

# EXPOSURE DRAFT

2016–2017

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (28/11/2016)
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## **Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017**

**No.     , 2017**

*(Communications and the Arts)*

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

**EXPOSURE DRAFT**



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1

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

4 The Parliament of Australia enacts:

### **1 Short title**

6 This Act is the *Telecommunications Legislation Amendment*  
7 *(Competition and Consumer) Act 2017*.

### **2 Commencement**

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

13

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#### **Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>

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1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	
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3. Schedule 3, Part 1	The day after this Act receives the Royal Assent.	
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4. Schedule 3, Part 2	Immediately after the commencement of the provisions covered by table item 3.	
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5. Schedule 4	The day after this Act receives the Royal Assent.	
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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

## 4 **3 Schedules**

- 5 (1) Legislation that is specified in a Schedule to this Act is amended or  
6 repealed as set out in the applicable items in the Schedule  
7 concerned, and any other item in a Schedule to this Act has effect  
8 according to its terms.
- 9 (2) The amendment of the *Carrier Licence Conditions (Networks*  
10 *supplying Superfast Carriage Services to Residential Customers)*  
11 *Declaration 2014* under subsection (1) does not prevent the  
12 declaration, as so amended, from being varied or revoked by the  
13 Minister administering section 63 of the *Telecommunications Act*  
14 *1997*.
- 15 (3) The amendment of any regulation under subsection (1) does not  
16 prevent the regulation, as so amended, from being amended or  
17 repealed by the Governor-General.

1 **Schedule 1—Layer 2 bitstream services**  
2

3 *Competition and Consumer Act 2010*

4 **1 Section 152AC**

5 Repeal the following definitions:

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

11 **2 Section 152AGA**

12 Repeal the section.

13 **3 Subsections 152AL(3C) to (3H)**

14 Repeal the subsections.

15 **4 Subsection 152AL(8CA)**

16 Repeal the subsection.

17 **5 Subsections 152ALA(1) and (5)**

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

19 **6 Subsection 152ALA(5A)**

20 Repeal the subsection.

21 **7 Subsection 152AO(4)**

22 Repeal the subsection (including the note).

23 **8 Sections 152ARA and 152ARB**

24 Repeal the sections.

25 **9 Paragraph 152AZ(aa)**

26 Omit “152ARA, 152ARB,”.

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## Schedule 1 Layer 2 bitstream services

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1 **10 Paragraph 152BA(2)(aa)**

2 Omit “152ARA, 152ARB,”.

3 **11 Subsection 152BB(1AA)**

4 Repeal the subsection.

5 **12 Subsection 152BC(4AA)**

6 Repeal the subsection.

7 **13 Subsections 152BCB(4G) to (4J)**

8 Repeal the subsections.

9 **14 Subsection 152BCB(5)**

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

11 **15 Subsections 152BDA(4G) to (4J)**

12 Repeal the subsections.

13 **16 Subsection 152BDA(5)**

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

15 **17 Subsection 152BE(1B)**

16 Repeal the subsection.

17 **18 Sections 152BEBE to 152BEBG**

18 Repeal the sections.

19 **19 Section 152BEC**

20 Omit “, 152BEBE, 152BEBE and 152BEBF”, substitute “and  
21 152BEBE”.

22 **20 Subsection 152BED(2)**

23 Omit “, 152BEBE, 152BEBE and 152BEBF”, substitute “and  
24 152BEBE”.



1 **21 Subparagraphs 152CJH(a)(ia) and (ib)**

2 Repeal the subparagraphs.

3 **22 Subparagraph 152CJH(a)(iii)**

4 Omit “and (4G) to (4J)”.

5 **23 Subparagraph 152CJH(a)(iv)**

6 Omit “and (4G) to (4J)”.

7 ***Telecommunications Act 1997***

8 **24 Part 7**

9 Repeal the Part.

10 **25 Subsection 349(16) (definition of *local access line*)**

11 Repeal the definition, substitute:

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

13 **26 After section 349**

14 Insert:

15 **349A Local access line**

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

18 (2) However, a line does not form part of a *local access line* to the  
19 extent that the line is on the customer side of the boundary of a  
20 telecommunications network.

21 (3) For the purposes of this section, the *boundary of a*  
22 *telecommunications network* is to be determined in the same  
23 manner in which it is determined under section 22 for the purposes  
24 of sections 20, 21 and 30.

25 (4) For the purposes of this section, *local access network* has the  
26 meaning generally accepted within the telecommunications  
27 industry.

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## Schedule 2 Local access lines

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1 **Schedule 2—Local access lines**  
2

3 ***Carrier Licence Conditions (Networks supplying Superfast***  
4 ***Carriage Services to Residential Customers)***  
5 ***Declaration 2014***

6 **1 Section 3**

7 Repeal the section.

8 **2 Subsection 4(1)**

9 Insert:

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

12 **3 Subsection 4(1) (at the end of the definition of *local access***  
13 ***line*)**

14 Add “(as that section stood immediately before the commencement of  
15 Schedule 2 to the *Telecommunications Legislation Amendment*  
16 *(Competition and Consumer) Act 2017*)”.

17 **4 Subsection 4(1) (at the end of the definition of *superfast***  
18 ***carriage service*)**

19 Add “(as that section stood immediately before the commencement of  
20 Schedule 2 to the *Telecommunications Legislation Amendment*  
21 *(Competition and Consumer) Act 2017*)”.

22 **5 Section 5**

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

24 **6 Section 5**

25 Omit “residential customers”, substitute:

26 residential customers, and:

27 (a) the network came into existence before 1 July 2017; and

- 1 (b) the network has not been altered, upgraded or extended on or  
2 after 1 July 2017; and  
3 (c) no functional separation undertaking given by the carrier is in  
4 force.

## 5 **7 At the end of section 5**

6 Add:

- 7 (2) For the purposes of paragraph (1)(b), if:  
8 (a) a designated telecommunications network was in existence  
9 immediately before 1 July 2017; and  
10 (b) a line is installed on or after 1 July 2017 for the purposes of  
11 connecting particular premises to the network; and  
12 (c) the installation of the line enables or enabled the occupier of  
13 the premises to become a customer in relation to carriage  
14 services supplied using the line; and  
15 (d) no point on the premises is located more than:  
16 (i) 50 metres; or  
17 (ii) if a longer distance is specified in a determination under  
18 subsection 157A(4) of the *Telecommunications Act*  
19 *1997*—that longer distance;  
20 from a point on the infrastructure of the network as the  
21 network stood immediately before 1 July 2017; and  
22 (e) the line is used to supply a superfast carriage service;  
23 neither the installation of the line mentioned in paragraph (b), nor  
24 the connection of the premises, is taken to be an alteration or  
25 upgrade of the network.
- 26 (3) A reference in paragraph (1)(c) to a functional separation  
27 undertaking given by a carrier is a reference to a functional  
28 separation undertaking given by the carrier either:  
29 (a) alone; or  
30 (b) jointly with one or more other persons.

## 31 **8 Paragraph 6(1)(c)**

32 Omit “until 31 December 2016”.

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## Schedule 2 Local access lines

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1 **9 At the end of subparagraph 6(6)(d)(i)**

2 Add “and”.

3 **10 At the end of paragraph 6(6)(d)**

4 Add:

5 and (iv) by each later 30 June; and  
6 (v) by each later 31 December;

7 ***Competition and Consumer Act 2010***

8 **11 After paragraph 151BU(4)(da)**

9 Insert:

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

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

13 Insert:

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

16 **13 After subparagraph 151BUB(2)(b)(ia)**

17 Insert:

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

20 **14 After subparagraph 151BUC(2)(b)(ia)**

21 Insert:

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

1 ***Legislation (Exemptions and Other Matters)***

2 ***Regulation 2015***

3 **15 Section 12 (table item 61, column headed “Legislative**  
4 **instrument”, after paragraph (a))**

5 Insert:

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

8 ***Telecommunications Act 1997***

9 **16 Section 7 (definition of *Layer 2 bitstream service*)**

10 After “means”, insert “(except in Part 8)”.

11 **17 After subsection 69(4)**

12 Insert:

13 (4A) Subsection (1) does not apply to a condition set out in Part 1 of  
14 Schedule 1 in so far as that condition relates to section 142C, 143,  
15 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

16 Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG,  
17 151ZH and 151ZI are set out in Part 8 (local access lines).

18 **18 After subsection 70(1)**

19 Insert:

20 (1A) Subsection (1) does not apply to a condition set out in Part 1 of  
21 Schedule 1 in so far as that condition relates to section 142C, 143,  
22 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

23 Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG,  
24 151ZH and 151ZI are set out in Part 8 (local access lines).

25 **19 Before paragraph 70(5)(a)**

26 Insert:

27 (aaa) the condition set out in Part 1 of Schedule 1 in so far as that  
28 condition relates to section 142C, 143, 143B, 151ZA, 151ZB,  
29 151ZD, 151ZF, 151ZG, 151ZH or 151ZI;

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## Schedule 2 Local access lines

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1 **20 After subsection 102(4)**

2 Insert:

3 (4A) Subsection (1) does not apply to the rule set out in Part 1 of  
4 Schedule 2 in so far as that rule relates to section 142C, 143, 143B,  
5 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

6 Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG,  
7 151ZH and 151ZI are set out in Part 8 (local access lines).

8 **21 After subsection 103(1)**

9 Insert:

10 (1A) Subsection (1) does not apply to the rule set out in Part 1 of  
11 Schedule 2 in so far as that rule relates to section 142C, 143, 143B,  
12 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI.

13 Note: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG,  
14 151ZH and 151ZI are set out in Part 8 (local access lines).

15 **22 After subsection 103(4E)**

16 Insert:

17 (4F) The ACCC may issue a formal warning if a person contravenes the  
18 service provider rule set out in Part 1 of Schedule 2 in so far as that  
19 rule relates to section 142C, 143, 143B, 151ZA, 151ZB, 151ZD,  
20 151ZF, 151ZG, 151ZH or 151ZI.

21 **23 Part 8 (heading)**

22 Repeal the heading, substitute:

23 **Part 8—Local access lines**

24 **24 Section 142**

25 Repeal the section, substitute:

1 **142 Simplified outline of this Part**

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- A controller of a local access line (other than a line that is part of the national broadband network) must not use the line to supply an eligible service to a person other than a carrier or a service provider, if:
  - (a) the line came into existence, or was upgraded, on or after 1 July 2017; and
  - (b) the line is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential customers, or prospective residential customers, in Australia; and
  - (c) no functional separation undertaking is in force.
  
- A controller of a telecommunications network (other than the national broadband network) must not use a local access line to supply an eligible service to a person other than a carrier or a service provider, if:
  - (a) the line is part of the infrastructure of the network; and
  - (b) the network came into existence, or was upgraded, on or after 1 January 2011, but before 1 July 2017; and
  - (c) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential customers, or prospective residential customers, in Australia; and
  - (d) no functional separation undertaking is in force.

25 **25 Section 142A (definition of *alter*)**

26 After “network”, insert “or line”.

27 **26 Section 142A**

28 Insert:

29 ***business unit*** means a part of a corporation.

30 ***corporation*** means a body corporate.

31 ***customer interface*** means an interface for the purposes of:

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## Schedule 2 Local access lines

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- 1 (a) ordering; and  
2 (b) provisioning; and  
3 (c) billing; and  
4 (d) service activation; and  
5 (e) fault rectification;  
6 in relation to the supply of local access line services.

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

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

11 **eligible Layer 2 bitstream service** means a carriage service that is:  
12 (a) a Layer 2 bitstream service; and  
13 (b) a listed carriage service; and  
14 (c) supplied using a line to premises occupied or used by an  
15 end-user.

16 For this purpose, **Layer 2** has the same meaning as in the Open  
17 System Interconnection (OSI) Reference Model for data exchange.

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

20 **functional** includes organisational.

21 **functional separation undertaking** means:

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

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

26 **joint functional separation undertaking** means an undertaking  
27 under section 151C.

28 **local access line service** means an eligible service supplied using a  
29 local access line.

30 **multi-unit building** means:



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

5 *residential customer* has a meaning affected by section 161.

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

9 *retail customer* means a customer other than a wholesale customer.

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

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

## 14 **27 Section 142A (definition of *small business customer*)**

15 Repeal the definition.

## 16 **28 Section 142A**

17 Insert:

18 *standard functional separation undertaking* means an undertaking  
19 under section 151A.

