 Transitional—clauses 21, 22 and 23 of Schedule 1 to the *Telecommunications Act 1997***

- (1) This item applies to a request if:
  - (a) the request was made under subclause 21(2), 22(2) or 23(2) of Schedule 1 to the *Telecommunications Act 1997*; and
  - (b) the request was in force immediately before the commencement of this item.
- (2) The request has effect, after the commencement of this item, as if it had been made under, and in the terms required by, subclause 21(2), 22(2) or 23(2), as the case may be, of Schedule 1 to that Act (as amended by this Part).

# Schedule 2—Amendment of the Trade Practices Act 1974

## Part 1—Model terms and conditions relating to access to core services etc.

### 1 After subsection 152QA(7)

Insert:

*Other powers not limited*

(7A) To avoid doubt, neither:

(a) this section; nor

(b) a determination under this section;

limits the Commission's powers under the following provisions:

(c) Division 4 (which deals with the telecommunications access code);

(d) Division 5 (which deals with access undertakings).

### 2 After section 152AQA

Insert:

#### 152AQB Model terms and conditions relating to access to core services

*Core services*

(1) For the purposes of this section, each of the following declared services is a *core service*:

(a) the Domestic PSTN Originating Access Service (as described in the relevant declaration);

(b) the Domestic PSTN Terminating Access Service (as described in the relevant declaration);

(c) the Unconditioned Local Loop Service (as described in the relevant declaration);

(d) the Local Carriage Service (as described in the relevant declaration);

(e) a declared service specified in the regulations.

*Determination setting out model terms and conditions*

(2) The Commission must make a written determination setting out model terms and conditions relating to access to each core service.

(2A) The Commission may make a written determination setting out model terms and conditions relating to access for active declared services other than a core service.

*Timing*

(3) The Commission must take all reasonable steps to ensure that a determination relating to a core service referred to in paragraph (1)(a), (b), (c) or (d) is made within 6 months after the commencement of this section.

- (4) The Commission must take all reasonable steps to ensure that a determination relating to a core service specified in the regulations is made within 6 months after the relevant regulation takes effect.

*Public consultation*

- (5) Before making a determination under this section, the Commission must:
- (a) publish a draft of the determination and invite people to make submissions to the Commission on the draft determination; and
  - (b) consider any submissions that are received within the time limit specified by the Commission when it published the draft determination.

*Consultation with ACA*

- (6) Before making a determination under this section, the Commission must consult the ACA.

*Publication*

- (7) The Commission must publish a determination under this section in such manner as it considers appropriate (including in electronic form).

*Duration of determination*

- (8) Unless sooner revoked, a determination under this section relating to a particular core service or active declared service ceases to be in force at the end of:
- (a) the period of 53 years beginning on the day on which the determination was made; or
  - (b) if a longer period is specified in the regulations in relation to the determination—that longer period.

*Arbitration*

- (9) The Commission must have regard to a determination under this section if it is required to arbitrate an access dispute under Division 8, or to assess an access undertaking under Division 5, in relation to a core service, or other active declared service, covered by the determination.

*Ministerial pricing determinations prevail etc.*

- (10) A determination under this section has no effect to the extent that it is inconsistent with:
- (a) any Ministerial pricing determination; or
  - (b) any determination under section 152AQA.

*Other powers not limited*

- (11) To avoid doubt, neither:
- (a) this section; nor
  - (b) a determination under this section;
- limits the Commission's powers under the following provisions:

(c) Division 4 (which deals with the telecommunications access code);

(d) Division 5 (which deals with access undertakings).

### **3 Subsection 152CH(1) (before note 2)**

Insert:

Note 1A: Subsection 152AQA(7) provides that a determination under section 152AQA has no effect to the extent that the determination is inconsistent with any Ministerial pricing determination.

Note 1B: Subsection 152AQB(9) provides that a determination under section 152AQB has no effect to the extent that the determination is inconsistent with any Ministerial pricing determination.

### **4 Section 152CLA (note)**

Omit “relevant pricing determination under section 152AQA”,

substitute “the matters set out in section 152CR, to any relevant pricing determination under section 152AQA and, in the case of core services, to any relevant determination under section 152AQB”.

## **Part 2—Merits review of final determinations**

### **5 Subsections 152DN(2) to (8)**

Repeal the subsections.

### **6 Subsection 152DNA(3)**

Omit “subsections 152CPA(9) and 152DN(5) and (6)”, substitute “subsection 152CPA(9)”.

### **7 Subsection 152DNA(5)**

Omit “subsection 152DN(1)”, substitute “section 152DN”.

### **8 Subdivision F of Division 8 of Part XIC**

Repeal the Subdivision.

### **9 Transitional—review of determinations**

(1) This item applies if a final determination was made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974* before the commencement of this item.

(2) Despite the amendments made by this Part, the *Trade Practices Act 1974* continues to apply, in relation to a review of the final determination, as if those amendments had not been made.

## **Part 3—Duration of declarations**

### **10 After section 152AL**

Insert:

#### **152ALA Duration of declaration**

*Expiry date*

(1) A declaration under section 152AL must specify an expiry date for the declaration.

(2) An expiry date must occur in the 5-year period beginning when the declaration was made.

(3) Subsection (2) has effect subject to subsection (4).

*Extension of expiry date*

- (4) The Commission may, by notice published in the *Gazette*, extend or further extend the expiry date of a specified declaration, so long as:
  - (a) the extension or further extension is for a period of not more than 5 years; and
  - (b) the Commission has held a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to extend or further extend the expiry date.

*Duration of declaration*

- (5) Unless sooner revoked, a declaration under section 152AL ceases to be in force on the expiry date of the declaration.

*Fresh declaration*

- (6) If a declaration under section 152AL expires, this Part does not prevent the Commission from making a fresh declaration under section 152AL in the same terms as the expired declaration.

**11 At the end of subsection 152AM(1)**

Add “or 152ALA(4)(b)”.

**12 At the end of subsection 152AN(1)**

Add “or 152ALA(4)(b)”.

**13 Paragraph 152AQ(2)(c)**

After “152AL(3)(a)”, insert “or 152ALA(4)(b)”.

**14 After section 152DNB**

Insert:

**152DNC Continuity of final determination not affected by expiry of declaration relating to declared service**

- (1) This section applies if:
  - (a) a declaration under section 152AL expires; and
  - (b) immediately before the expiry of the declaration, a final determination was in force in relation to the declared service concerned; and
  - (c) the determination does not have an indefinite duration.
- (2) Despite the expiry of the declaration, the declaration continues in force for the purposes of:
  - (a) ascertaining whether the determination remains in force; and
  - (b) ascertaining whether a party to the determination has any obligations under section 152AR to any other party to the determination while the determination remains in force; and
  - (c) exercising the Commission’s power to vary the determination under section 152DT.

- (3) A party to the determination is not entitled to notify an access dispute in relation to the declared service.

## **15 Transitional—section 152ALA of the *Trade Practices Act 1974***

- (1) This item applies to a declaration if:
- (a) the declaration was made under section 152AL of the *Trade Practices Act 1974*; and
  - (b) the declaration was in force immediately before the commencement of this item.
- (2) Section 152ALA of the *Trade Practices Act 1974* does not apply to the declaration unless and until the Commission makes a determination in relation to the declaration under subitem (3).
- (3) The Commission may, by notice published in the *Gazette*, determine that section 152ALA of the *Trade Practices Act 1974* has effect, in relation to a declaration specified in the determination, as if a date specified in the determination had been specified in the declaration as the expiry date of the declaration.
- (4) The specified date must occur within the 5-year period beginning on the commencement of this item.
- (5) The Commission must take all reasonable steps to ensure that each declaration is covered by a determination under subitem (3) within 6 months after the commencement of this item.

## **Part 4—Revocation of declarations of minor importance**

### **16 After subsection 152AO(1)**

Insert:

(1A) If:

- (a) a declaration under section 152AL relates to a particular service; and
- (b) in the Commission’s opinion, the service is of minor importance, namely a service that is obsolete or operationally redundant;

the Commission is not required to hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about a proposal to revoke the declaration.

## **Part 5—Service provider’s reasonably anticipated requirements**

### **17 Paragraph 152CQ(1)(a)**

Omit “dispute was notified”, substitute “access seeker made a request in relation to the service under section 152AR”.

### **18 Paragraph 152CQ(1)(b)**

Omit “dispute was notified”, substitute “access seeker made a request in relation to the service under section 152AR”.

## **19 Transitional—section 152CQ of the *Trade Practices Act 1974***

To avoid doubt, the amendments of section 152CQ of the *Trade Practices Act 1974* made by this Part do not affect the validity of a determination made before the commencement of this item.

## **Part 6—Costs of extending or enhancing the capability of a facility etc.**

### **20 Paragraph 152CQ(1)(f)**

Omit “some or all”, substitute “an unreasonable amount”.

## **21 Transitional—section 152CQ of the *Trade Practices Act 1974***

To avoid doubt, the amendment of section 152CQ of the *Trade Practices Act 1974* made by this Part does not affect the validity of a determination made before the commencement of this item.

## **Part 7—Hindering the fulfilment of a standard access obligation etc.**

### **22 Section 152AA**

Omit “prevent or hinder access to a declared service”, substitute “prevent or hinder the fulfilment of a standard access obligation”.

### **23 Division 10 of Part XIC (heading)**

Repeal the heading, substitute:

## **Division 10—Hindering the fulfilment of a standard access obligation etc.**

### **24 Subsection 152EF(1)**

Repeal the subsection, substitute:

- (1) A person must not engage in conduct for the purpose of preventing or hindering the fulfilment of:
  - (a) a standard access obligation; or
  - (b) an obligation imposed by a determination made by the Commission under Division 8;if the person is:
  - (c) a carrier or a carriage service provider who supplies a declared service; or
  - (d) a service provider to whom a declared service is being supplied by a carrier or carriage service provider; or
  - (e) a body corporate that is related to a carrier or provider referred to in paragraph (c) or (d).

Note 1: The heading to section 152EF is altered by omitting “access to declared service” and substituting “the fulfilment of a standard access obligation etc.”.

Note 2: The heading to section 152EG is altered by omitting “access” and substituting “the fulfilment of a standard access obligation etc.”.

## Part 8—Backdating of final determinations

### 25 At the end of section 152DNA

Add:

#### *Interest*

(6) If:

- (a) a provision of a determination is covered by subsection (1); and
- (b) the provision requires a party to the determination (the *first party*) to pay money to another party;

the determination may require the first party to pay interest to the other party, at the rate specified in the determination, on the whole or a part of the money, for the whole or a part of the period:

- (c) beginning on the date on which the parties began negotiations with a view to agreeing on the terms and conditions as mentioned in paragraph 152AY(2)(a); and
- (d) ending on the date on which the determination would have taken effect if no provision of the determination had been covered by subsection (1) of this section.

#### *Guidelines*

- (7) In exercising the powers conferred by subsection (1) or (6), the Commission must have regard to:
  - (a) any guidelines in force under subsection (8); and
  - (b) such other matters as the Commission considers relevant.
- (8) The Commission must, by writing, formulate guidelines for the purposes of subsection (7).
- (9) The Commission must take all reasonable steps to ensure that the first set of guidelines under subsection (8) is made within 6 months after the commencement of this subsection.
- (10) Guidelines under subsection (8) are to be made available on the Internet.

## Part 9—Guidelines about the ACCC’s powers to regulate anti-competitive conduct

### 26 Subsection 151AP(3)

Repeal the subsection, substitute:

- (3) Guidelines under subsection (2) must address the appropriateness of the Commission issuing a competition notice as opposed to the Commission taking other action under this Act.



- (4) The Commission must take all reasonable steps to ensure that guidelines under subsection (2) comply with subsection (3) within 12 months after the commencement of this subsection.

## **Part 10—Telecommunications access codes**

### **27 Section 152AC (definition of *ACCC telecommunications access code*)**

Repeal the definition.

### **28 Section 152AC (definition of *approved TAF telecommunications access code*)**

Repeal the definition.

### **29 Section 152AC (definition of *draft TAF telecommunications access code*)**

Repeal the definition.

### **30 Section 152AC (definition of *TAF*)**

Repeal the definition.

### **31 Section 152AC**

Insert:

*telecommunications access code* means a code made under section 152BJ.

### **32 Section 152AI**

Repeal the section.

### **33 Subsection 152AL(2)**

Repeal the subsection.

### **34 Subsection 152AM(4)**

Omit “and the TAF”.

### **35 Subsection 152AO(2)**

Repeal the subsection.

### **36 Section 152AP**

Repeal the section.

### **37 Paragraph 152AQ(2)(c)**

Omit “or subsection 152AO(2)”.

### **38 Subdivision A of Division 4 of Part XIC**

Repeal the Subdivision.

### **39 Subdivision B of Division 4 of Part XIC (heading)**

Repeal the heading.

### **40 Section 152BJ**

Repeal the section, substitute:

### **152BJ Telecommunications access code**

*Commission may make code*

- (1) The Commission may, by writing, make a telecommunications access code.

*Disallowable instrument*

- (2) A telecommunications access code is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*Only one code*

- (3) The Commission must ensure that not more than one code is in force at a particular time.

#### **41 Subsection 152BK(1)**

Omit “An ACCC”, substitute “A”.

Note: The heading to section 152BK is altered by omitting “ACCC”.

#### **42 Subsection 152BK(3)**

Omit “an ACCC”, substitute “a”.

#### **43 Section 152BL**

Omit “an ACCC”, substitute “a”.

Note: The heading to section 152BL is altered by omitting “ACCC”.

#### **44 Section 152BM**

Omit “an ACCC”, substitute “a”.

#### **45 Section 152BN**

Omit “an ACCC”, substitute “a”.

#### **46 Section 152BN**

Omit “the TAF and”.

Note: The heading to section 152BN is altered by omitting “TAF and”.

#### **47 Section 152BO**

Repeal the section.

#### **48 Subdivision C of Division 4 of Part XIC**

Repeal the Subdivision.

#### **49 Subdivision D of Division 4 of Part XIC (heading)**

Repeal the heading.

#### **50 Subsection 152BR(1)**

Omit “approved TAF” (wherever occurring).

#### **51 Paragraph 152BR(1)(b)**

Omit “approved variations”, substitute “variations”.

#### **52 Subsection 152BS(4)**

Omit “approved TAF”.

#### **53 Paragraph 152BV(1)(b)**

Omit “approved TAF”.

#### **54 Paragraph 152BW(1)(b)**

Omit “approved TAF”.

**55 Subparagraph 152BX(2)(b)(ii)**

Omit “approved TAF”.

**56 Subsection 152CH(1) (note 1)**

Repeal the note.

**57 Subsection 152CH(1) (note 2)**

Omit “an ACCC”, substitute “a”.

**58 Subsection 152CH(1) (note 5)**

Omit “approved TAF”.

**59 Subsection 152CI(2)**

Omit “approved TAF”.

**Part 11—Exemptions from standard access obligations**

**60 After section 152AS**

Insert:

**152ASA Anticipatory class exemptions from standard access obligations**

*Determination providing for exemption*

- (1) The Commission may, by written instrument, determine that, in the event that a specified service or proposed service becomes an active declared service, each of the members of a specified class of carrier or of a specified class of carriage service provider are exempt from any or all of the obligations referred to in section 152AR, to the extent to which the obligations relate to the active declared service.
- (2) A determination under this section may be unconditional or subject to such conditions or limitations as are specified in the determination.
- (3) A determination under this section has effect accordingly.

*Criteria for making determination*

- (4) The Commission must not make a determination under this section unless the Commission is satisfied that the making of the determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services.
- (5) In applying subsection (4), the Commission must have regard to:

- (a) ~~any matters specified in an instrument in force under subsection (6); and~~
- (b) the matter set out in subsection 152AB(2).

This subsection has effect despite subsection 152AB(3).

- (6) ~~The Minister may, by written instrument, specify matters for the purposes of subsection (5).~~

~~(7) An instrument under subsection (6) is to be made available on the Internet.~~

*Expiry time of determination*

- (8) A determination under this section must specify the expiry time of the determination. If a determination expires, this Part does not prevent the Commission from making:
- (a) a fresh determination under this section in the same terms as the expired determination; or
  - (b) if the service or proposed service has become an active declared service—a determination under section 152AS in relation to the service.
- (9) The expiry time of the determination may be described by reference to the end of a period beginning when the service or proposed service becomes an active declared service.
- (10) Subsection (9) does not, by implication, limit subsection (8).

*Consultation*

- (11) If, in the Commission's opinion, the making of a determination under this section is likely to have a material effect on the interests of a person, then, before making the determination, the Commission must first:
- (a) publish a draft of the determination and invite people to make submissions to the Commission on the question of whether the draft determination should be made; and
  - (b) consider any submissions that were received within the time limit specified by the Commission when it published the draft determination.

*Disallowable instrument*

- (12) An instrument under subsection (1) or (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*Definition*

- (13) In this section:

***active declared service*** has the same meaning as in section 152AR.

Note: The heading to section 152AS is altered by omitting "Class" and substituting "Ordinary class".

## **61 Subsection 152AT(10)**

Repeal the subsection, substitute:

*Commission to make decision within 6 months*

- (10) If the Commission does not make a decision on an application under subsection (1) within 6 months after receiving the application, the Commission is taken to have made, at the end of that 6-month period, an order under paragraph (3)(~~ab~~) ~~in accordance with the terms of the application.~~
- (11) In calculating the 6-month period referred to in subsection (10), disregard:

- (a) if the Commission has published the application under subsection (9)—a day in the period:
  - (i) beginning on the date of publication; and
  - (ii) ending at the end of the time limit specified by the Commission when it published the application; and
- (b) if the Commission has requested further information under section 152AU in relation to the application—a day during any part of which the request, or any part of the request, remains unfulfilled.