## 20 **29 Section 142A (paragraph (b) of the definition of *superfast*** 21 ***carriage service*)**

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

## 24 **30 Section 142A**

25 Insert:

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

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## Schedule 2 Local access lines

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

### 3                    **31 Section 142A (definition of *upgrade*)**

4                    After “network”, insert “or line”.

### 5                    **32 Section 142A**

6                    Insert:

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

11                    *wholesale customer* means a customer that is:

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

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

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

19                    *worker* means an individual who is:

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

### 23                    **33 At the end of Division 1 of Part 8**

24                    Add:

### 25                    **142B Functional separation undertaking given by a person**

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

- 29                    (a) alone; or
-

1 (b) jointly with one or more other persons.

2 **142BA Promotion of the long-term interests of end-users of carriage**  
3 **services and of services supplied by means of carriage**  
4 **services**

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

10 **142BB Terms and conditions**

11 For the purposes of this Part:

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

18 **142BC Unsatisfactory compliance record**

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

- 22 (a) any breaches by the person of functional separation  
23 undertakings given by the person, so long as the breaches  
24 occurred when the undertakings were in force; and  
25 (b) any contraventions by the person of section 143B, 151ZA,  
26 151ZB, 151ZF, 151ZG, 151ZH or 151ZI.

27 **142BD Designated carriage service**

28 (1) For the purposes of this Part, *designated carriage service* means:

- 29 (a) if a carriage service is specified in an instrument under  
30 subsection (2)—that carriage service; or  
31 (b) otherwise—an eligible Layer 2 bitstream service.
-

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## Schedule 2 Local access lines

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- 1 (2) The ACCC may, by legislative instrument, specify a carriage  
2 service for the purposes of paragraph (1)(a).
- 3 (3) The ACCC must not specify a carriage service under subsection (2)  
4 unless:
- 5 (a) the carriage service enables end-users to download  
6 communications; and
- 7 (b) the download transmission speed of the carriage service is  
8 normally 25 megabits per second or more; and
- 9 (c) the carriage service is supplied using a line to premises  
10 occupied or used by an end-user; and
- 11 (d) there is in force a declaration under subsection 152AL(3) of  
12 the *Competition and Consumer Act 2010* that relates to the  
13 carriage service.

### 14 **34 Before section 143**

15 Insert:

### 16 **142C Supply of eligible services to be on wholesale basis—lines that** 17 **come into existence on or after 1 July 2017 etc.**

#### 18 *Scope*

- 19 (1) This section applies to a local access line if:
- 20 (a) the line is part of the infrastructure of a telecommunications  
21 network in Australia; and
- 22 (b) the network is not the national broadband network; and
- 23 (c) the line is used, or proposed to be used, to supply a superfast  
24 carriage service wholly or principally to residential  
25 customers, or prospective residential customers, in Australia;  
26 and
- 27 (d) either:
- 28 (i) the line came into existence on or after 1 July 2017; or  
29 (ii) the line was altered or upgraded on or after 1 July 2017.

30 Note 1: See also section 156A (certain lines deemed to have come into  
31 existence on or after 1 July 2017).

32 Note 2: For exemptions, see sections 143A to 151.

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Local access lines **Schedule 2**

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1

## *Use of line*

2

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

3

(a) is in a position to exercise control of the line; or

4

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

5

the first person must not, on or after 1 July 2017, use the line, either alone or jointly with one or more other persons, to supply an eligible service unless the service is supplied to:

6

7

(c) a carrier; or

8

(d) a service provider.

9

10

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

11

12

(3) Subsection (2) does not apply to the use of the line if a functional separation undertaking given by the first person is in force, unless:

13

14

(a) the ACCC has given a notice under section 151W revoking the undertaking; and

15

16

(b) the revocation has not taken effect; and

17

18

(c) the line came into existence after the notice was given.

19

20

21

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

22

Note 2: See also section 142B.

23

## *Ancillary contraventions*

24

(4) A person must not:

25

(a) aid, abet, counsel or procure a contravention of subsection (2); or

26

27

(b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or

28

29

(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or

30

31

(d) conspire with others to effect a contravention of subsection (2).

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## Schedule 2 Local access lines

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1 *Civil penalty provisions*

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

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

### 5 **35 Section 143 (heading)**

6 Repeal the heading, substitute:

7 **143 Supply of eligible services to be on wholesale basis—networks in**  
8 **existence before 1 July 2017 etc.**

### 9 **36 Paragraph 143(1)(b)**

10 Omit “or small business” (wherever occurring).

### 11 **37 Subparagraph 143(1)(d)(i)**

12 After “2011”, insert “, but before 1 July 2017”.

### 13 **38 Subparagraph 143(1)(d)(ii)**

14 After “2011”, insert “, but before 1 July 2017,”.

### 15 **39 Subparagraph 143(1)(d)(ii)**

16 Omit “or small business” (wherever occurring).

### 17 **40 Subsection 143(1) (note 2)**

18 Omit “144”, substitute “143A”.

### 19 **41 Subsections 143(2) and (3)**

20 Repeal the subsections, substitute:

21 *Use of network*

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

23 (a) is in a position to exercise control of the network; or

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

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Local access lines **Schedule 2**

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

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

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

8 (3) Subsection (2) does not apply to the use of the line if a functional  
9 separation undertaking given by the first person is in force, unless:

- 10 (a) the ACCC has given a notice under section 151W revoking  
11 the undertaking; and  
12 (b) the revocation has not taken effect; and  
13 (c) the line came into existence after the notice was given.

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

17 Note 2: See also section 142B.

18 (4) Subsection (2) does not apply to the use of the line if:

- 19 (a) the *Carrier Licence Conditions (Networks supplying*  
20 *Superfast Carriage Services to Residential Customers)*  
21 *Declaration 2014* is in force; and  
22 (b) the line is part of the infrastructure of a designated  
23 telecommunications network (within the meaning of that  
24 declaration); and  
25 (c) a carrier owns or operates the network; and  
26 (d) as a result of the application of section 5 of that declaration to  
27 the network, the carrier licence held by the carrier is subject  
28 to the conditions set out in subsections 6(5), (6), (7) and (8)  
29 of that declaration.

30 *Ancillary contraventions*

31 (5) A person must not:

- 32 (a) aid, abet, counsel or procure a contravention of  
33 subsection (2); or
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- 1 (b) induce, whether by threats or promises or otherwise, a  
2 contravention of subsection (2); or  
3 (c) be in any way, directly or indirectly, knowingly concerned in,  
4 or party to, a contravention of subsection (2); or  
5 (d) conspire with others to effect a contravention of  
6 subsection (2).

7 *Civil penalty provisions*

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

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

11 **42 After section 143**

12 Insert:

13 **Division 2A—Exemptions**

14 **143A Class exemptions**

15 *Determination providing for exemption*

- 16 (1) The ACCC may, by legislative instrument, determine that, if:  
17 (a) a person is included in a specified class of persons; and  
18 (b) the person has, by written notice given to the ACCC, elected  
19 to be bound by the determination; and  
20 (c) the person has not, by written notice given to the ACCC,  
21 cancelled the election; and  
22 (d) in a case where the person is not a member of an associated  
23 group—the number of residential customers to whom the  
24 person supplies fixed-line carriage services does not exceed:  
25 (i) 2,000; or  
26 (ii) if a higher number (not exceeding 20,000) is specified  
27 in the regulations—that higher number; and  
28 (e) in a case where the person is a member of an associated  
29 group—the total number of residential customers to whom  
30 the members of the group supply fixed-line carriage services  
31 does not exceed:



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- 1 (i) 2,000; or  
2 (ii) if a higher number (not exceeding 20,000) is specified  
3 in the regulations—that higher number;  
4 the person is exempt from section 142C.

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

- 6 (2) The ACCC may, by legislative instrument, determine that, if:  
7 (a) a person is included in a specified class of persons; and  
8 (b) the person has, by written notice given to the ACCC, elected  
9 to be bound by the determination; and  
10 (c) the person has not, by written notice given to the ACCC,  
11 cancelled the election; and  
12 (d) in a case where the person is not a member of an associated  
13 group—the number of residential customers to whom the  
14 person supplies fixed-line carriage services does not exceed:  
15 (i) 2,000; or  
16 (ii) if a higher number (not exceeding 20,000) is specified  
17 in the regulations—that higher number; and  
18 (e) in a case where the person is a member of an associated  
19 group—the total number of residential customers to whom  
20 the members of the group supply fixed-line carriage services  
21 does not exceed:  
22 (i) 2,000; or  
23 (ii) if a higher number (not exceeding 20,000) is specified  
24 in the regulations—that higher number;  
25 the person is exempt from section 143.

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

- 27 (3) A determination under subsection (1) or (2) is subject to the  
28 following conditions and limitations:  
29 (a) the person must ensure that a designated carriage service is  
30 available for supply to wholesale customers, or prospective  
31 wholesale customers, of the person;  
32 (b) the person must not discriminate between the person's  
33 wholesale customers, or the person's prospective wholesale  
34 customers, in relation to the supply of designated carriage  
35 services;

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1 (c) the person must not discriminate in favour of itself in relation  
2 to the supply of designated carriage services;

3 (d) such other conditions and limitations as are specified in the  
4 determination.

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

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

8 (4) The rule in paragraph (3)(b) does not prevent discrimination  
9 against a wholesale customer, or prospective wholesale customer,  
10 if the person has reasonable grounds to believe that the wholesale  
11 customer or prospective wholesale customer would fail, to a  
12 material extent, to comply with the terms and conditions on which  
13 the person supplies designated carriage services.

14 (5) Examples of grounds for believing as mentioned in  
15 subsection (3A) include:

16 (a) evidence that the wholesale customer or prospective  
17 wholesale customer is not creditworthy; and

18 (b) repeated failures by the wholesale customer or prospective  
19 wholesale customer to comply with the terms and conditions  
20 on which the person supplied eligible services (whether or  
21 not using the line).

22 (6) A determination under subsection (1) or (2) must not specify a  
23 condition or limitation of a kind specified in a determination under  
24 subsection (7).

25 (7) The Minister may, by legislative instrument, determine one or  
26 more kinds of condition or limitation for the purposes of  
27 subsection (6).

### 28 *Criteria for making determination*

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

31 (a) whether the determination promotes the long-term interests  
32 of end-users of carriage services or of services supplied by  
33 means of carriage services; and

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- 1 (b) the matters (if any) specified in a determination under  
2 subsection (9); and  
3 (c) such other matters (if any) as the ACCC considers relevant.

- 4 (9) The Minister may, by legislative instrument, determine one or  
5 more matters for the purposes of paragraph (8)(b).

6 *Associated group*

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

16 **143B Compliance with conditions and limitations of exemption**  
17 **determinations**

- 18 (1) A person must, on or after 1 July 2017, comply with the conditions  
19 or limitations of a determination under subsection 143A(1) or (2).

20 *Ancillary contraventions*

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

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1 *Civil penalty provisions*

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

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

### 5 **143C Judicial enforcement of conditions and limitations of** 6 **exemption determinations**

7 (1) If the Federal Court is satisfied that a person has, on or after 1 July  
8 2017, contravened any of the conditions or limitations of a  
9 determination under subsection 143A(1) or (2), the Court may, on  
10 the application of the ACCC, make all or any of the following  
11 orders:

12 (a) an order directing the person to comply with the condition or  
13 limitation;

14 (b) an order directing the person to compensate any other person  
15 who has suffered loss or damage as a result of the  
16 contravention;

17 (c) any other order that the Court thinks appropriate.

18 (2) The Federal Court may discharge or vary an order granted under  
19 this section.

### 20 **143D Publication of list of persons who have elected to be bound by** 21 **exemption determinations**

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

25 (a) have elected to be bound by the determination; and

26 (b) have not cancelled the election concerned.

### 27 **43 At the end of section 144**

28 Add:

29 (7) The Minister must not make an instrument under subsection (1),  
30 (2) or (3) on or after 1 July 2017.

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

2 Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and  
3 143(2) do”.

4 **45 Subsection 146(1)**

5 Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and  
6 143(2) do”.

7 **46 Subsection 147(1)**

8 Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and  
9 143(2) do”.

10 **47 Subsection 148(1)**

11 Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and  
12 143(2) do”.

13 **48 Subsection 149(1)**

14 Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and  
15 143(2) do”.

16 **49 Subsection 150(1)**

17 Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and  
18 143(2) do”.