*Extension of decision-making period*

- (12) The Commission may, by written notice given to the applicant, extend or further extend the 6-month period referred to in subsection (10), so long as:
  - (a) the extension or further extension is for a period of not more than 3 months; and
  - (b) the notice includes a statement explaining why the Commission has been unable to make a decision on the application within that 6-month period or that 6-month period as previously extended, as the case may be.
- (13) As soon as practicable after the Commission gives a notice under subsection (12), the Commission must cause a copy of the notice to be made available on the Internet.

*Notification of refusal of application*

- (14) If the Commission makes a decision refusing an application under subsection (1), the Commission must give the applicant a written statement setting out the reasons for the refusal.

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

Note 1: The following heading to subsection 152AT(1) is inserted “*Application for exemption order*”.

Note 2: The following heading to subsection 152AT(3) is inserted “*Commission must make exemption order or refuse application*”.

Note 3: The following heading to subsection 152AT(4) is inserted “*Criteria for making exemption order*”.

Note 4: The following heading to subsection 152AT(5) is inserted “*Exemption orders*”.

Note 5: The following heading to subsection 152AT(8) is inserted “*Expiry date for exemption order*”.

Note 6: The following heading to subsection 152AT(9) is inserted “*Consultation*”.

## **62 After section 152AT**

Insert:

### **152ATA Anticipatory individual exemptions from standard access obligations**

*Application for exemption order*

- (1) A person who is, or expects to be, a carrier or a carriage service provider may apply to the Commission for a written

order that, in the event that a specified service or proposed service becomes an active declared service, the person is exempt from any or all of the obligations referred to in section 152AR, to the extent to which the obligations relate to the active declared service.

- (2) An application under subsection (1) must be:
- (a) in writing; and
  - (b) in a form approved in writing by the Commission for the purposes of this paragraph.

*Commission must make exemption order or refuse application*

- (3) After considering the application, the Commission must:
- (a) make a written order that, in the event that the service or proposed service becomes an active declared service, the applicant is exempt from one or more of the obligations referred to in section 152AR, to the extent to which the obligations relate to the active declared service; or
  - (b) refuse the application.

- (4) An order under paragraph (3)(a) may be unconditional or subject to such conditions or limitations as are specified in the order.

- (5) An order under paragraph (3)(a) has effect accordingly.

*Criteria for making exemption order*

- (6) The Commission must not make an order under paragraph (3)(a) unless the Commission is satisfied that the making of the order will promote the long-term interests of end-users of carriage services or of services provided by means of carriage services.

- (7) In applying subsection (6), the Commission must have regard to:

- ~~(a) any matters specified in an instrument in force under subsection (8); and~~
- ~~(b) the matter set out in subsection 152AB(2).~~

This subsection has effect despite subsection 152AB(3).

- ~~(8) The Minister may, by written instrument, specify matters for the purposes of subsection (7).~~

- (9) An instrument under subsection (8) is to be made available on the Internet.

*Expiry time for exemption order*

- (10) An order under paragraph (3)(a) must specify the expiry time for the order. If an order expires, this Part does not prevent the Commission from making:

- (a) a fresh order under paragraph (3)(a) in the same or similar terms as the expired order; or
- (b) if the service or proposed service has become an active declared service—an order under section 152AT in relation to the service.

*Consultation*

- (11) If, in the Commission's opinion, the making of an order under paragraph (3)(a) is likely to have a material effect on the interests of a person, then, before making the order, the Commission must first:
- (a) publish the application for the order and invite people to make submissions to the Commission on the question of whether the order should be made; and
  - (b) consider any submissions that were received within the time limit specified by the Commission when it published the application.

*Commission to make decision within 6 months*

- (12) If the Commission does not make a decision on an application under this section within 6 months after receiving the application, the Commission is taken to have made, at the end of that 6-month period, an order under paragraph (3)(a) ~~in accordance with the terms of the application.~~
- (13) In calculating the 6-month period referred to in subsection (12), disregard:
- (a) if the Commission has published the application under subsection (11)—a day in the period:
    - (i) beginning on the date of publication; and
    - (ii) ending at the end of the time limit specified by the Commission when it published the application; and
  - (b) if the Commission has requested further information under section 152AU in relation to the application—a day during any part of which the request, or any part of the request, remains unfulfilled.

*Extension of decision-making period*

- (14) The Commission may, by written notice given to the applicant, extend or further extend the 6-month period referred to in subsection (12), so long as:
- (a) the extension or further extension is for a period of not more than 3 months; and
  - (b) the notice includes a statement explaining why the Commission has been unable to make a decision on the application within that 6-month period or that 6-month period as previously extended, as the case may be.
- (15) As soon as practicable after the Commission gives a notice under subsection (14), the Commission must cause a copy of the notice to be made available on the Internet.

*Notification of refusal of application*

- (16) If the Commission makes a decision refusing an application under subsection (1), the Commission must give the applicant a written statement setting out the reasons for the refusal.

*Disallowable instrument*

- (17) An instrument under subsection (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*Definition*

- (18) In this section:

*active declared service* has the same meaning as in section 152AR.

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

Note: The heading to section 152AT is altered by omitting “**Individual**” and substituting “**Ordinary individual**”.

**63 At the end of subsection 152AU(1)**

Add “or 152ATA(1)”.

**64 At the end of section 152AU**

Add:

- (4) The Commission may withdraw its request for further information, in whole or in part.

**65 Subsection 152AV(1)**

[After “152AT”, insert “or 152ATA”.]

Repeal the section, substitute:

- (1) A person whose interests are affected by a decision of the Commission under section 152AT, will be affected or is likely to be affected, by a decision of the Commission under section 152ATA, may apply in writing to the Tribunal for a review of the decision.

**66 Section 152AW**

Repeal the section, substitute:

**152AW Functions and powers of Tribunal**

*Decision on review*

- (1) On a review of a decision of the Commission under section 152AT or 152ATA, the Tribunal may make a decision:
- (a) in any case—affirming the Commission’s decision; or
  - (b) in the case of a review of a decision of the Commission to make an order under paragraph 152AT(3)(a) or paragraph 152ATA(3)(a)—setting aside or varying the Commission’s decision; or
  - (c) in the case of a review of a decision of the Commission under section 152AT refusing an application for an order—both:
    - (i) setting aside the Commission’s decision; and
    - (ii) in substitution for the decision so set aside, making an order under paragraph 152AT(3)(a); or



- (d) in the case of a review of a decision of the Commission under section 152ATA refusing an application for an order—both:
  - (i) setting aside the Commission’s decision; and
  - (ii) in substitution for the decision so set aside, making an order under paragraph 152ATA(3)(a); or
- (e) in the case of a review of a decision of the Commission under section 152AT or 152ATA varying an order—setting aside or varying the Commission’s decision; or
- (f) in the case of a review of a decision of the Commission under section 152AT or 152ATA refusing to vary an order—both:
  - (i) setting aside the Commission’s decision; and
  - (ii) in substitution for the decision so set aside, varying the order; or
- (g) in the case of a review of a decision of the Commission under section 152AT or 152ATA revoking an order—a decision setting aside the Commission’s decision; or
- (h) in the case of a review of a decision of the Commission under section 152AT or 152ATA refusing to revoke an order— both:
  - (i) setting aside the Commission’s decision; and
  - (ii) in substitution for the decision so set aside, revoking the order;

and, for the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the Commission.

- (2) A decision by the Tribunal:
  - (a) affirming a decision of the Commission; or
  - (b) varying a decision of the Commission; or
  - (c) setting aside a decision of the Commission; or
  - (d) made in substitution for a decision of the Commission;

is taken, for the purposes of this Act (other than section 152AV or this section), to be a decision of the Commission.

*Conduct of review*

- (3) For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.
- (4) For the purposes of a review, the Tribunal may have regard only to:
  - (a) any information given, documents produced or evidence given to the Commission in connection

with the making of the decision to which the review relates; and

- (b) any other information that was referred to in the Commission's reasons for making the decision to which the review relates.

*Tribunal to make decision within 6 months*

(5) If:

- (a) a person applies to the Tribunal for a review of a decision of the Commission under section 152AT or 152ATA; and
- (b) the Tribunal does not make a decision under subsection (1) of this section on the review within 6 months after receiving the application for review;

the Tribunal is taken not to have granted the application, at the end of that 6-month period, in relation to whichever of the following decisions is applicable:

- (c) in the case of a review of a decision of the Commission to make an order under paragraph 152AT(3)(a) or paragraph 152ATA(3)(a), where the applicant for review is seeking to have the Tribunal set aside the Commission's decision—a decision setting aside the Commission's decision;
- (d) in the case of a review of a decision of the Commission to make an order under paragraph 152AT(3)(a) or paragraph 152ATA(3)(a), where the applicant for review is seeking to have the Tribunal vary the Commission's decision—a decision varying the Commission's decision in accordance with the terms of the application for review;
- (e) in the case of a review of a decision of the Commission under section 152AT refusing an application for an order—both:
  - (i) a decision setting aside the Commission's decision; and
  - (ii) in substitution for the decision so set aside, a decision to make an order under paragraph 152AT(3)(a) in accordance with the terms of the application;
- (f) in the case of a review of a decision of the Commission under section 152ATA refusing an application for an order—both:
  - (i) a decision setting aside the Commission's decision; and
  - (ii) in substitution for the decision so set aside, a decision to make an order under paragraph 152ATA(3)(a) in accordance with the terms of the application;
- (g) in the case of a review of a decision of the Commission under section 152AT or 152ATA varying an order, where the applicant for review is seeking to have the Tribunal set aside the

Commission's decision—a decision setting aside the Commission's decision;

- (h) in the case of a review of a decision of the Commission under section 152AT or 152ATA varying an order, where the applicant for review is seeking to have the Tribunal vary the Commission's decision—a decision varying the Commission's decision in the manner sought by the applicant for review;
- (i) in the case of a review of a decision of the Commission under section 152AT or 152ATA refusing to vary an order—both:
  - (i) a decision setting aside the Commission's decision; and
  - (ii) in substitution for the decision so set aside, a decision to vary the order in accordance with the terms of the application for variation;
- (j) in the case of a review of a decision of the Commission under section 152AT or 152ATA revoking an order—a decision setting aside the Commission's decision;
- (k) in the case of a review of a decision of the Commission under section 152AT or 152ATA refusing to revoke an order— both:
  - (i) a decision setting aside the Commission's decision; and
  - (ii) in substitution for the decision so set aside, a decision to revoke the order.

*Extension of decision-making period*

- (6) The Tribunal may, by written notice given to the applicant for review, extend or further extend the 6-month period referred to in subsection (5), so long as:
  - (a) the extension or further extension is for a period of not more than 3 months; and
  - (b) the notice includes a statement explaining why the Tribunal has been unable to make a decision on the review within that 6-month period or that 6-month period as previously extended, as the case may be.
- (7) As soon as practicable after the Tribunal gives a notice under subsection (6), the Tribunal must cause a copy of the notice to be made available on the Internet.

Note: Division 2 of Part IX applies to proceedings before the Tribunal.

**67 At the end of section 152AX**

Add “or 152ATA”.

**68 After section 152AX**

Insert:

**152AXA Statement of reasons for reviewable decision—specification of documents**

- (1) If the Commission:
  - (a) makes a decision under section 152AT or 152ATA;  
and
  - (b) gives a person a written statement setting out the reasons for the decision;

the statement must specify the documents that the Commission examined in the course of making the decision.
- (2) If a document is specified under subsection (1), information in the document is taken, for the purposes of paragraph 152AW(4)(b), to be referred to in the Commission’s reasons for making the decision.

## **69 Application—section 152AW of the *Trade Practices Act 1974***

- (1) Subsections 152AW(1), (2) and (3) of the *Trade Practices Act 1974* as amended by this Part apply in relation to:
  - (a) an application under section 152AV of the *Trade Practices Act 1974* that was made after the commencement of this item; or
  - (b) an application under section 152AV of the *Trade Practices Act 1974* that was made before the commencement of this item, so long as the Tribunal did not make a decision on the review under subsection 152AW(1) of that Act before the commencement of this item.
- (2) Subsections 152AW(4) to (7) of the *Trade Practices Act 1974* as amended by this Part apply in relation to an application under section 152AV of the *Trade Practices Act 1974* that was made after the commencement of this item.
- (3) Despite the repeal of subsection 152AW(4) of the *Trade Practices Act 1974* by this Part, that subsection continues to apply, in relation to an application under section 152AV of the *Trade Practices Act 1974* that was made before the commencement of this item, as if that repeal had not happened.

## **Part 12—Access undertakings**

### **70 Section 152AA**

Before “may adopt”, insert “(other than a special access undertaking)”.

### **71 Section 152AC (definition of *access undertaking*)**

Omit “an undertaking under Division 5”, substitute “an ordinary access undertaking or a special access undertaking”.

### **72 Section 152AC**

Insert:

*ordinary access undertaking* means an undertaking under Subdivision A of Division 5.

### **73 Section 152AC**

Insert:

*special access undertaking* means an undertaking under Subdivision B of Division 5.

#### **74 At the end of section 152AL**

Add:

*Services covered by special access undertakings*

(7) If:

- (a) a person gives the Commission a special access undertaking in relation to a service or a proposed service; and
- (b) the undertaking is in operation; and
- (c) the person supplies the service or proposed service (whether to itself or to other persons);

the service supplied by the person is ~~an~~ ***active declared service***.

(8) The Commission may declare a service under subsection (3) even if the service is, to any extent, covered by subsection (7).

#### **75 Paragraph 152BK(1)(b)**

Before “access undertakings”, insert “ordinary”.

#### **76 Before section 152BS**

Insert:

#### **Subdivision A—Ordinary access undertakings**

#### **77 Subsection 152BS(1)**

Before “*access undertaking*”, insert “*ordinary*”.

Note: The heading to section 152BS is altered by inserting “*ordinary*” before “*access undertaking*”.

#### **78 At the end of subsection 152BS(1)**

Add:

Note: The undertaking need not specify all terms and conditions—see subparagraph 152AY(2)(b)(ii).

#### **79 After subsection 152BS(6)**

Insert:

(6A) The undertaking may be without limitations or may be subject to such limitations as are specified in the undertaking.

#### **80 After subsection 152BS(9)**

Insert:

(9A) If an undertaking expires, this Part does not prevent the carrier or provider from giving a fresh undertaking in the same terms as the expired undertaking.

#### **81 Subsection 152BT(1)**

Before “access undertaking”, insert “ordinary”.

#### **82 At the end of section 152BT**

Add:

- (4) The Commission may withdraw its request for further information, in whole or in part.

### **83 Subsection 152BU(1)**

Before “access undertaking”, insert “ordinary”.

### **84 Subsections 152BU(3) and (4)**

Omit “access”.

### **85 At the end of section 152BU**

Add:

*Commission to make decision within 6 months*

- (5) If the Commission does not make a decision under subsection (2) about the undertaking within 6 months after receiving the undertaking, the Commission is taken to have made, at the end of that 6-month period, a decision under subsection (2) to ~~accept~~reject the undertaking.
- (6) In calculating the 6-month period referred to in subsection (5), disregard:
- (a) if the Commission has published the undertaking under paragraph 152BV(2)(a)—a day in the period:
    - (i) beginning on the date of publication; and
    - (ii) ending at the end of the time limit specified by the Commission when it published the undertaking; and
  - (b) if the Commission has requested further information under section 152BT in relation to the undertaking—a day during any part of which the request, or any part of the request, remains unfulfilled.

*Extension of decision-making period*

- (7) The Commission may, by written notice given to the carrier or provider, extend or further extend the 6-month period referred to in subsection (5), so long as:
- (a) the extension or further extension is for a period of not more than 3 months; and
  - (b) the notice includes a statement explaining why the Commission has been unable to make a decision on the undertaking within that 6-month period or that 6-month period as previously extended, as the case may be.
- (8) As soon as practicable after the Commission gives a notice under subsection (7), the Commission must cause a copy of the notice to be made available on the Internet.

Note 1: The following heading to subsection 152BU(2) is inserted “*Decision to accept or reject undertaking*”.

Note 2: The following heading to subsection 152BU(3) is inserted “*Notice of decision*”.

### **86 Paragraph 152BV(1)(a)**

Before “access undertaking”, insert “ordinary”.

## 87 Paragraph 152BW(1)(a)

Before “access undertaking”, insert “ordinary”.

## 88 Subsection 152BX(1)

Before “access undertaking”, insert “ordinary”.

## 89 Subsection 152BY(1)

Before “access undertaking”, insert “ordinary”.

## 90 At the end of section 152BY

Add:

*Commission to make decision within 6 months*

- (7) If the Commission does not make a decision under subsection (3) about the variation within 6 months after receiving the variation, the Commission is taken to have made, at the end of that 6-month period, a decision under subsection (3) to ~~accept~~reject the variation.
- (8) In calculating the 6-month period referred to in subsection (7), disregard:
- (a) if the Commission has published the variation under paragraph 152BV(2)(a)—a day in the period:
    - (i) beginning on the date of publication; and
    - (ii) ending at the end of the time limit specified by the Commission when it published the variation; and
  - (b) if the Commission has requested further information under section 152BZ in relation to the variation—a day during any part of which the request, or any part of the request, remains unfulfilled.

*Extension of decision-making period*

- (9) The Commission may, by written notice given to the person, extend or further extend the 6-month period referred to in subsection (7), so long as:
- (a) the extension or further extension is for a period of not more than 3 months; and
  - (b) the notice includes a statement explaining why the Commission has been unable to make a decision on the variation within that 6-month period or that 6-month period as previously extended, as the case may be.
- (10) As soon as practicable after the Commission gives a notice under subsection (9), the Commission must cause a copy of the notice to be made available on the Internet.