19 **50 Subsection 151(1)**

20 Omit “Subsection 143(2) does”, substitute “Subsections 142C(2) and  
21 143(2) do”.

22 **51 Before Division 3 of Part 8**

23 Insert:

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1 **Division 2B—Functional separation undertakings**

2 **151A Standard functional separation undertaking**

3 (1) If a person is a corporation, the person may give a written  
4 undertaking (a *standard functional separation undertaking*) to the  
5 ACCC.

6 (2) The undertaking must:

7 (a) provide that the person will maintain:

8 (i) a single wholesale business unit; and

9 (ii) a single retail business unit; and

10 (b) provide that the person will maintain arm's length functional  
11 separation between:

12 (i) the person's wholesale business unit; and

13 (ii) the person's retail business unit; and

14 (c) provide that the person will ensure that:

15 (i) the terms and conditions relating to price or a method of  
16 ascertaining price; and

17 (ii) other terms and conditions;

18 on which the person's wholesale business unit supplies local  
19 access line services to the person's retail business unit are  
20 documented; and

21 (d) provide that the person will, to the extent specified in the  
22 undertaking, ensure that the workers who perform their duties  
23 for the person's wholesale business unit are different from  
24 the workers who perform their duties for the person's retail  
25 business unit; and

26 (e) provide that the person will, to the extent specified in the  
27 undertaking, ensure that there are separate:

28 (i) operational support systems; and

29 (ii) business systems; and

30 (iii) communications systems; and

31 (iv) accounts;

32 for:

33 (v) the person's wholesale business unit; and

34 (vi) the person's retail business unit; and

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- 1 (f) provide that the person will publish on the person's website:  
2 (i) the terms and conditions relating to price or a method of  
3 ascertaining price; and  
4 (ii) other terms and conditions;  
5 on which the person's wholesale business unit offers to  
6 supply local access line services to the following:  
7 (iii) the person's retail business unit;  
8 (iv) the person's wholesale customers or prospective  
9 wholesale customers; and  
10 (g) provide that the person will:  
11 (i) if requested to do so by a wholesale customer or  
12 prospective wholesale customer, supply a local access  
13 line service to the wholesale customer or prospective  
14 wholesale customer; and  
15 (ii) do so on the terms and conditions that were published  
16 on the person's website at the time when the request  
17 was made; and  
18 (h) provide that the person will ensure that information provided  
19 to the person's wholesale business unit by the person's  
20 wholesale customers is not disclosed to the person's retail  
21 business unit; and  
22 (i) provide that the person will ensure that the person's retail  
23 business unit does not obtain, access or use information  
24 provided to the person's wholesale business unit by the  
25 person's wholesale customers; and  
26 (j) provide that the person will ensure that information provided  
27 to the person's retail business unit by a carrier or carriage  
28 service provider (other than information of a kind specified in  
29 a determination under subsection (13)) is not disclosed to the  
30 person's wholesale business unit; and  
31 (k) provide that the person will ensure that the person's  
32 wholesale business unit does not obtain, access or use  
33 information provided to the person's retail business unit by a  
34 carrier or carriage service provider (other than information of  
35 a kind specified in a determination under subsection (13));  
36 and

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- 1 (l) provide that the person will use the same customer interface  
2 for dealings between:  
3 (i) the person's wholesale business unit; and  
4 (ii) the person's wholesale customers;  
5 as the person uses for dealings between:  
6 (iii) the person's wholesale business unit; and  
7 (iv) the person's retail business unit; and  
8 (m) contain such other provisions (if any) as are specified in a  
9 determination under subsection (14); and  
10 (n) not contain a provision of a kind specified in a determination  
11 under subsection (15).
- 12 (3) An extent specified under paragraph (2)(d) or (e) may be a nil  
13 extent.
- 14 *Form etc.*
- 15 (4) The undertaking must:  
16 (a) be in a form approved in writing by the ACCC; and  
17 (b) be accompanied by such information as is reasonably likely  
18 to assist the ACCC to decide whether to accept or reject the  
19 undertaking; and  
20 (c) be accompanied by the fee (if any) specified in, or  
21 ascertained in accordance with, a determination under  
22 subsection (16).
- 23 *Expiry time*
- 24 (5) The undertaking must specify the expiry time of the undertaking.
- 25 (6) The expiry time of the undertaking may be described by reference  
26 to the end of a period beginning when the undertaking comes into  
27 force.
- 28 (7) Subsection (6) does not, by implication, limit subsection (5).
- 29 (8) The expiry time of the undertaking must not be more than 10 years  
30 after the undertaking comes into force.
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1 *Fundamental provisions*

2 (9) The undertaking:

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

8 *Compliance reports*

- 9 (10) The undertaking may provide that the person will give the ACCC  
10 periodic reports (to be known as compliance reports) relating to the  
11 person's compliance with the undertaking.

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

13 *Compliance plans*

14 (11) The undertaking may provide that the person will:

- 15 (a) prepare a plan (to be known as a compliance plan) setting out  
16 the actions to be taken by the person for the purpose of  
17 ensuring that the person complies with the undertaking; and  
18 (b) give the ACCC:  
19 (i) a copy of the compliance plan; and  
20 (ii) a copy of any variation of the compliance plan.

21 *ACCC may perform functions or exercise powers*

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

26 *Determinations*

- 27 (13) The ACCC may, by legislative instrument, determine one or more  
28 kinds of information for the purposes of paragraphs (2)(j) and (k).

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

### 7 **151B Deemed standard functional separation undertaking**

- 8 (1) The ACCC may, by legislative instrument, determine that, if:  
9 (a) a corporation is included in a specified class of corporations;  
10 and  
11 (b) the corporation has, by written notice given to the ACCC,  
12 elected to be bound by the determination; and  
13 (c) the corporation has not, by written notice given to the ACCC,  
14 cancelled the election; and  
15 (d) the ACCC has not revoked the election under subsection (7);  
16 this Act has effect as if:  
17 (e) the corporation had given a standard functional separation  
18 undertaking in the terms set out in the determination; and  
19 (f) the ACCC had accepted the undertaking; and  
20 (g) if the election was given before 1 July 2017—the undertaking  
21 had come into force on 1 July 2017; and  
22 (h) if the election was given on or after 1 July 2017—the  
23 undertaking had come into force when the election was given  
24 to the ACCC.
- 25 (2) The following provisions do not apply to a functional separation  
26 undertaking covered by a determination under subsection (1):  
27 (a) subsections 151A(4) to (8);  
28 (b) section 151N;  
29 (c) section 151P;  
30 (d) section 151Q;  
31 (e) section 151W.

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- 1 (3) If, as a result of an election under a determination under  
2 subsection (1), a corporation is taken to have given a standard  
3 functional separation undertaking:  
4 (a) this Act does not prevent the corporation from giving the  
5 ACCC another standard functional separation undertaking;  
6 and  
7 (b) if the other standard functional separation undertaking comes  
8 into force—the corporation is taken to have cancelled the  
9 election immediately before the other standard functional  
10 separation undertaking comes into force.
- 11 (4) If, as a result of an election under a determination under  
12 subsection (1), a corporation is taken to have given a standard  
13 functional separation undertaking:  
14 (a) this Act does not prevent the corporation, together with one  
15 or more other persons, from giving the ACCC a joint  
16 functional separation undertaking; and  
17 (b) if the joint functional separation undertaking comes into  
18 force—the corporation is taken to have cancelled the election  
19 immediately before the joint functional separation  
20 undertaking comes into force.
- 21 (5) Before making a determination under subsection (1), the ACCC  
22 must:  
23 (a) publish on the ACCC’s website a notice:  
24 (i) setting out the draft determination; and  
25 (ii) inviting persons to make submissions to the ACCC  
26 about the draft determination within the time limit  
27 specified in the notice; and  
28 (b) consider any submissions received within the time limit  
29 specified in the notice.
- 30 (6) The time limit must not be shorter than 10 business days after the  
31 notice is published.
- 32 (7) If:  
33 (a) a standard functional separation undertaking is in force as the  
34 result of an election made by a person as mentioned in  
35 paragraph (1)(b); and
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- 1 (b) any of the following conditions is satisfied:  
2 (i) the person has breached a fundamental provision of the  
3 undertaking;  
4 (ii) the person has contravened section 151ZF or 151ZG;  
5 (iii) the ACCC is satisfied that the person has an  
6 unsatisfactory compliance record in relation to  
7 functional separation;  
8 the ACCC may, by written notice given to the person, revoke the  
9 election.

### 10 **151C Joint functional separation undertaking**

- 11 (1) If 2 or more persons are corporations, those persons may give a  
12 joint written undertaking (a *joint functional separation*  
13 *undertaking*) to the ACCC.
- 14 (2) The undertaking must:
- 15 (a) identify:
- 16 (i) one or more (but not all) of those persons as the  
17 wholesaler or wholesalers for the purposes of the  
18 undertaking; and  
19 (ii) the remaining person or persons as the retailer or  
20 retailers for the purposes of the undertaking; and
- 21 (b) provide that a wholesaler will not supply a local access line  
22 service to a person unless the person is a wholesale customer;  
23 and
- 24 (c) provide that a retailer will not supply a local access line  
25 service to a person unless the person is a retail customer; and
- 26 (d) provide that a wholesaler will, to the extent specified in the  
27 undertaking, ensure that the wholesaler's workers will  
28 perform their duties exclusively for the wholesaler; and
- 29 (e) provide that a retailer will, to the extent specified in the  
30 undertaking, ensure that the retailer's workers will perform  
31 their duties exclusively for the retailer; and
- 32 (f) provide that a wholesaler will, to the extent specified in the  
33 undertaking, ensure that the workers who:
- 34 (i) are engaged by persons other than the wholesaler; and  
35 (ii) perform duties for the wholesaler;
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- 1 are different from the workers who:  
2 (iii) are engaged by persons other than the wholesaler; and  
3 (iv) perform duties for a retailer; and  
4 (g) provide that a retailer will, to the extent specified in the  
5 undertaking, ensure that the workers who:  
6 (i) are engaged by persons other than the retailer; and  
7 (ii) perform duties for the retailer;  
8 are different from the workers who:  
9 (iii) are engaged by persons other than the retailer; and  
10 (iv) perform duties for a wholesaler; and  
11 (h) provide that a wholesaler will ensure that no director of the  
12 wholesaler is a director of a retailer; and  
13 (i) provide that a retailer will ensure that no director of the  
14 retailer is a director of a wholesaler; and  
15 (j) provide that:  
16 (i) the wholesaler or wholesalers; and  
17 (ii) the retailer or retailers;  
18 will, to the extent specified in the undertaking, have separate:  
19 (iii) operational support systems; and  
20 (iv) business systems; and  
21 (v) communications systems; and  
22 (vi) accounts; and  
23 (k) provide that a wholesaler will publish on the wholesaler's  
24 website:  
25 (i) the terms and conditions relating to price or a method of  
26 ascertaining price; and  
27 (ii) other terms and conditions;  
28 on which the wholesaler offers to supply local access line  
29 services to the following:  
30 (iii) a retailer;  
31 (iv) its wholesale customers or prospective wholesale  
32 customers; and  
33 (l) provide that a wholesaler will:  
34 (i) if requested to do so by a wholesale customer or  
35 prospective wholesale customer, supply a local access

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- 1 line service to the wholesale customer or prospective  
2 wholesale customer; and
- 3 (ii) do so on the terms and conditions that were published  
4 on the wholesaler's website at the time when the request  
5 was made; and
- 6 (m) provide that a wholesaler will ensure that information  
7 provided by its wholesale customers (other than the retailer  
8 or retailers) is not disclosed to any of the retailers; and
- 9 (n) provide that a retailer will ensure that it does not obtain,  
10 access or use information provided to any of the wholesalers  
11 by the wholesaler's wholesale customers; and
- 12 (o) provide that a retailer will ensure that information provided  
13 to the retailer by a carrier or carriage service provider, other  
14 than:  
15 (i) information provided by a wholesaler; or  
16 (ii) information of a kind specified in a determination under  
17 subsection (15);  
18 is not disclosed to any of the wholesalers; and
- 19 (p) provide that a wholesaler will ensure that it does not obtain,  
20 access or use information provided to any of the retailers by a  
21 carrier or carriage service provider, other than:  
22 (i) information provided by a wholesaler; or  
23 (ii) information of a kind specified in a determination under  
24 subsection (15); and
- 25 (q) provide that a wholesaler will use the same customer  
26 interface for dealings between:  
27 (i) the wholesaler; and  
28 (ii) the wholesaler's wholesale customers (other than the  
29 retailer or retailers);  
30 as the wholesaler uses for dealings between:  
31 (iii) the wholesaler; and  
32 (iv) a retailer; and
- 33 (r) contain such other provisions (if any) as are specified in a  
34 determination under subsection (16); and
- 35 (s) not contain a provision of a kind specified in a determination  
36 under subsection (17).
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1 (3) An extent specified under paragraph (2)(d), (e), (f), (g) or (j) may  
2 be a nil extent.

3 *Form etc.*

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

12 *Expiry time*

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

20 *Fundamental provisions*

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

27 *Compliance reports*

28 (10) The undertaking may provide that a wholesaler will give the  
29 ACCC periodic reports (to be known as compliance reports)  
30 relating to the wholesaler's compliance with the undertaking.

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

2 (11) The undertaking may provide that a retailer will give the ACCC  
3 periodic reports (to be known as compliance reports) relating to the  
4 retailer's compliance with the undertaking.

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

### 6 *Compliance plans*

7 (12) The undertaking may provide that a wholesaler will:

8 (a) prepare a plan (to be known as a compliance plan) setting out  
9 the actions to be taken by the wholesaler for the purpose of  
10 ensuring that the wholesaler complies with the undertaking;  
11 and

12 (b) give the ACCC:

13 (i) a copy of the compliance plan; and

14 (ii) a copy of any variation of the compliance plan.

15 (13) The undertaking may provide that a retailer will:

16 (a) prepare a plan (to be known as a compliance plan) setting out  
17 the actions to be taken by the retailer for the purpose of  
18 ensuring that the retailer complies with the undertaking; and

19 (b) give the ACCC:

20 (i) a copy of the compliance plan; and

21 (ii) a copy of any variation of the compliance plan.

### 22 *ACCC may perform functions or exercise powers*

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

### 27 *Determinations*

28 (15) The ACCC may, by legislative instrument, determine one or more  
29 kinds of information for the purposes of paragraphs (2)(o) and (p).

30 (16) The Minister may, by legislative instrument, determine one or  
31 more provisions for the purposes of paragraph (2)(r).

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

## 7 **151D Further information about undertaking**

### 8 *Scope*

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

### 14 *Request for further information*

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

## 21 **151E Withdrawal of undertaking that is under consideration**

### 22 *Scope*

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

# EXPOSURE DRAFT

## Schedule 2 Local access lines

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1

### *Withdrawal*

2

(2) The person or persons may withdraw the undertaking at any time before the ACCC makes a decision to accept or reject the undertaking.

3

4

5

(3) This Act does not prevent the person or persons from giving a fresh undertaking.

6

7

### *Refund of fee*

8

(4) If:

9

(a) the person or persons withdraw the undertaking; and

10

(b) the person or persons have paid a fee in relation to the undertaking;

11

12

the ACCC may, on behalf of the Commonwealth, refund the whole or a part of the fee.

13

14

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

15

### *Scope*

16

(1) This section applies if:

17

(a) a person gives the ACCC a standard functional separation undertaking; or

18

19

(b) 2 or more persons give the ACCC a joint functional separation undertaking.

20

21

### *Decision to accept or reject undertaking*

22

(2) After considering the undertaking, the ACCC must:

23

(a) accept the undertaking; or

24

(b) reject the undertaking.

25

### *Notice of decision*

26

(3) If the ACCC accepts the undertaking, the ACCC must give the person or persons a written notice stating that the undertaking has been accepted.

27

28

# EXPOSURE DRAFT

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- 1 (4) If the ACCC rejects the undertaking, the ACCC must give the  
2 person or persons a written notice:  
3 (a) stating that the undertaking has been rejected; and  
4 (b) setting out the reasons for the rejection.
- 5 *ACCC to make decision within 3 months*
- 6 (5) The ACCC must take all reasonable steps to ensure that a decision  
7 about the undertaking is made under subsection (2) within 3  
8 months after receiving the undertaking.
- 9 (6) In calculating the 3-month period referred to in subsection (5),  
10 disregard:  
11 (a) if:  
12 (i) the ACCC has given a notice under section 151K in  
13 relation to the undertaking; and  
14 (ii) no varied undertaking was given to the ACCC in  
15 response to the notice;  
16 a day in the period specified in the notice; and  
17 (b) if:  
18 (i) the ACCC has given a notice under section 151K in  
19 relation to the undertaking; and  
20 (ii) a varied undertaking was given to the ACCC in  
21 response to the notice;  
22 a day in the period:  
23 (iii) beginning on the day on which the notice was given;  
24 and  
25 (iv) ending at the end of the time limit specified by the  
26 ACCC when it published the varied undertaking under  
27 section 151G; and  
28 (c) if the ACCC has not given a notice under section 151K in  
29 relation to the undertaking—a day in the period:  
30 (i) beginning on the day on which the ACCC published the  
31 undertaking under section 151G; and  
32 (ii) ending at the end of the time limit specified by the  
33 ACCC when it published the undertaking under  
34 section 151G; and
-

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## Schedule 2 Local access lines

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- 1 (d) if the ACCC has requested further information under  
2 section 151D in relation to the undertaking—a day during  
3 any part of which the request, or any part of the request,  
4 remains unfulfilled.

5 *Extension of decision-making period*

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

16 **151G Consultation—acceptance or rejection of undertaking**

17 *Scope*

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

23 *Consultation*

- 24 (2) Before making a decision to accept or reject the undertaking, the  
25 ACCC must:  
26 (a) publish on the ACCC's website a notice:  
27 (i) setting out the undertaking; and  
28 (ii) inviting persons to make submissions to the ACCC  
29 about the undertaking within the time limit specified in  
30 the notice; and

1 (b) consider any submissions received within the time limit  
2 specified in the notice.

3 (3) The time limit must not be shorter than 10 business days after the  
4 notice is published.

## 5 **151H Serial undertakings**

6 (1) If:

7 (a) a person gives the ACCC a standard functional separation  
8 undertaking (the *first functional separation undertaking*);  
9 and

10 (b) the ACCC rejects the first functional separation undertaking;  
11 and

12 (c) the person subsequently gives the ACCC another standard  
13 functional separation undertaking; and

14 (d) the ACCC is satisfied that any or all of the provisions of the  
15 first functional separation undertaking are materially similar  
16 to any or all of the provisions of the other functional  
17 separation undertaking;

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

20 (2) If:

21 (a) 2 or more persons give the ACCC a joint functional  
22 separation undertaking (the *first functional separation*  
23 *undertaking*); and

24 (b) the ACCC rejects the first functional separation undertaking;  
25 and

26 (c) those persons subsequently give the ACCC another joint  
27 functional separation undertaking; and

28 (d) the ACCC is satisfied that any or all of the provisions of the  
29 first functional separation undertaking are materially similar  
30 to any or all of the provisions of the other functional  
31 separation undertaking;

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

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- 1                    *Refund of fee*
- 2                    (3) If:
- 3                    (a) the ACCC refuses to consider a functional separation
- 4                           undertaking under this section; and
- 5                    (b) a person or persons have paid a fee in relation to the
- 6                           undertaking;
- 7                    the ACCC must, on behalf of the Commonwealth, refund the fee.

### 8                    **151J Criteria for accepting functional separation undertaking**

#### 9                    *Scope*

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

#### 15                    *Criteria*

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

1 **151K Variation of functional separation undertaking that is under**  
2 **consideration**

3 *Scope*

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

9 *Notice*

- 10 (2) The ACCC may give the person or persons a written notice stating  
11 that, if:  
12 (a) the person makes, or the persons make, such variations to the  
13 original undertaking as are specified in the notice; and  
14 (b) the person gives, or the persons give, the varied undertaking  
15 to the ACCC within the period specified in the notice;  
16 the ACCC will consider the varied undertaking under section 151F  
17 as if the varied undertaking had been given to the ACCC instead of  
18 the original undertaking.

19 *Treatment of varied undertaking*

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

24 *No duty to consider whether to give a notice*

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

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### 151L Replacement of functional separation undertaking that is under consideration

#### *Scope*

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

#### *Notice*

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

### 151M Renewal of functional separation undertaking

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



- 1 (b) at least 12 months before the expiry of the existing  
2 undertaking, those persons give another joint functional  
3 separation undertaking to the ACCC;  
4 the other undertaking may be expressed to be given by way of  
5 renewal of the existing undertaking.

6 **151N Variation of expiry time of certain functional separation**  
7 **undertakings**

8 *Standard functional separation undertaking*

- 9 (1) If:  
10 (a) a standard functional separation undertaking (the *existing*  
11 *undertaking*) given by a person is in force; and  
12 (b) another functional separation undertaking is given to the  
13 ACCC by the person; and  
14 (c) the ACCC rejects the other undertaking;  
15 the ACCC may, by written notice given to the person, vary the  
16 existing undertaking by:  
17 (d) omitting the expiry time specified in the existing  
18 undertaking; and  
19 (e) substituting the expiry time specified in the notice.

20 Note: See also section 142B.

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

27 *Joint functional separation undertaking*

- 28 (4) If:  
29 (a) a joint functional separation undertaking (the *existing*  
30 *undertaking*) given by 2 or more persons is in force; and

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- 1 (b) another functional separation undertaking is given to the  
2 ACCC by a person who is one of the persons mentioned in  
3 paragraph (a); and  
4 (c) the ACCC rejects the other undertaking;  
5 the ACCC may, by written notice given to each of the persons  
6 mentioned in paragraph (a), vary the existing undertaking by:  
7 (d) omitting the expiry time specified in the existing  
8 undertaking; and  
9 (e) substituting the expiry time specified in the notice.

10 Note: See also section 142B.

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

### 17 **151P Duration of functional separation undertaking**

#### 18 *Scope*

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

#### 26 *Duration*

- 27 (2) If the new undertaking is not expressed to be given by way of  
28 renewal of another functional separation undertaking:  
29 (a) in a case where the new undertaking is accepted before 1 July  
30 2017—the new undertaking comes into force:  
31 (i) on 1 July 2017; or

- 1 (ii) if a later day is specified in the new undertaking—on  
2 that day; and
- 3 (b) in a case where the new undertaking is accepted on or after  
4 1 July 2017—the new undertaking comes into force:
- 5 (i) on the day after it is accepted; or  
6 (ii) if a later day is specified in the new undertaking—on  
7 that day; and
- 8 (c) unless sooner revoked, the new undertaking continues in  
9 force until it expires.
- 10 (3) If the new undertaking is expressed to be given by way of renewal  
11 of another functional separation undertaking:
- 12 (a) the new undertaking comes into force immediately after the  
13 expiry of the other undertaking; and  
14 (b) unless sooner revoked, the new undertaking continues in  
15 force until it expires.

## 16 **151Q Variation of functional separation undertaking that is in force**

### 17 *Scope*

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

### 23 *Variation*

- 24 (2) The person or persons may give the ACCC a variation of the  
25 undertaking.
- 26 (3) If the undertaking is a standard functional separation undertaking,  
27 the undertaking as varied must comply with subsections 151A(2),  
28 (5), (8) and (9) and paragraph 151A(4)(a).
- 29 (4) If the undertaking is a joint functional separation undertaking, the  
30 undertaking as varied must comply with subsections 151C(2), (5),  
31 (8) and (9) and paragraph 151C(4)(a).

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1

*Form etc.*

2

(5) The variation must:

3

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

4

5

(b) be accompanied by the fee (if any) specified in, or ascertained in accordance with, a determination under subsection (6).

6

7

(6) The ACCC may, by legislative instrument, determine a fee, or a method of ascertaining a fee, for the purposes of paragraph (5)(b).

8

9

(7) A fee determined under, or ascertained in accordance with, subsection (6) must not be such as to amount to taxation.

10

11

### **151R Further information about variation of functional separation undertaking**

12

13

*Scope*

14

(1) This section applies if:

15

(a) a person gives the ACCC a variation of a standard functional separation undertaking; or

16

17

(b) 2 or more persons give the ACCC a variation of a joint functional separation undertaking.

18

19

*Request for further information*

20

(2) The ACCC may request the person or persons to give the ACCC further information about the variation.

21

22

(3) The ACCC may refuse to consider the variation until the person or persons give the ACCC the information.

23

24

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

25

26

27

1 **151S Withdrawal of variation that is under consideration**

2 *Scope*

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

8 *Withdrawal*

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

13 *Refund of fee*

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

20 **151T ACCC to accept or reject variation**

21 *Scope*

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

27 *Decision to accept or reject variation*

- 28 (2) After considering the variation, the ACCC must:
-

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- 1 (a) accept the variation; or  
2 (b) reject the variation.