Note 1: The following heading to subsection 152BY(3) is inserted “*Decision to accept or reject variation*”.

Note 2: The following heading to subsection 152BY(5) is inserted “*Notice of decision*”.

## 91 Subsection 152BZ(1)

Before “access undertaking”, insert “ordinary”.

## 92 At the end of section 152BZ

Add:

- (4) The Commission may withdraw its request for further information, in whole or in part.

### **93 Subsection 152CA(1)**

Before “access undertaking”, insert “ordinary”.

### **94 Subsections 152CB(1) and (2)**

Before “access undertaking”, insert “ordinary”.

### **95 After section 152CB**

Insert:

## **Subdivision B—Special access undertakings**

### **152CBA What is a *special access undertaking*?**

#### *Scope*

- (1) This section applies to a person who is, or expects to be, a carrier or a carriage service provider supplying:
  - (a) a listed carriage service (within the meaning of the *Telecommunications Act 1997*); or
  - (b) a service that facilitates the supply of a listed carriage service (within the meaning of that Act);whether to itself or to other persons, so long as the service is not an active declared service.

#### *Undertaking*

- (2) The person may give a written undertaking (a *special access undertaking*) to the Commission in connection with the provision of access to the service.
- (3) The undertaking must state that, in the event that the person supplies the service (whether to itself or to other persons), the person:
  - (a) agrees to be bound by the obligations referred to in section 152AR, ~~to the extent that those obligations would apply to the person in relation to the service if the service were treated as an active declared service~~; and
  - (b) undertakes to comply with the terms and conditions specified in the undertaking in relation to the obligations referred to in paragraph (a).

Note: The undertaking need not specify all terms and conditions—see subparagraph 152AY(2)(b)(ii).

- (4) The undertaking must be in a form approved in writing by the Commission.
- (5) The undertaking may be without limitations or may be subject to such limitations as are specified in the undertaking.

#### *Expiry time*

- (6) The undertaking must specify the expiry time of the undertaking.



- (7) The expiry time of the undertaking may be described by reference to the end of a period beginning:
  - (a) when the undertaking comes into operation; or
  - (b) when the person begins to supply the service (whether to itself or to other persons).
- (8) Subsection (7) does not, by implication, limit subsection (6).
- (9) The undertaking may provide for the person to extend, or further extend, the expiry time of the undertaking, so long as:
  - (a) the extension or further extension is approved by the Commission; and
  - (b) the undertaking sets out criteria that are to be applied by the Commission in deciding whether to approve the extension or further extension.
- (10) If the undertaking expires, this Part does not prevent the person from giving:
  - (a) a fresh special access undertaking in the same terms as the expired undertaking; or
  - (b) an ordinary access undertaking that deals with the same service as the expired undertaking.

*Related services*

- (11) A reference in paragraph (1)(b) to a service that facilitates the supply of a carriage service does not include a reference to the use of intellectual property except to the extent that it is an integral but subsidiary part of the first-mentioned service.

*Definition*

- (12) In this section:  
*active declared service* has the same meaning as in section 152AR.

Note: A service includes a proposed service—see section 152CBJ.

**152CBB Further information about undertaking**

- (1) This section applies if a person gives a special access undertaking to the Commission.
- (2) The Commission may request the person to give the Commission further information about the undertaking.
- (3) The Commission may refuse to consider the undertaking until the person gives the Commission the information.
- (4) The Commission may withdraw its request for further information, in whole or in part.

**152CBC Commission to accept or reject access undertaking**

- (1) This section applies if a person gives a special access undertaking to the Commission.

*Decision to accept or reject undertaking*

- (2) After considering the undertaking, the Commission must:
  - (a) accept the undertaking; or

- (b) reject the undertaking.

*Notice of decision*

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

*Commission to make decision within 6 months*

- (5) If the Commission does not make a decision under subsection (2) about the undertaking within 6 months after receiving the undertaking, the Commission is taken to have made, at the end of that 6-month period, a decision under subsection (2) to ~~accept~~reject the undertaking.
- (6) In calculating the 6-month period referred to in subsection (5), disregard:
  - (a) if the Commission has published the undertaking under paragraph 152CBD(2)(d)—a day in the period:
    - (i) beginning on the date of publication; and
    - (ii) ending at the end of the time limit specified by the Commission when it published the undertaking; and
  - (b) if the Commission has requested further information under section 152CBB in relation to the undertaking—a day during any part of which the request, or any part of the request, remains unfulfilled.

*Extension of decision-making period*

- (7) The Commission may, by written notice given to the person, extend or further extend the 6-month period referred to in subsection (5), so long as:
  - (a) the extension or further extension is for a period of not more than 3 months; and
  - (b) the notice includes a statement explaining why the Commission has been unable to make a decision on the undertaking within that 6-month period or that 6-month period as previously extended, as the case may be.
- (8) As soon as practicable after the Commission gives a notice under subsection (7), the Commission must cause a copy of the notice to be made available on the Internet.

**152CBD Criteria for accepting access undertaking**

- (1) This section applies if a person gives the Commission a special access undertaking relating to a service.
- (2) The Commission must not accept the undertaking unless:

- (a) the Commission is satisfied that the terms and conditions referred to in paragraph 152CBA(3)(b) would be consistent with the obligations referred to in paragraph 152CBA(3)(a); and
  - (b) the Commission is satisfied that those terms and conditions are reasonable; and
  - (c) the Commission is satisfied that the undertaking is consistent with any Ministerial pricing determination; and
  - (d) the Commission has:
    - (i) published the undertaking and invited people to make submissions to the Commission on the undertaking; and
    - (ii) considered any submissions that were received within the time limit specified by the Commission when it published the undertaking.
- (3) In applying paragraph (2)(b), the Commission must have regard to:
- ~~(a) any matters specified in an instrument in force under subsection (4); and~~
  - (b) the matters set out in subsection 152AH(1).

This subsection does not, by implication, limit the matters to which regard may be had.

- ~~(4) The Minister may, by written instrument, specify matters for the purposes of subsection (3).~~
- ~~(5) An instrument under subsection (4) is to be made available on the Internet.~~
- ~~(6) An instrument under subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.~~

### **152CBE Extension of access undertaking**

- (1) This section applies if:
  - (a) a special access undertaking is given by a person; and
  - (b) the undertaking is in operation; and
  - (c) the undertaking provides for the person to extend the expiry time of the undertaking, so long as the extension is approved by the Commission; and
  - (d) the undertaking sets out criteria that are to be applied by the Commission in deciding whether to approve the extension.
- (2) The person may apply to the Commission for approval of the extension. The application must be made in the 12-month period ending at the expiry time.
- (3) An application under subsection (2) must be:
  - (a) in writing; and

- (b) in a form approved in writing by the Commission.
- (4) After considering the application, the Commission must decide whether to:
  - (a) approve the extension; or
  - (b) refuse to approve the extension.
- (5) Subject to sub-section (5A) tThe Commission must approve the extension if the Commission is satisfied that the criteria referred to in paragraph (1)(d) have been met.
- (5A) The Commission must not approve the extension if the service to which the special access undertaking relates has been declared.
- (6) If the Commission approves the extension, the Commission must give the person a written notice stating that the extension has been approved.
- (6A) Before making a decision under subsection (4), the Commission must:
  - (a) publish a draft decision and invite interested parties to make submissions to the Commission; and
  - (b) consider submissions that are received within the time limit specified by the Commission when publishing the draft decision.
- (7) If the Commission refuses to approve the extension, the Commission must give the person a written notice:
  - (a) stating that the Commission has refused to approve the extension; and
  - (b) setting out the reasons for the refusal.
- (8) In this section, a reference to an *extension* includes a reference to a further extension.

### **152CBF Duration of access undertaking**

- (1) This section applies if a person gives the Commission a special access undertaking relating to a service.
- (2) If the Commission accepts the undertaking:
  - (a) the undertaking comes into operation at the time of acceptance; and
  - (b) the undertaking continues in operation until:
    - (i) it expires; or
    - (ii) it is withdrawn as mentioned in section 152CBI;
 even if the service becomes an active declared service.
- (3) In this section:
 

*active declared service* has the same meaning as in section 152AR.

## 152CBG Variation of access undertakings

- (1) This section applies if a special access undertaking given by a person is in operation.
- (2) The person may give the Commission a variation of the undertaking.

### *Decision to accept or reject variation*

- (3) After considering the variation, the Commission must decide to:
  - (a) accept the variation; or
  - (b) reject the variation.
- (4) Section 152CBD applies to the variation in a corresponding way to the way in which it applies to an undertaking. However, if the variation is of a minor nature, the Commission is not required to comply with paragraph 152CBD(2)(d) in relation to the variation.