3 *Notice of decision*

- 4 (3) If the ACCC accepts the variation, the ACCC must give the person  
5 or persons a written notice:  
6 (a) stating that the variation has been accepted; and  
7 (b) setting out the terms of the variation.
- 8 (4) If the ACCC rejects the variation, the ACCC must give the person  
9 or persons a written notice:  
10 (a) stating that the variation has been rejected; and  
11 (b) setting out the reasons for the rejection.

12 *ACCC to make decision within 3 months*

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

28 *Extension of decision-making period*

- 29 (7) The ACCC may, by written notice given to the person or persons,  
30 extend the 3-month period referred to in subsection (5) (the *initial*  
31 *3-month period*), so long as:
-

- 1 (a) the extension is for a period of not more than 3 months; and  
2 (b) the notice includes a statement explaining why the ACCC has  
3 been unable to make a decision on the variation within the  
4 initial 3-month period.
- 5 (8) As soon as practicable after the ACCC gives a notice under  
6 subsection (7), the ACCC must publish a copy of the notice on the  
7 ACCC's website.

## 8 **151U Consultation—acceptance or rejection of variation**

### 9 *Scope*

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

### 15 *Consultation*

- 16 (2) Before making a decision to accept or reject the variation, the  
17 ACCC must:  
18 (a) publish on the ACCC's website a notice:  
19 (i) setting out the variation; and  
20 (ii) inviting persons to make submissions to the ACCC  
21 about the variation within the time limit specified in the  
22 notice; and  
23 (b) consider any submissions received within the time limit  
24 specified in the notice.
- 25 (3) The time limit must not be shorter than 10 business days after the  
26 notice is published.

## 27 **151V Criteria for accepting variation**

### 28 *Scope*

- 29 (1) This section applies if:
-

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

### 5 *Criteria*

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

## 16 **151W Revocation of functional separation undertaking**

### 17 *Standard functional separation undertaking*

- 18 (1) If:  
19 (a) a standard functional separation undertaking given by a  
20 person is in force; and  
21 (b) the person has:  
22 (i) breached a fundamental provision of the undertaking; or  
23 (ii) contravened section 151ZF or 151ZG;  
24 the ACCC may, by written notice given to the person, revoke the  
25 undertaking.  
26 (2) If:  
27 (a) a standard functional separation undertaking given by a  
28 person is in force; and  
29 (b) the ACCC is satisfied that the person has an unsatisfactory  
30 compliance record in relation to functional separation;  
31 the ACCC may, by written notice given to the person, revoke the  
32 undertaking.
-



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- 1 (3) If:  
2 (a) a standard functional separation undertaking given by a  
3 person is in force; and  
4 (b) the person requests the ACCC, in writing, to revoke the  
5 undertaking;  
6 the ACCC must, by written notice given to the person, revoke the  
7 undertaking.
- 8 (4) A revocation under subsection (1), (2) or (3) takes effect at the  
9 time specified in the notice of revocation. The specified time:  
10 (a) must not be earlier than the time the notice is given; and  
11 (b) must not be later than 12 months after the notice is given.
- 12 (5) After the giving of a notice of revocation of a standard functional  
13 separation undertaking under subsection (1), (2) or (3):  
14 (a) the undertaking does not apply to local access line services  
15 supplied using a local access line that came into existence  
16 after the notice was given; and  
17 (b) the definitions of *retail business unit* and *wholesale business*  
18 *unit* in section 142A (in so far as those definitions relate to  
19 the undertaking) have effect as if references in those  
20 definitions to the supply of local access line services did not  
21 include the supply of local access line services using a local  
22 access line that came into existence after the notice was  
23 given.
- 24 *Joint functional separation undertaking*
- 25 (6) If:  
26 (a) a joint functional separation undertaking given by 2 or more  
27 persons is in force; and  
28 (b) any of those persons has:  
29 (i) breached a fundamental provision of the undertaking; or  
30 (ii) contravened section 151ZF or 151ZG;  
31 the ACCC may, by written notice given to each of those persons,  
32 revoke the undertaking.
- 33 (7) If:
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- 1 (a) a joint functional separation undertaking given by 2 or more  
2 persons is in force; and  
3 (b) the ACCC is satisfied that any of those persons has an  
4 unsatisfactory compliance record in relation to functional  
5 separation;  
6 the ACCC may, by written notice given to each of those persons,  
7 revoke the undertaking.

- 8 (8) If:  
9 (a) a joint functional separation undertaking given by 2 or more  
10 persons is in force; and  
11 (b) those persons request the ACCC, in writing, to revoke the  
12 undertaking;  
13 the ACCC must, by written notice given to each of those persons,  
14 revoke the undertaking.
- 15 (9) A revocation under subsection (6), (7) or (8) takes effect at the  
16 time specified in the notice of revocation. The specified time:  
17 (a) must not be earlier than the time the notice is given; and  
18 (b) must not be later than 12 months after the notice is given.

- 19 (10) After the giving of a notice of revocation of a joint functional  
20 separation undertaking under subsection (6), (7) or (8), the  
21 undertaking does not apply to local access line services supplied  
22 using a local access line that came into existence after the notice  
23 was given.

24 *Matters to which the ACCC must have regard*

- 25 (11) In exercising its powers under this section, the ACCC must have  
26 regard to the following matters:  
27 (a) whether arrangements to maintain the continuity of the  
28 supply of superfast carriage services to residential customers  
29 using local access lines:  
30 (i) have been made; or  
31 (ii) can be made before the relevant revocation takes effect;  
32 (b) in the case of a revocation under subsection (1) or (6)—the  
33 consequences of the breach;
-

- 1 (c) in the case of a revocation under subsection (2) or (7)—the  
2 consequences of the person’s unsatisfactory compliance  
3 record;  
4 (d) such other matters (if any) as the ACCC considers relevant.

5 **151X Consultation—revocation of functional separation**  
6 **undertaking**

7 *Revocation of standard functional separation undertaking*

- 8 (1) Before making a decision under subsection 151W(1) or (2) to  
9 revoke a standard functional separation undertaking given by a  
10 person, the ACCC must:  
11 (a) give the person a written notice:  
12 (i) stating that the ACCC proposes to revoke the  
13 undertaking; and  
14 (ii) inviting the person to make a submission to the ACCC  
15 about the revocation within the time limit specified in  
16 the notice; and  
17 (b) consider any submission received within the time limit  
18 specified in the notice.  
19 (2) The time limit must not be shorter than 10 business days after the  
20 notice is given.

21 *Revocation of joint functional separation undertaking*

- 22 (3) Before making a decision under subsection 151W(6) or (7) to  
23 revoke a joint functional separation undertaking given by 2 or more  
24 persons, the ACCC must:  
25 (a) give each of those persons a written notice:  
26 (i) stating that the ACCC proposes to revoke the  
27 undertaking; and  
28 (ii) inviting those persons to make submissions to the  
29 ACCC about the revocation within the time limit  
30 specified in the notice; and  
31 (b) consider any submissions received within the time limit  
32 specified in the notice.

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- 1 (4) The time limit must not be shorter than 10 business days after the  
2 notice is given.

3 **151Y Notification that a person is at risk of having an unsatisfactory**  
4 **compliance record in relation to functional separation**

5 *Scope*

- 6 (1) This section applies to:  
7 (a) a breach by a person of a functional separation undertaking  
8 given by the person, so long as the breach occurred when the  
9 undertaking was in force; and  
10 (b) a contravention by a person of section 143B, 151ZA, 151ZB,  
11 151ZF, 151ZG, 151ZH or 151ZI.

12 Note: See section 142B.

13 *Notification*

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

26 the ACCC must:

- 27 (e) give the person a written notice:  
28 (i) stating that the ACCC considers that the person is at risk  
29 of having an unsatisfactory compliance record in  
30 relation to functional separation; and  
31 (ii) informing the person that an unsatisfactory compliance  
32 record is a ground for revoking the undertaking; and
-

- 1 (f) do so as soon as practicable after becoming satisfied as  
2 mentioned in paragraph (d).

3 Note: See section 142B.

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

6 **151Z Variation of functional separation undertaking following**  
7 **giving of revocation notice**

8 *Standard functional separation undertaking*

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

21 *Joint functional separation undertaking*

- 22 (3) If:  
23 (a) the ACCC has given a notice under section 151W revoking a  
24 joint functional separation undertaking; and  
25 (b) the revocation has not taken effect;  
26 the ACCC may, by written notice given to each of the persons who  
27 gave the undertaking, vary the undertaking.
- 28 (4) The ACCC must not vary a joint functional separation undertaking  
29 under subsection (3) unless the variation:

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- 1 (a) addresses the matter or matters that constituted the grounds  
2 for the revocation of the undertaking under section 151W;  
3 and  
4 (b) does not address any other matter.

5 *When variation takes effect*

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

### 8 **151ZA Reporting obligations following giving of revocation notice**

9 *Standard functional separation undertaking*

- 10 (1) If:  
11 (a) the ACCC has given a notice under section 151W revoking a  
12 standard functional separation undertaking; and  
13 (b) the revocation has not taken effect;  
14 the ACCC may, by written notice given to the person who gave the  
15 undertaking, direct the person:  
16 (c) to give the ACCC:  
17 (i) a report about the person's compliance with the  
18 undertaking; or  
19 (ii) information about the person's compliance with the  
20 undertaking; or  
21 (iii) a report about action that the person has taken, is taking,  
22 or proposes to take for the purpose of ensuring that the  
23 person complies with sections 142C and 143 after the  
24 revocation takes effect; or  
25 (iv) information about action that the person has taken, is  
26 taking, or proposes to take for the purpose of ensuring  
27 that the person complies with sections 142C and 143  
28 after the revocation takes effect; and  
29 (d) to do so within the period specified in the direction.

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

1 *Joint functional separation undertaking*

2 (2) If:

3 (a) the ACCC has given a notice under section 151W revoking a  
4 joint functional separation undertaking; and

5 (b) the revocation has not taken effect;

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

9 (c) to give the ACCC:

10 (i) a report about the person's compliance with the  
11 undertaking; or

12 (ii) information about the person's compliance with the  
13 undertaking; or

14 (iii) a report about action that the person has taken, is taking,  
15 or proposes to take for the purpose of ensuring that the  
16 person complies with sections 142C and 143 after the  
17 revocation takes effect; or

18 (iv) information about action that the person has taken, is  
19 taking, or proposes to take for the purpose of ensuring  
20 that the person complies with sections 142C and 143  
21 after the revocation takes effect; and

22 (d) to do so within the period specified in the direction.

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

24 *Compliance with direction*

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

26 *Ancillary contraventions*

27 (4) A person must not:

28 (a) aid, abet, counsel or procure a contravention of  
29 subsection (3); or

30 (b) induce, whether by threats or promises or otherwise, a  
31 contravention of subsection (3); or

32 (c) be in any way, directly or indirectly, knowingly concerned in,  
33 or party to, a contravention of subsection (3); or

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- 1 (d) conspire with others to effect a contravention of  
2 subsection (3).

3 *Civil penalty provisions*

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

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

7 **151ZB Requirement to notify changes in control of person who gave**  
8 **undertaking**

9 *Notification by person who gave undertaking*

- 10 (1) If:

11 (a) a functional separation undertaking given by a person (the  
12 *first person*) is in force; and

13 (b) the first person becomes aware that:

14 (i) a person who was not in a position to exercise control of  
15 the first person has become in a position to exercise  
16 control of the first person; or

17 (ii) a person who was in a position to control the first  
18 person has ceased to be in that position;

19 the first person must:

20 (c) notify the ACCC, in writing, of that event; and

21 (d) do so as soon as practicable, but not later than 10 business  
22 days, after becoming so aware.

23 Note: See section 154.

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

25 *Notification by controller of person who gave undertaking*

- 26 (3) If:

27 (a) a functional separation undertaking given by a person (the  
28 *first person*) is in force; and

29 (b) another person becomes aware that the other person is in a  
30 position to exercise control of the first person;

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- 1 the other person must:  
2 (c) notify the ACCC, in writing, of that position; and  
3 (d) do so as soon as practicable, but not later than 10 business  
4 days, after becoming so aware.

5 Note: See section 154.

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

7 *Ancillary contraventions*

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

17 *Civil penalty provisions*

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

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

21 **151ZC Register of functional separation undertakings**

- 22 (1) The ACCC is to maintain a Register in which the ACCC includes:  
23 (a) all functional separation undertakings that have been  
24 accepted by the ACCC (including those that are no longer in  
25 force); and  
26 (b) in the case of a functional separation undertaking that, under  
27 section 151B, is taken to have been given by a corporation:  
28 (i) the name of the corporation; and  
29 (ii) the date the undertaking came into force; and  
30 (c) all variations of functional separation undertakings.  
31 (2) The Register is to be maintained by electronic means.
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1 (3) The Register is to be made available for inspection on the ACCC's  
2 website.

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

### 4 **151ZD Compliance with functional separation undertaking**

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

7 Note: See also section 142B.

#### 8 *Ancillary contraventions*

9 (2) A person must not:

10 (a) aid, abet, counsel or procure a contravention of  
11 subsection (1); or

12 (b) induce, whether by threats or promises or otherwise, a  
13 contravention of subsection (1); or

14 (c) be in any way, directly or indirectly, knowingly concerned in,  
15 or party to, a contravention of subsection (1); or

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

#### 18 *Civil penalty provisions*

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

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

### 22 **151ZE Enforcement of functional separation undertaking**

23 (1) If:

24 (a) a functional separation undertaking given by a person is in  
25 force; and

26 (b) the ACCC considers that the person has breached the  
27 undertaking;

28 the ACCC may apply to the Federal Court for an order under  
29 subsection (2).

30 Note: See also section 142B.

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

## Schedule 2 Local access lines

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1 **Division 2C—Non-discrimination rules**

2 **151ZF Eligible services to be supplied on a non-discriminatory basis**

3 *No discrimination between wholesale customers*

4 (1) If:

5 (a) an eligible service is supplied, or proposed to be supplied, by  
6 a person using a local access line; and

7 (b) either:

8 (i) section 142C applies to the line; or

9 (ii) section 143 applies to the line, and a functional  
10 separation undertaking given by the person is in force;

11 the person must not, on or after 1 July 2017, discriminate between  
12 the person's wholesale customers, or the person's prospective  
13 wholesale customers, in relation to the supply of eligible services  
14 using the line.

15 Note: See also section 142B.

16 (2) The rule in subsection (1) does not prevent discrimination against a  
17 wholesale customer, or prospective wholesale customer, if the  
18 person has reasonable grounds to believe that the wholesale  
19 customer or prospective wholesale customer would fail, to a  
20 material extent, to comply with the terms and conditions on which  
21 the person supplies eligible services using the line.

22 (3) Examples of grounds for believing as mentioned in subsection (2)  
23 include:

24 (a) evidence that the wholesale customer or prospective  
25 wholesale customer is not creditworthy; and

26 (b) repeated failures by the wholesale customer or prospective  
27 wholesale customer to comply with the terms and conditions  
28 on which the person supplied eligible services (whether or  
29 not using the line).

30 *No discrimination by a person in favour of itself*

31 (4) If:

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- 1 (a) a person supplies, or proposes to supply, an eligible service  
2 using a local access line:  
3 (i) to itself; and  
4 (ii) to its wholesale customers or prospective wholesale  
5 customers; and  
6 (b) either:  
7 (i) section 142C applies to the line; or  
8 (ii) section 143 applies to the line, and a functional  
9 separation undertaking given by the person is in force;  
10 the person must not, on or after 1 July 2017, discriminate in favour  
11 of itself in relation to the supply of the eligible service.

12 Note: See also section 142B.

13 *Ancillary contraventions*

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

23 *Civil penalty provisions*

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

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

27 **151ZG Eligible services—related activities to be carried on on a**  
28 **non-discriminatory basis**

29 *Scope*

- 30 (1) This section applies to a person, on and after 1 July 2017, if:
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- 1 (a) an eligible service is supplied, or proposed to be supplied, by  
2 a person using a local access line; and  
3 (b) either:  
4 (i) section 142C applies to the line; or  
5 (ii) section 143 applies to the line, and a functional  
6 separation undertaking given by the person is in force.

7 Note: See also section 142B.

### 8 *No discrimination between wholesale customers*

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

### 25 *No discrimination by a person in favour of itself*

- 26 (3) The person must not discriminate in favour of itself in relation to  
27 the carrying on of any of the following activities:  
28 (a) developing a new eligible service;  
29 (b) enhancing an eligible service;  
30 (c) extending or enhancing the capability of a facility or  
31 telecommunications network by means of which an eligible  
32 service is, or is to be, supplied;  
33 (d) planning for a facility or telecommunications network by  
34 means of which an eligible service is, or is to be, supplied;
-

- 1 (e) an activity that is preparatory to the supply of an eligible  
2 service;  
3 (f) an activity that is ancillary or incidental to the supply of an  
4 eligible service;  
5 (g) giving information to service providers about any of the  
6 above activities.

7 *Ancillary contraventions*

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

17 *Civil penalty provisions*

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

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

21 **151ZH Statement about the differences between an access**  
22 **agreement and an offer**

- 23 (1) If:  
24 (a) an access agreement is entered into by a person on or after  
25 1 July 2017; and  
26 (b) the eligible service to which the access agreement relates is  
27 an eligible service supplied, or proposed to be supplied, by  
28 the person using a local access line; and  
29 (c) either:  
30 (i) section 142C applies to the line; or

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- 1 (ii) section 143 applies to the line, and a functional  
2 separation undertaking given by the person is in force;  
3 and  
4 (d) immediately before the access agreement was entered into,  
5 there was published on the person's website:  
6 (i) the terms and conditions relating to price or a method of  
7 ascertaining price; or  
8 (ii) other terms and conditions;  
9 on which the person offers to supply eligible services using  
10 the line; and  
11 (e) the terms and conditions set out in the access agreement are  
12 not the same as the terms and conditions set out in the offer;  
13 the person must, within 5 business days after the day on which the  
14 access agreement was entered into, publish on the person's website  
15 a statement, in a form approved in writing by the ACCC:  
16 (f) identifying the parties to the access agreement; and  
17 (g) describing the differences between the terms and conditions  
18 set out in the access agreement and the terms and conditions  
19 set out in the offer; and  
20 (h) setting out such other information (if any) about the access  
21 agreement as is required by the form.

22 Note 1: For *access agreement*, see subsection (5).

23 Note 2: See also section 142B.

### 24 *Variation agreement*

- 25 (2) If:  
26 (a) a variation agreement is entered into by a person on or after  
27 1 July 2017; and  
28 (b) the eligible service to which the relevant access agreement  
29 relates is an eligible service supplied, or proposed to be  
30 supplied, by the person using a local access line; and  
31 (c) either:  
32 (i) section 142C applies to the line; or  
33 (ii) section 143 applies to the line, and a functional  
34 separation undertaking given by the person is in force;  
35 and
-



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- 1 (d) immediately before the variation agreement was entered into,  
2 there was published on the person's website:  
3 (i) the terms and conditions relating to price or a method of  
4 ascertaining price; or  
5 (ii) other terms and conditions;  
6 on which the person offers to supply eligible services using  
7 the line; and  
8 (e) the terms and conditions set out in the relevant access  
9 agreement (as varied by the variation agreement) are not the  
10 same as the terms and conditions set out in the offer;  
11 the person must, within 5 business days after the day on which the  
12 variation agreement was entered into, publish on the person's  
13 website a statement, in a form approved in writing by the ACCC:  
14 (f) identifying the parties to the relevant access agreement (as  
15 varied by the variation agreement); and  
16 (g) describing the differences between the terms and conditions  
17 set out in the relevant access agreement (as varied by the  
18 variation agreement) and the terms and conditions set out in  
19 the offer; and  
20 (h) setting out such other information (if any) about the relevant  
21 access agreement (as varied by the variation agreement) as is  
22 required by the form.

23 Note 1: For *variation agreement*, see subsection (5).

24 Note 2: See also section 142B.

## 25 *Ancillary contraventions*

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

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1 *Civil penalty provisions*

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

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

5 *Access agreement and variation agreement*

6 (5) For the purposes of this section, *access agreement* and *variation*  
7 *agreement* have the same respective meanings as in Part XIC of  
8 the *Competition and Consumer Act 2010*. For this purpose, assume  
9 that:

10 (a) each reference in section 152AF, subsections 152AG(1) and  
11 (3) and section 152BE of that Act to a declared service were  
12 a reference to an eligible service; and

13 (b) subsection 152BE(2) of that Act had not been enacted.

## 14 **52 Before section 152**

15 Insert:

### 16 **151ZI Anti-avoidance**

17 (1) A corporation must not, either alone or together with one or more  
18 other persons:

19 (a) enter into a scheme; or

20 (b) begin to carry out a scheme; or

21 (c) carry out a scheme;

22 for the sole or dominant purpose of avoiding the application of any  
23 provision of this Part in relation to:

24 (d) the corporation; or

25 (e) any other corporation.

26 *Ancillary contraventions*

27 (2) A person must not:

28 (a) aid, abet, counsel or procure a contravention of  
29 subsection (1); or

30 (b) induce, whether by threats or promises or otherwise, a  
31 contravention of subsection (1); or

---

- 1 (c) be in any way, directly or indirectly, knowingly concerned in,  
2 or party to, a contravention of subsection (1); or  
3 (d) conspire with others to effect a contravention of  
4 subsection (1).

5 *Civil penalty provisions*

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

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

9 *Scheme*

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

16 **151ZJ Self-incrimination**

- 17 (1) A person is not excused from:  
18 (a) giving a report in compliance with a provision of a functional  
19 separation undertaking covered by subsection 151A(10) or  
20 151C(10) or (11); or  
21 (b) giving a report or information under section 151ZA:  
22 on the ground that the report or information might tend to  
23 incriminate the person or expose the person to a penalty.
- 24 (2) However, in the case of an individual:  
25 (a) the report or information; or  
26 (b) giving the report or information; or  
27 (c) any information, document or thing obtained as a direct or  
28 indirect consequence of giving the report or information;  
29 is not admissible in evidence against the individual:  
30 (d) in civil proceedings for the recovery of a penalty; or

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- 1 (e) in criminal proceedings (other than proceedings for an  
2 offence against section 137.1 or 137.2 of the *Criminal Code*  
3 that relates to the report).

### 4 **151ZK Delegation**

- 5 The ACCC may, by writing, delegate to a person who is:  
6 (a) a member of the staff of the ACCC; and  
7 (b) an SES employee or acting SES employee;  
8 the ACCC's powers under any of the following provisions:  
9 (c) subsection 103(4F) (formal warning);  
10 (d) section 151D (further information);  
11 (e) subsection 151F(7) (extension of decision-making period);  
12 (f) section 151H (serial undertakings);  
13 (g) section 151R (further information);  
14 (h) subsection 151T(7) (extension of decision-making period).

### 15 **151ZL Review by the Australian Competition Tribunal**

- 16 (1) If the ACCC makes a decision under section 151F to reject a  
17 functional separation undertaking that was given by a person or  
18 persons, the person or persons may apply to the Australian  
19 Competition Tribunal for a review of the decision.
- 20 (2) If the ACCC makes a decision under section 151N to vary a  
21 functional separation undertaking that was given by a person or  
22 persons, the person or persons may apply to the Australian  
23 Competition Tribunal for a review of the decision.
- 24 (3) If the ACCC makes a decision under section 151T to reject a  
25 variation that was given by a person or persons, the person or  
26 persons may apply to the Australian Competition Tribunal for a  
27 review of the decision.
- 28 (4) If the ACCC makes a decision under section 151W to revoke a  
29 functional separation undertaking that was given by a person or  
30 persons, the person or persons may apply to the Australian  
31 Competition Tribunal for a review of the decision.

- 1 (5) If the ACCC makes a decision under section 151Z to vary a  
2 functional separation undertaking that was given by a person or  
3 persons, the person or persons may apply to the Australian  
4 Competition Tribunal for a review of the decision.
- 5 (6) An application under this section for a review of a decision must  
6 be:  
7 (a) in writing; and  
8 (b) in the case of an application under subsection (1), (3), (4) or  
9 (5)—made within 21 days after the ACCC made the decision;  
10 and  
11 (c) in the case of an application under subsection (2)—made  
12 within 14 days after the ACCC made the decision.
- 13 (7) If the Australian Competition Tribunal receives an application  
14 under this section for a review of a decision, the Australian  
15 Competition Tribunal must review the decision.