### *Notice of decision*

- (5) If the Commission accepts the variation, the Commission must give the person a written notice:
  - (a) stating that the variation has been accepted; and
  - (b) setting out the terms of the variation.
- (6) If the Commission rejects the variation, the Commission must give the person a written notice:
  - (a) stating that the variation has been rejected; and
  - (b) setting out the reasons for the rejection.

(6A) Before making a decision under subsection (3), the Commission must:

- (a) publish a draft decision and invite interested parties to make submissions to the Commission; and
- (b) consider submissions that are received within the time limit specified by the Commission when publishing the draft decision.

### *Commission to make decision within 6 months*

- (7) If the Commission does not make a decision under subsection (3) about the variation within 6 months after receiving the variation, the Commission is taken to have made, at the end of that 6-month period, a decision under subsection (3) to ~~accept~~reject the variation.
- (8) In calculating the 6-month period referred to in subsection (7), disregard:
  - (a) if the Commission has published the variation under paragraph 152CBD(2)(d)—a day in the period:
    - (i) beginning on the date of publication; and

- (ii) ending at the end of the time limit specified by the Commission when it published the variation; and
- (b) if the Commission has requested further information under section 152CBH in relation to the variation—a day during any part of which the request, or any part of the request, remains unfulfilled.

*Extension of decision-making period*

- (9) The Commission may, by written notice given to the person, extend or further extend the 6-month period referred to in subsection (7), so long as:
  - (a) the extension or further extension is for a period of not more than 3 months; and
  - (b) the notice includes a statement explaining why the Commission has been unable to make a decision on the variation within that 6-month period or that 6-month period as previously extended, as the case may be.
- (10) As soon as practicable after the Commission gives a notice under subsection (9), the Commission must cause a copy of the notice to be made available on the Internet.

**152CBH Further information about variation of access undertaking**

- (1) This section applies if a person gives the Commission a variation of a special access undertaking.
- (2) The Commission may request the person to give the Commission further information about the variation.
- (3) The Commission may refuse to consider the variation until the person gives the Commission the information.
- (4) The Commission may withdraw its request for further information, in whole or in part.

**152CBI Voluntary withdrawal of undertaking**

- (1) This section applies if a special access undertaking given by a person is in operation.
- (2) The person may, by written notice given to the Commission, withdraw the undertaking if:
  - (a) the service to which the undertaking relates is a declared service when the notice is given; or
  - (b) ~~both:~~
    - (i) ~~the service to which the undertaking relates is not a declared service when the notice is given; and~~
    - (ii) ~~at least 12 months before the notice is given, the person informed the Commission in writing that the person proposed to withdraw the undertaking.~~
- (3) For the purposes of this section, in determining whether a service is a declared service, disregard subsection 152AL(7).

**152CBJ Proposed service**

In this Subdivision, a reference to a *service* includes a reference to a proposed service.

## **Subdivision C—General provisions**

### **96 Subsection 152CD(1)**

Omit “carrier or carriage service provider”, substitute “person (the *first person*)”.

### **97 Paragraph 152CD(2)(b)**

After “person”, insert “(the *affected person*)”.

### **98 Subsection 152CD(2)**

Omit “carrier or provider”, substitute “first person”.

### **99 Subsection 152CD(2)**

Omit “or person”, substitute “or affected person”.

### **100 Subsection 152CD(3)**

Omit “carrier or provider” (wherever occurring), substitute “first person”.

### **101 Subsection 152CE(1)**

~~Omit “or 152BY(3)”, substitute “, 152BY(3), 152CBC(2) or 152CBG(3)”. A person whose interests are affected by a decision of the Commission under subsections 152BY(3), 152CBC(2) or 152CBG(3), will be affected or is likely to be affected, by a decision of the Commission under subsections 152BY(3), 152CBC(2) or 152CBG(3), may apply in writing to the Tribunal for a review of the decision.~~

## **102 Section 152CF**

Repeal the section, substitute:

### **152CF Functions and powers of Tribunal**

#### *Decision on review*

- (1) On a review of a decision of the Commission under subsection 152BU(2), 152BY(3), 152CBC(2) or 152CBG(3), the Tribunal may make a decision:
  - (a) in any case—affirming the Commission’s decision; or
  - (b) in the case of a review of a decision of the Commission under subsection 152BU(2) or 152CBC(2) to accept an undertaking—setting aside the Commission’s decision; or
  - (c) in the case of a review of a decision of the Commission under subsection 152BU(2) or 152CBC(2) to reject an undertaking—both:
    - (i) setting aside the Commission’s decision; and
    - (ii) in substitution for the decision so set aside, to accept the undertaking; or
  - (d) in the case of a review of a decision of the Commission under subsection 152BY(3) or 152CBG(3) to accept a variation of an

undertaking—setting aside the Commission’s decision; or

- (e) in the case of a review of a decision of the Commission under subsection 152BY(3) or 152CBG(3) to reject a variation of an undertaking—both:
  - (i) setting aside the Commission’s decision; and
  - (ii) in substitution for the decision so set aside, to accept the variation;

and, for the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the Commission.

- (2) A decision by the Tribunal:
  - (a) affirming a decision of the Commission; or
  - (b) setting aside a decision of the Commission; or
  - (c) made in substitution for a decision of the Commission;

is taken, for the purposes of this Act (other than section 152CE or this section), to be a decision of the Commission.

*Conduct of review*

- (3) For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.
- (4) For the purposes of a review, the Tribunal may have regard only to:
  - (a) any information given, documents produced or evidence given to the Commission in connection with the making of the decision to which the review relates; and
  - (b) any other information that was referred to in the Commission’s reasons for making the decision to which the review relates.

*Tribunal to make decision within 6 months*

- (5) If:
  - (a) a person applies to the Tribunal for a review of a decision of the Commission under subsection 152BU(2), 152BY(3), 152CBC(2) or 152CBG(3); and
  - (b) the Tribunal does not make a decision under subsection (1) of this section on the review within 6 months after receiving the application for review;

the Tribunal is taken not to have granted the application, at the end of that 6-month period, in relation to whichever of the following decisions is applicable:

- (c) in the case of a review of a decision of the Commission to accept an access undertaking—a decision setting aside the Commission’s decision;



- (d) in the case of a review of a decision of the Commission to reject an access undertaking:
  - (i) a decision setting aside the Commission’s decision; and
  - (ii) in substitution for the decision so set aside, a decision to accept the undertaking;
- (e) in the case of a review of a decision of the Commission to accept a variation of an access undertaking—a decision setting aside the Commission’s decision;
- (f) in the case of a review of a decision of the Commission to reject a variation of an access undertaking:
  - (i) a decision setting aside the Commission’s decision; and
  - (ii) in substitution for the decision so set aside, a decision to accept the variation.

*Extension of decision-making period*

- (6) The Tribunal may, by written notice given to the applicant for review, extend or further extend the 6-month period referred to in subsection (5), so long as:
  - (a) the extension or further extension is for a period of not more than 3 months; and
  - (b) the notice includes a statement explaining why the Tribunal has been unable to make a decision on the review within that 6-month period or that 6-month period as previously extended, as the case may be.
- (7) As soon as practicable after the Tribunal gives a notice under subsection (6), the Tribunal must cause a copy of the notice to be made available on the Internet.

*Time of acceptance of undertaking*

- (8) To avoid doubt, if the Tribunal makes a decision to accept an undertaking, the time of acceptance of the undertaking is the time when the Tribunal made its decision.

Note: Division 2 of Part IX applies to proceedings before the Tribunal.

**103 Section 152CG**

Omit “or 152BY(3)”, substitute “, 152BY(3), 152CBC(2) or 152CBG(3)”.

**104 After section 152CG**

Insert:

**152CGA Statement of reasons for reviewable decision—specification of documents**

- (1) If the Commission:
  - (a) makes a decision referred to in section 152CE; and
  - (b) gives a person a written statement setting out the reasons for the decision;

the statement must specify the documents that the Commission examined in the course of making the decision.

- (2) If a document is specified under subsection (1), information in the document is taken, for the purposes of paragraph 152CF(4)(b), to be referred to in the Commission's reasons for making the decision.

**~~152CGB Access undertakings prevail over inconsistent arbitral determinations~~**

~~A determination made by the Commission under Division 8 has no effect to the extent to which it is inconsistent with an access undertaking that is in operation.~~

**104A Subsection 152CQ(5)**

Repeal the section

**105 Subsection 152CH(1) (note 3)**

Before "access undertaking", insert "ordinary".

**106 Subsection 152CH(1) (after note 3)**

Insert:

Note 3A: Subsection 152CBD(2) provides that the Commission must not accept a special access undertaking unless the undertaking is consistent with any Ministerial pricing determination.

**107 At the end of section 152CK**

Add:

- (4) For the purposes of this section, if a special access undertaking is in operation, assume that subsection 152AL(7) has effect in relation to the undertaking as if paragraph 152AL(7)(c) had not been enacted.