## 16 **151ZM Functions and powers of the Australian Competition** 17 **Tribunal etc.**

### 18 *Decision on review*

- 19 (1) On a review of a decision of the ACCC of a kind mentioned in  
20 section 151ZL, the Australian Competition Tribunal may make a  
21 decision:  
22 (a) affirming the ACCC's decision; or  
23 (b) setting aside the ACCC's decision;  
24 and, for the purposes of the review, the Australian Competition  
25 Tribunal may perform all the functions and exercise all the powers  
26 of the ACCC.
- 27 (2) A decision by the Australian Competition Tribunal:  
28 (a) affirming a decision of the ACCC; or  
29 (b) setting aside a decision of the ACCC;  
30 is taken, for the purposes of this Act (other than this section or  
31 section 151ZL), to be a decision of the ACCC.

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## Schedule 2 Local access lines

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

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

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

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

### 14 *Conduct of review*

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

- 20 (6) For the purposes of a review, the Australian Competition Tribunal  
21 may have regard to any information given, documents produced or  
22 evidence given to the ACCC in connection with the making of the  
23 decision to which the review relates.

- 24 (7) Paragraphs 103(1)(a) and (b) and 108(b) of the *Competition and  
25 Consumer Act 2010* have effect, in relation to a review, as if a  
26 reference in those paragraphs to that Act included a reference to  
27 this Part.

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

### 30 **151ZN Provisions that do not apply in relation to an Australian 31 Competition Tribunal review**

32 Division 1 of Part IX of the *Competition and Consumer Act 2010*  
33 does not apply in relation to a review by the Australian

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1 Competition Tribunal of a decision of the ACCC of a kind  
2 mentioned in section 151ZL of this Act.

3 **53 After paragraph 152(1)(a)**

4 Insert:  
5 (aa) a line; or

6 **54 Paragraphs 152(2)(a) and (b)**

7 After “network”, insert “, line”.

8 **55 At the end of section 155**

9 Add:  
10 (4) Subsections (1) to (3) do not apply in determining the meaning of  
11 an expression used in:  
12 (a) section 142C; or  
13 (b) sections 151ZF, 151ZG and 151ZH, to the extent to which  
14 they relate to a line to which section 142C applies; or  
15 (c) any other provision of this Part, so far as that provision  
16 relates to:  
17 (i) section 142C; or  
18 (ii) section 151ZF, 151ZG or 151ZH, to the extent to which  
19 that section relates to a line to which section 142C  
20 applies.

21 **56 After section 155**

22 Insert:

23 **155A When a person is in a position to exercise control of a line**

24 (1) For the purposes of this Part, a person (the *controller*) is in a  
25 position to exercise control of a line if:  
26 (a) the controller legally or beneficially owns the line (whether  
27 alone or together with one or more other persons); or  
28 (b) the controller is in a position, either alone or together with an  
29 associate of the controller and whether directly or indirectly:

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## Schedule 2 Local access lines

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- 1 (i) to exercise control of the operation of all or part of the  
2 line; or
- 3 (ii) to exercise control of the selection of the kinds of  
4 services that are supplied using the line; or
- 5 (iii) to exercise control of the supply of services using the  
6 line; or
- 7 (c) a company other than the controller legally or beneficially  
8 owns the line (whether alone or together with one or more  
9 other persons), and:
- 10 (i) the controller is in a position, either alone or together  
11 with an associate of the controller, to exercise control of  
12 the company; or
- 13 (ii) the controller, either alone or together with an associate  
14 of the controller, is in a position to veto any action taken  
15 by the board of directors of the company; or
- 16 (iii) the controller, either alone or together with an associate  
17 of the controller, is in a position to appoint or secure the  
18 appointment of, or veto the appointment of, at least half  
19 of the board of directors of the company; or
- 20 (iv) the controller, either alone or together with an associate  
21 of the controller, is in a position to exercise, in any other  
22 manner, whether directly or indirectly, direction or  
23 restraint over any substantial issue affecting the  
24 management or affairs of the company; or
- 25 (v) the company or more than 50% of its directors act, or  
26 are accustomed to act, in accordance with the directions,  
27 instructions or wishes of, or in concert with, the  
28 controller, the controller and an associate of the  
29 controller acting together, or the directors of the  
30 controller; or
- 31 (vi) the company or more than 50% of its directors, under a  
32 contract or an arrangement or understanding (whether  
33 formal or informal), are intended or expected to act in  
34 accordance with the directions, instructions or wishes  
35 of, or in concert with, the controller, the controller and  
36 an associate of the controller acting together, or the  
37 directors of the controller.
-



- 1 (2) An employee is not, except through an association with another  
2 person, to be regarded as being in a position to exercise control of a  
3 line under subsection (1) purely because of being an employee.
- 4 (3) More than one person may be in a position to exercise control of a  
5 line.
- 6 (4) Subsections (1) to (3) do not apply in determining the meaning of  
7 an expression used in:  
8 (a) section 143; or  
9 (b) sections 151ZF, 151ZG and 151ZH, to the extent to which  
10 they relate to a line to which section 143 applies; or  
11 (c) any other provision of this Part, so far as that provision  
12 relates to:  
13 (i) section 143; or  
14 (ii) section 151ZF, 151ZG or 151ZH, to the extent to which  
15 that section relates to a line to which section 143  
16 applies.

## 17 **57 Section 156 (heading)**

18 Repeal the heading, substitute:

## 19 **156 Deemed networks etc.**

## 20 **58 Paragraph 156(1)(a)**

21 After “2011”, insert “, but before 1 July 2017”.

## 22 **59 Paragraph 156(1)(b)**

23 Omit “or small business” (wherever occurring).

## 24 **60 Paragraph 156(1)(d)**

25 After “2011”, insert “, but before 1 July 2017”.

## 26 **61 Paragraph 156(2)(a)**

27 After “2011”, insert “, but before 1 July 2017”.

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## Schedule 2 Local access lines

---

1 **62 Paragraph 156(2)(b)**

2 Omit “or small business” (wherever occurring).

3 **63 Paragraph 156(2)(d)**

4 After “2011”, insert “, but before 1 July 2017”.

5 **64 At the end of subsection 156(4)**

6 Add “at any time before 1 July 2017”.

7 **65 At the end of section 156**

8 Add:

9 (6) Subsections (1) and (2) do not apply in determining the meaning of  
10 an expression used in:

11 (a) section 142C; or

12 (b) sections 151ZF, 151ZG and 151ZH, to the extent to which  
13 they relate to a line to which section 142C applies; or

14 (c) any other provision of this Part, so far as that provision  
15 relates to:

16 (i) section 142C; or

17 (ii) section 151ZF, 151ZG or 151ZH, to the extent to which  
18 that section relates to a line to which section 142C  
19 applies.

20 **66 After section 156**

21 Insert:

22 **156A Certain lines deemed to have come into existence on or after**  
23 **1 July 2017**

24 (1) For the purposes of this Part, if:

25 (a) a telecommunications network was in existence immediately  
26 before 1 July 2017; and

27 (b) the network is altered or upgraded on or after 1 July 2017;  
28 and

29 (c) following the alteration or upgrade, a local access line that  
30 forms part of the infrastructure of the network is used wholly

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# EXPOSURE DRAFT

Local access lines **Schedule 2**

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1 or principally to supply a superfast carriage service to  
2 residential customers in Australia;  
3 the line is taken to have come into existence on or after 1 July  
4 2017.

5 (2) For the purposes of this Part, if:  
6 (a) a local access line came into existence before 1 July 2017;  
7 and  
8 (b) before 1 July 2017, the line was used wholly or principally to  
9 supply a superfast carriage service to non-residential  
10 customers in Australia; and  
11 (c) on or after 1 July 2017, following:  
12 (i) the construction or alteration of premises; or  
13 (ii) changes to the activities carried out at premises;  
14 the line is used wholly or principally to supply a superfast  
15 carriage service to residential customers in Australia;  
16 the line is taken to have come into existence on or after 1 July  
17 2017.

18 (3) Subsections (1) and (2) do not apply in determining the meaning of  
19 an expression used in:  
20 (a) section 143; or  
21 (b) sections 151ZF, 151ZG and 151ZH, to the extent to which  
22 they relate to a line to which section 143 applies; or  
23 (c) any other provision of this Part, so far as that provision  
24 relates to:  
25 (i) section 143; or  
26 (ii) section 151ZF, 151ZG or 151ZH, to the extent to which  
27 that section relates to a line to which section 143  
28 applies.

## 29 **67 Section 157 (heading)**

30 Repeal the heading, substitute:

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## Schedule 2 Local access lines

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1 **157 Certain installations and connections are not taken to be an**  
2 **extension, alteration or upgrade of a network**

3 **68 Section 157**

4 Before “For”, insert “(1)”.

5 **69 At the end of section 157**

6 Add:

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

18 **70 After section 157**

19 Insert:

20 **157A Certain installations and connections are not taken to be an**  
21 **alteration or upgrade of a line**

- 22 (1) For the purposes of this Part, if:
- 23 (a) a telecommunications network was in existence immediately  
24 before 1 January 2011; and
  - 25 (b) the network is extended on or after 1 January 2011 but before  
26 1 July 2017; and
  - 27 (c) subsection 156(4) applied to the extension; and
  - 28 (d) a line is installed on or after 1 July 2017 for the purposes of  
29 connecting particular premises to the network; and

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Local access lines **Schedule 2**

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- 1 (e) the installation of the line enables or enabled the occupier of  
2 the premises to become a customer in relation to carriage  
3 services supplied using the line; and  
4 (f) no point on the premises is located more than:  
5 (i) 50 metres; or  
6 (ii) if a longer distance is specified in a determination under  
7 subsection (4)—that longer distance;  
8 from a point on the infrastructure of the network as the  
9 network stood immediately before 1 July 2017; and  
10 (g) the line is used to supply a superfast carriage service;  
11 neither the installation of the line mentioned in paragraph (d), nor  
12 the connection of the premises, is taken to be an alteration or  
13 upgrade of the line.
- 14 (2) For the purposes of this Part, if:  
15 (a) a telecommunications network came into existence on or  
16 after 1 January 2011; and  
17 (b) a line is installed on or after 1 July 2017 for the purposes of  
18 connecting particular premises to the network; and  
19 (c) the installation of the line enables or enabled the occupier of  
20 the premises to become a customer in relation to carriage  
21 services supplied using the line; and  
22 (d) no point on the premises is located more than:  
23 (i) 50 metres; or  
24 (ii) if a longer distance is specified in a determination under  
25 subsection (4)—that longer distance;  
26 from a point on the infrastructure of the network as the  
27 network stood immediately before the installation of the line;  
28 and  
29 (e) the line is used to supply a superfast carriage service;  
30 neither the installation of the line mentioned in paragraph (b), nor  
31 the connection of the premises, is taken to be an alteration or  
32 upgrade of the line.
- 33 (3) Subsections (1) and (2) do not apply in determining the meaning of  
34 an expression used in:  
35 (a) section 143; or
-

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## Schedule 2 Local access lines

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- 1 (b) sections 151ZF, 151ZG and 151ZH, to the extent to which  
2 they relate to a line to which section 143 applies; or  
3 (c) any other provision of this Part, so far as that provision  
4 relates to:  
5 (i) section 143; or  
6 (ii) section 151ZF, 151ZG or 151ZH, to the extent to which  
7 that section relates to a line to which section 143  
8 applies.
- 9 (4) The Minister may, by legislative instrument, determine a distance  
10 for the purposes of subparagraphs (1)(f)(ii) and (2)(d)(ii).

### 71 After subsection 158(2)

- 11 Insert:  
12  
13 (2A) Subsection (2) has effect subject to subsection (2B).  
14 (2B) For the purposes of:  
15 (a) section 142C; and  
16 (b) sections 151ZF, 151ZG and 151ZH, to the extent to which  
17 they relate to a line to which section 142C applies; and  
18 (c) any other provision of this Part, so far as that provision  
19 relates to:  
20 (i) section 142C; or  
21 (ii) section 151ZF, 151ZG or 151ZH, to the extent to which  
22 that section relates to a line to which section 142C  
23 applies;  
24 if a line in a multi-unit building is used to supply a superfast  
25 carriage service to a residential customer living in a unit in the  
26 building:  
27 (d) the line is taken to be a *local access line*; and  
28 (e) the line is taken to form part of the infrastructure of a  
29 telecommunications network.