**108 At the end of section 152CLA (after the note)**

Add:

*Deferral of consideration of access dispute*

- (2) If:
- (a) the Commission receives an access undertaking that relates, in whole or in part, to a matter; and
  - (b) the matter is the subject of an access dispute that has been notified to the Commission;

the Commission, with the consent of the parties to the access dispute, may defer consideration of the access dispute, in whole or in part, while the Commission considers the access undertaking.

- (3) Subsection (2) has effect despite anything in this Division (other than subsection (4)).

*Guidelines about deferral*

- (4) In exercising the power conferred by subsection (2), the Commission must have regard to:
- (a) the fact that the access undertaking will, if accepted, apply generally to access seekers whereas a

determination relating to the access dispute will only apply to the parties to the determination; and

- (b) any guidelines in force under subsection (5); and
  - (c) such other matters as the Commission considers relevant;
- (5) The Commission must, by writing, formulate guidelines for the purposes of subsection (4).
  - (6) The Commission must take all reasonable steps to ensure that the first set of guidelines under subsection (5) is made within 6 months after the commencement of this subsection.
  - (7) Guidelines under subsection (5) are to be made available on the Internet.

### **109 Subsection 155AB(3) (definition of *protected Part XIB or XIC information*)**

Omit “or 155”, substitute “, 152CBB, 152CBH or 155”.

### **110 Transitional—subsection 152BS(6A) of the *Trade Practices Act 1974***

To avoid doubt, an access undertaking given before the commencement of subsection 152BS(6A) of the *Trade Practices Act 1974* is as valid as it would have been if that subsection had been in force when the undertaking was given.

### **111 Application—section 152CF of the *Trade Practices Act 1974***

- (1) Subsections 152CF(1), (2) and (3) of the *Trade Practices Act 1974* as amended by this Part apply in relation to:
  - (a) an application under section 152CE of the *Trade Practices Act 1974* that was made after the commencement of this item; or
  - (b) an application under section 152CE of the *Trade Practices Act 1974* that was made before the commencement of this item, so long as the Tribunal did not make a decision on the review under subsection 152CF(1) of that Act before the commencement of this item.
- (2) Subsections 152CF(4) to (8) of the *Trade Practices Act 1974* as amended by this Part apply in relation to an application under section 152CE of the *Trade Practices Act 1974* that was made after the commencement of this item.
- (3) Despite the repeal of subsection 152CF(4) of the *Trade Practices Act 1974* by this Part, that subsection continues to apply, in relation to an application under section 152CE of the *Trade Practices Act 1974* that was made before the commencement of this item, as if that repeal had not happened.

## **Part 13—Ordering and provisioning**

### **112 After subsection 152AR(4)**

Insert:

*Ordering and provisioning—paragraph (3)(b)*

- (4A) To avoid doubt, ordering and provisioning, which includes but is not limited to the handling of customer churn, number portability and billing, are taken to be aspects of technical and operational quality referred to in paragraph (3)(b).
- (4B) The Commission and/or regulations may provide that, for the purposes of subsection (4A), a specified act or thing is taken to be ordering.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (4C) The regulations may provide that, for the purposes of subsection (4A), a specified act or thing is taken to be provisioning.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

**113 Transitional—paragraph 152AR(3)(b) of the *Trade Practices Act 1974***

The amendment made by this Part is to be disregarded in determining the meaning that paragraph 152AR(3)(b) of the *Trade Practices Act 1974* had before the commencement of this item.

**Part 14—Review of competition decisions**

**114 Subsections 151CJ(1) and (2)**

Repeal the subsections, substitute:

*Decision on review*

- (1) On a review of a decision of the Commission of a kind mentioned in section 151CI, the Tribunal may make a decision:
- (a) in any case—affirming the Commission’s decision; or
  - (b) in the case of a review of a decision of the Commission under section 151BA refusing to make an exemption order—both:
    - (i) setting aside the Commission’s decision; and
    - (ii) in substitution for the decision so set aside, making an exemption order; or
  - (c) in the case of a review of a decision of the Commission under section 151BG to revoke an exemption order—setting aside the Commission’s decision; or
  - (d) in the case of a review of a decision of the Commission under section 151BQ, 151BUA, 151BUB or 151BUC—setting aside or varying the Commission’s decision;

and, for the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the Commission.

- (2) A decision by the Tribunal:

- (a) affirming a decision of the Commission; or
- (b) setting aside a decision of the Commission; or
- (c) made in substitution for a decision of the Commission; or
- (d) varying a decision of the Commission;

is taken, for the purposes of this Act (other than this Division), to be a decision of the Commission.

Note: The following heading to subsection 151CJ(3) is inserted “*Conduct of review*”.

### **115 Transitional—section 151CJ of the *Trade Practices Act 1974***

Subsections 151CJ(1) and (2) of the *Trade Practices Act 1974* as amended by this Part apply in relation to:

- (a) an application under section 151CI of the *Trade Practices Act 1974* that was made after the commencement of this item; or
- (b) an application under section 151CI of the *Trade Practices Act 1974* that was made before the commencement of this item, so long as the Tribunal did not make a decision on the review under subsection 151CJ(1) of that Act before the commencement of this item.

## **Part 15—Competition notices and advisory notices etc.**

### **116 After subsection 151AKA(8) (before the note)**

Insert:

#### *Consultation*

- ~~(9) The Commission must not issue a Part A competition notice under subsection (1) in relation to a carrier or carriage service provider unless the Commission has first:
 
  - ~~(a) given the carrier or provider a written notice:
 
    - ~~(i) stating that the Commission proposes to issue a Part A competition notice under subsection (1) in relation to the carrier or provider; and~~
    - ~~(ii) describing, in summary form, the instance of anti-competitive conduct that is proposed to be specified in the Part A competition notice; and~~
    - ~~(iii) inviting the carrier or provider to make a submission to the Commission on the proposal by a specified time limit; and~~~~
  - ~~(b) considered any submission that was received within that time limit.~~~~
- ~~(10) The Commission must not issue a Part A competition notice under subsection (2) in relation to a carrier or carriage service provider unless the Commission has first:
 
  - ~~(a) given the carrier or provider a written notice:~~~~

- ~~(i) stating that the Commission proposes to issue a Part A competition notice under subsection (2) in relation to the carrier or provider; and~~
  - ~~(ii) describing, in summary form, the kind of anti-competitive conduct that is proposed to be specified in the Part A competition notice; and~~
  - ~~(iii) inviting the carrier or provider to make a submission to the Commission on the proposal by a specified time limit; and~~
- ~~(b) considered any submission that was received within that time limit.~~

### **117 Subsection 151AQB(1)**

Repeal the subsection, substitute:

*Issue of advisory notice*

- (1) The Commission may give a carrier or carriage service provider a written notice (an *advisory notice*) advising the carrier or provider of the action it should take, or consider taking, in order to ensure that it does not engage, or continue to engage, in anti-competitive conduct.
- (2) The Commission does not have a duty to consider whether to issue an advisory notice in relation to:
  - (a) a particular instance of anti-competitive conduct; or
  - (b) a particular kind of anti-competitive conduct;before it issues a Part A competition notice in relation to that instance or kind of conduct.

Note: The following heading to subsection 151AQB(3) is inserted “*Nature of advisory notice*”.

### **118 Subsection 151AQB(4)**

Repeal the subsection.

Note: The following heading to subsection 151AQB(5) is inserted “*Varying or revoking advisory notice*”.

### **119 At the end of section 151AQB**

Add:

*Publication of advisory notice*

- (8) If the Commission is satisfied that:
  - (a) the publication of an advisory notice would result, or be likely to result, in a benefit to the public; and
  - (b) that benefit would outweigh any substantial prejudice to the commercial interests of a person that would result, or be likely to result, if the advisory notice were published;

the Commission may publish the advisory notice in such manner as it thinks fit.

### **120 At the end of section 151AU**

Add:

- (3) The Commission may withdraw its request for further information, in whole or in part.

## **Part 16—Record-keeping rules and disclosure directions**

### **121 Section 151AA**

Omit “for inspection and purchase”.

### **122 Section 151AB (definition of *disclosure direction*)**

Omit “or 151BUC(2)”, substitute “, 151BUC(2), 151BUDB(2) or 151BUDC(2)”.

### **123 Section 151AB**

Insert:

*Ministerially-directed report* has the meaning given by section 151BUAA.

### **124 After section 151BU**

Insert:

### **151BUAA Minister may give directions to Commission**

- (1) The Minister may give written directions to the Commission in relation to the exercise of its powers under section 151BU, 151BUDA, 151BUDB or 151BUDC.
- (2) The Commission must comply with a direction under this section.
- (3) If:
  - (a) a record-keeping rule is made as a result of a direction under this section; and
  - (b) the rule requires the preparation of a report;then:
  - (c) the rule must contain a statement to the effect that the rule was made as a result of a Ministerial direction;
  - (d) a report prepared under the rule is to be known as a *Ministerially-directed report*.
- (4) A direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) On or before 1 May 2003, the Minister must direct the Commission under this section to require Telstra Corporation Limited to prepare separate accounts for all of it and its related entities’ retail and wholesale operations on an ongoing basis, commencing with the 2002-2003 financial year. Such separate accounts must conform with an accounting separation framework formulated by the Commission which will have the the aim of being able to determine whether Telstra Corporation Limited or its related entities have, or are engaging in, anti-competitive conduct in breach of Part IV or Part XIC.

- (6) Before the Commission requires Telstra Corporation Limited to prepare separate accounts under subsection (5) for 2002-2003, the Commission must invite interested parties to make submissions on the appropriate accounting separation framework that should be adopted for the purposes of that subsection. The Commission is required to take those submissions into account when formulating the accounting separation framework.

### **151BUAB Request for disclosure**

- (1) A person may request the Commission to exercise its powers under:
  - (a) section 151BUA or 151BUB in relation to a particular report; or
  - (b) section 151BUC in relation to a particular series of periodic reports.
- (2) The request must be in writing.
- (3) The Commission must consider the request.
- (4) However, the Commission need not consider the request if it considers that the request is frivolous, vexatious or was not made in good faith.

### **125 After section 151BUD**

Insert:

### **151BUDA Commission gives access to Ministerially-directed reports**

- (1) This section applies to a particular Ministerially-directed report given to the Commission by a carrier, or a carriage service provider, in accordance with the record-keeping rules.

#### *Public access*

- (2) The Commission:
  - (a) may make:
    - (i) copies of the report or copies of extracts from the report; and
    - (ii) such other relevant material (if any) as the Commission determines;  
available to the public; and
  - (b) may also give a written direction to the carrier or provider requiring it to take such action as is specified in the direction to inform the public, or such persons as are specified in the direction, that the report is, or the extracts are, so available.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

#### *Limited access*

- (3) The Commission may make:
  - (a) copies of the report or copies of extracts from the report; and



- (b) such other relevant material (if any) as the Commission determines;

available:

- (c) to particular persons; and
  - (d) on such terms and conditions (if any) as the Commission determines.
- (4) If subsection (3) applies, the Commission must take reasonable steps to inform the persons who access copies of the report or extracts of the terms and conditions (if any) on which the copies are available.
  - (5) If, in accordance with subsection (3), a person accesses a copy of the report or extracts, the person must comply with the terms and conditions (if any) on which the copy is available.

#### *Offences*

- (6) A person is guilty of an offence if:
  - (a) the person is subject to a direction under paragraph (2)(b); and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the direction.

Penalty: 20 penalty units.

- (7) A person is guilty of an offence if:
  - (a) the person is subject to a requirement under subsection (5); and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission breaches the requirement.

Penalty: 100 penalty units.

#### *Exercise of power by Commission*

- (8) The Commission may only exercise a power under this section as required by a direction in force under section 151BUAA.

#### *Application of section 151BUA*

- (9) This section does not limit section 151BUA.

### **151BUDB Carrier or carriage service provider gives access to Ministerially-directed reports**

- (1) This section applies to a Ministerially-directed report prepared by a carrier, or a carriage service provider, in accordance with the record-keeping rules.

#### *Disclosure direction*

- (2) The Commission may give the carrier or provider:
  - (a) a written direction requiring it to make copies of the report or copies of particular extracts from the report, together with other relevant material (if any) specified in the direction, available:
    - (i) to the public; and

- (ii) in the manner specified in the direction; and
  - (iii) as soon as practicable after the end of the period specified in the direction; or
- (b) a written direction requiring it to make copies of the report or copies of particular extracts from the report, together with other relevant material (if any) specified in the direction, available:
- (i) to such persons as are specified in the direction; and
  - (ii) on such terms and conditions (if any) as are specified in the direction; and
  - (iii) in the manner specified in the direction; and
  - (iv) as soon as practicable after the end of the period specified in the direction.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (3) A direction under paragraph (2)(b) is also taken to require the carrier or provider to take reasonable steps to inform the persons who access the copies of the report or extracts of the terms and conditions (if any) that are specified in the direction.

*Direction to give information about availability of report*

- (4) If the Commission gives the carrier or provider a direction under paragraph (2)(a), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the public:
- (a) that the report is, or extracts are, available; and
  - (b) of the way in which the report or extracts may be accessed.
- (5) If the Commission gives the carrier or provider a direction under paragraph (2)(b), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the persons specified in the paragraph (2)(b) direction that:
- (a) the report is, or the extracts are, available; and
  - (b) of the way in which the report or extracts may be accessed.

*Compliance with terms and conditions*

- (6) If, in accordance with a direction under paragraph (2)(b), a person accesses a copy of the report or extracts, the person must comply with the terms and conditions (if any) that are specified in the direction.

*Offences*

- (7) A person is guilty of an offence if:
- (a) the person is subject to a direction under subsection (4) or (5); and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the direction.

Penalty: 20 penalty units.

- (8) A person is guilty of an offence if:
- (a) the person is subject to a requirement under subsection (6); and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission breaches the requirement.

Penalty: 100 penalty units.

*Exercise of power by Commission*

- (9) The Commission may only exercise a power under this section as required by a direction in force under section 151BUAA.

*Application of section 151BUB*

- (10) This section does not limit section 151BUB.

*Application of section 151BUDC*

- (11) Section 151BUDC does not limit this section.

### **151BUDC Carrier or carriage service provider gives access to Ministerially-directed periodic reports**

- (1) This section applies to a particular series of Ministerially-directed periodic reports that are required to be prepared by a carrier, or a carriage service provider, in accordance with the record-keeping rules.

*Disclosure direction*

- (2) The Commission may give the carrier or provider:
- (a) a written direction requiring it to make copies of each of the reports in that series or copies of particular extracts from each of the reports in that series, together with other relevant material (if any) specified in the direction, available:
    - (i) to the public; and
    - (ii) in the manner specified in the direction; and
    - (iii) by such times as are ascertained in accordance with the direction; or
  - (b) a written direction requiring it to make copies of each of the reports in the series or copies of particular extracts from each of the reports in the series, together with other relevant material (if any) specified in the direction, available:
    - (i) to such persons as are specified in the direction; and
    - (ii) on such terms and conditions (if any) as are specified in the direction; and
    - (iii) in the manner specified in the direction; and
    - (iv) by such times as are ascertained in accordance with the direction.

Note 1: For example, a direction under paragraph (2)(a) could require that each report in a particular series of quarterly reports be

made available by the 28th day after the end of the quarter to which the report relates.

Note 2: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (3) A direction under paragraph (2)(b) is also taken to require the carrier or provider to take reasonable steps to inform the persons who access the copies of the report or extracts of the terms and conditions (if any) that are specified in the direction.

*Direction to give information about availability of report*

- (4) If the Commission gives the carrier or provider a direction under paragraph (2)(a), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the public:

- (a) that each of those reports is, or extracts are, available; and
- (b) of the way in which those reports or extracts may be accessed.

- (5) If the Commission gives the carrier or provider a direction under paragraph (2)(b), the Commission may also give it a written direction requiring it to take such action as is specified in the direction to inform the persons specified in the paragraph (2)(b) direction:

- (a) that each of those reports is, or extracts are, available; and
- (b) of the way in which those reports or extracts may be accessed.

*Compliance with terms and conditions*

- (6) If, in accordance with a direction under paragraph (2)(b), a person accesses a copy of the report or extracts, the person must comply with the terms and conditions (if any) that are specified in the direction.

*Offences*

- (7) A person is guilty of an offence if:
- (a) the person is subject to a direction under subsection (4) or (5); and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the direction.

Penalty: 20 penalty units.

- (8) A person is guilty of an offence if:
- (a) the person is subject to a requirement under subsection (6); and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission breaches the requirement.

Penalty: 100 penalty units.

*Exercise of power by Commission*

- (9) The Commission may only exercise a power under this section as required by a direction in force under section 151BUAA.

*Application of section 151BUC*

- (10) This section does not limit section 151BUC.

*Application of section 151BUDB*

- (11) Section 151BUDB does not limit this section.

# Schedule 3—Amendment of the Telecommunications (Carrier Licence Charges) Act 1997

## 1 Paragraph 15(1)(d)

Omit “1997; and”, substitute “1997.”.

## 2 Paragraph 15(1)(e)

Repeal the paragraph.

## 3 Subsection 15(4) (definition of *Industry Minister*)

Repeal the definition.

## 4 Application of amendments

- (1) For the purposes of this item, if the Commonwealth did not incur any costs for a financial year that were attributable to the administration of Part 2 of Schedule 1 to the *Telecommunications Act 1997*, the financial year is a **zero-cost financial year**.
- (2) The amendments made by this Part apply in relation to charges imposed on carrier licences in force at the beginning of:
  - (a) the first financial year where both of the following conditions are satisfied:
    - (i) the financial year ends after the commencement of this item;
    - (ii) the immediately preceding financial year is a zero-cost financial year; or
  - (b) a financial year that is later than that first financial year.