### 72 After section 158

- 30 Insert:  
31
-

1 **158A Deemed local access lines**

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

3 (a) a local access line was in existence immediately before 1 July  
4 2017; and

5 (b) the line is extended on or after 1 July 2017;

6 then:

7 (c) the extension is taken to be a local access line in its own  
8 right; and

9 (d) the local access line referred to in paragraph (c) is taken to  
10 have come into existence on or after 1 July 2017.

11 (2) Subsection (1) does not apply in determining the meaning of an  
12 expression used in:

13 (a) section 143; or

14 (b) sections 151ZF, 151ZG and 151ZH, to the extent to which  
15 they relate to a line to which section 143 applies; or

16 (c) any other provision of this Part, so far as that provision  
17 relates to:

18 (i) section 143; or

19 (ii) section 151ZF, 151ZG or 151ZH, to the extent to which  
20 that section relates to a line to which section 143  
21 applies.

22 **73 Section 159**

23 Before “For”, insert “(1)”.

24 **74 At the end of section 159**

25 Add:

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

28 **75 Section 160**

29 Before “For”, insert “(1)”.

30 **76 At the end of section 160**

31 Add:

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# EXPOSURE DRAFT

## Schedule 2 Local access lines

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

### 3 **77 At the end of Part 8**

4 Add:

#### 5 **161 Extended meaning of *residential customer***

6 *Home-based business carried on by an individual*

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

15 *Home-based business carried on by a partnership*

- 16 (2) For the purposes of this Part, if a business is carried on by a  
17 partnership, and:  
18 (a) most or all of the work of the business is carried out at the  
19 residence of an individual who is:  
20 (i) one of the partners of the partnership; or  
21 (ii) the director, or one of the directors, of a corporation that  
22 is one of the partners of the partnership; or  
23 (b) the business does not occupy any premises other than the  
24 residence of an individual who is:  
25 (i) one of the partners of the partnership; or  
26 (ii) the director, or one of the directors, of a corporation that  
27 is one of the partners of the partnership;  
28 the partnership, in its capacity as a customer, is taken to be a  
29 *residential customer*.



1

*Home-based business carried on by a corporation*

2

- (3) For the purposes of this Part, if a business is carried on (otherwise than in the capacity of trustee) by a corporation, and:

3

4

- (a) most or all of the work of the business is carried out at the residence of an individual who is the director, or one of the directors, of the corporation; or

5

6

7

- (b) the business does not occupy any premises other than the residence of an individual who is the director, or one of the directors, of the corporation;

8

9

10

the corporation, in its capacity as a customer, is taken to be a ***residential customer***.

11

12

*Home-based business carried on by a trust*

13

- (4) For the purposes of this Part, if a business is carried on by a trust, and:

14

15

- (a) most or all of the work of the business is carried out at the residence of an individual who is:

16

17

- (i) a trustee of the trust; or

18

- (ii) the director, or one of the directors, of a corporation that is a trustee of the trust; or

19

20

- (b) the business does not occupy any premises other than the residence of an individual who is:

21

22

- (i) a trustee of the trust; or

23

- (ii) the director, or one of the directors, of a corporation that is a trustee of the trust;

24

25

a trustee of the trust, in the trustee's capacity as a customer, is taken to be a ***residential customer***.

26

27

**78 Before paragraph 564(3)(a)**

28

Insert:

29

- (aaa) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

30

31

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

32

33

# EXPOSURE DRAFT

## Schedule 2 Local access lines

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1 **79 After paragraph 564(3)(ba)**

2 Insert:

3 (bb) the service provider rule set out in Part 1 of Schedule 2 in so  
4 far as that rule relates to section 142C, 143, 143B, 151ZA,  
5 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

6 **80 Subsection 564(3) (before note 1)**

7 Insert:

8 Note 1AA: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG,  
9 151ZH and 151ZI are set out in Part 8 (local access lines).

10 **81 Before paragraph 571(3)(a)**

11 Insert:

12 (aaa) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF,  
13 151ZG, 151ZH or 151ZI; or  
14 (aab) the carrier licence condition set out in Part 1 of Schedule 1 in  
15 so far as that condition relates to section 142C, 143, 143B,  
16 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

17 **82 After paragraph 571(3)(ba)**

18 Insert:

19 (bb) the service provider rule set out in Part 1 of Schedule 2 in so  
20 far as that rule relates to section 142C, 143, 143B, 151ZA,  
21 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or

22 **83 Subsection 571(3) (before note 1)**

23 Insert:

24 Note 1AA: Sections 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF, 151ZG,  
25 151ZH and 151ZI are set out in Part 8 (local access lines).

26 **84 At the end of paragraph 572E(6)(c)**

27 Add “(other than section 142C, 143, 143B, 151ZA, 151ZB, 151ZD,  
28 151ZF, 151ZG, 151ZH or 151ZI)”.

29 **85 After paragraph 572F(1)(c)**

30 Insert:

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# EXPOSURE DRAFT

Local access lines **Schedule 2**

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- 1 (ca) if the alleged contravention consists of a breach of:  
2 (i) section 68, to the extent to which that section relates to  
3 the carrier licence condition set out in Part 1 of  
4 Schedule 1 in so far as that condition relates to  
5 section 142C, 143, 143B, 151ZA, 151ZB, 151ZD,  
6 151ZF, 151ZG, 151ZH or 151ZI; or  
7 (ii) section 101, to the extent to which that section relates to  
8 the service provider rule set out in Part 1 of Schedule 2  
9 in so far as that rule relates to section 142C, 143, 143B,  
10 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or  
11 151ZI; or  
12 (iii) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD,  
13 151ZF, 151ZG, 151ZH or 151ZI;  
14 contain a statement to the effect that the matter will not be  
15 dealt with by the Federal Court if the penalty specified in the  
16 notice is paid to the ACCC, on behalf of the Commonwealth,  
17 within:  
18 (iv) 28 days after the notice is given; or  
19 (v) if the ACCC allows a longer period—that longer period;  
20 and

## 21 **86 Paragraph 572F(1)(d)**

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

## 23 **87 At the end of section 572L**

24 Add:

- 25 (3) The ACCC may, by writing, appoint a member of the staff of the  
26 ACCC as an authorised infringement notice officer for the  
27 purposes of this Part.
- 28 (4) The ACCC must not appoint a person under subsection (3) unless  
29 the person:  
30 (a) is an SES employee or acting SES employee; or  
31 (b) holds, or is acting in, an Executive Level 1 or 2 position or an  
32 equivalent position.

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

# EXPOSURE DRAFT

## Schedule 2 Local access lines

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- 1 (5) An authorised infringement notice officer appointed under  
2 subsection (1) must not give or withdraw an infringement notice if  
3 the alleged contravention consists of a breach of:  
4 (a) section 68, to the extent to which that section relates to the  
5 carrier licence condition set out in Part 1 of Schedule 1 in so  
6 far as that condition relates to section 142C, 143, 143B,  
7 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or  
8 (b) section 101, to the extent to which that section relates to the  
9 service provider rule set out in Part 1 of Schedule 2 in so far  
10 as that rule relates to section 142C, 143, 143B, 151ZA,  
11 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or  
12 (c) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF,  
13 151ZG, 151ZH or 151ZI.
- 14 (6) An authorised infringement notice officer appointed under  
15 subsection (3) must not give or withdraw an infringement notice  
16 unless the alleged contravention consists of a breach of:  
17 (a) section 68, to the extent to which that section relates to the  
18 carrier licence condition set out in Part 1 of Schedule 1 in so  
19 far as that condition relates to section 142C, 143, 143B,  
20 151ZA, 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or  
21 (b) section 101, to the extent to which that section relates to the  
22 service provider rule set out in Part 1 of Schedule 2 in so far  
23 as that rule relates to section 142C, 143, 143B, 151ZA,  
24 151ZB, 151ZD, 151ZF, 151ZG, 151ZH or 151ZI; or  
25 (c) section 142C, 143, 143B, 151ZA, 151ZB, 151ZD, 151ZF,  
26 151ZG, 151ZH or 151ZI.

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

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1 **Schedule 3—Statutory infrastructure**  
2 **providers**

3 **Part 1—Amendments**

4 *Competition and Consumer Act 2010*

5 **1 After section 152BCCA**

6 Insert:

7 **152BCCB Statutory infrastructure provider standards and rules**  
8 **prevail over inconsistent access determinations**

9 An access determination made after the commencement of this  
10 section has no effect to the extent to which it is inconsistent with:

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

14 **2 After section 152BDCA**

15 Insert:

16 **152BDCB Statutory infrastructure provider standards and rules**  
17 **prevail over inconsistent binding rules of conduct**

18 Binding rules of conduct made after the commencement of this  
19 section have no effect to the extent to which they are inconsistent  
20 with:

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

24 **3 Before section 152BEC**

25 Insert:

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

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1 **152BEBH Statutory infrastructure provider standards prevail over**  
2 **inconsistent access agreements**

3 (1) An access agreement entered into after the commencement of this  
4 section has no effect to the extent to which it is inconsistent with a  
5 standard determined under section 360U of the  
6 *Telecommunications Act 1997*.

7 (2) Subsection (1) does not apply to an access agreement covered by  
8 subsection 360U(5) of the *Telecommunications Act 1997*.

9 **152BEBI Statutory infrastructure provider rules prevail over**  
10 **inconsistent access agreements**

11 (1) An access agreement entered into after the commencement of this  
12 section has no effect to the extent to which it is inconsistent with  
13 rules made under section 360V of the *Telecommunications Act*  
14 *1997*.

15 (2) Subsection (1) does not apply to an access agreement covered by  
16 subsection 360V(3) of the *Telecommunications Act 1997*.

17 **4 After section 152CBIC**

18 Insert:

19 **152CBID Statutory infrastructure provider standards and rules**  
20 **prevail over inconsistent special access undertakings**

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

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

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

26 ***Telecommunications Act 1997***

27 **5 Section 7**

28 Insert:

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# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

---

1                    *fixed wireless broadband service* has the meaning given by  
2                    section 17.

3                    *fixed wireless technology platform* has the meaning generally  
4                    accepted within the telecommunications industry.

## 5                    **6 After section 16**

6                                       Insert:

## 7                    **17 Fixed wireless broadband service**

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

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

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

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

16                                                          (d) the carriage service is not a public mobile  
17                                                          telecommunications service; and

18                                                          (e) the carriage service is a listed carriage service; and

19                                                          (f) the conditions (if any) determined under subsection (2) are  
20                                                          satisfied.

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

## 23                    **7 After Part 18**

24                                       Insert:

# EXPOSURE DRAFT

Schedule 3 Statutory infrastructure providers

Part 1 Amendments

---

1 **Part 19—Statutory infrastructure providers**

2 **Division 1—Introduction**

3 **360 Simplified outline of this Part**

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

24 **360A Definitions**

25 In this Part:

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



# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

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

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

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

8                    **designated equipment** means any of the following:

- 9                    (a) a personal medical alarm;
- 10                   (b) equipment for use by an individual in connection with  
11                   monitoring a medical condition of the individual;
- 12                   (c) equipment for use by an individual who:
- 13                          (i) is deaf; or
- 14                          (ii) has a hearing impairment; or
- 15                          (iii) has a speech impairment;
- 16                          in connection with communications;
- 17                   (d) equipment for use in connection with a payment system;
- 18                   (e) an automatic teller machine;
- 19                   (f) a security alarm;
- 20                   (g) a fire alarm;
- 21                   (h) a lift alarm;
- 22                   (i) a lift telephone;
- 23                   (j) equipment for use in connection with monitoring the  
24                   operation of a lift;
- 25                   (k) equipment for use in connection with the management or  
26                   control of road traffic;
- 27                   (l) equipment specified in the regulations.

28                   Note:            For specification by class, see subsection 13(3) of the *Legislation Act*  
29                   *2003*.

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

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

33                   **equipment** includes a device.

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# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

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- 1            ***exempt area*** has the meaning given by section 360N.
- 2            ***general service area*** has the meaning given by section 360F.
- 3            ***interim NBN service area*** has the meaning given by section 360D.
- 4            ***NBN Co*** has the same meaning as in the *National Broadband*  
5            *Network Companies Act 2011*.
- 6            ***nominated service area*** has the meaning given by section 360H or  
7            360J.
- 8            ***project area***, for a building redevelopment project, has the  
9            meaning given by section 360Y.
- 10           ***provisional designated service area*** has the meaning given by  
11           section 360L.
- 12           ***provisional interim NBN service area*** has the meaning given by  
13           section 360D.
- 14           ***provisional nominated service area*** has the meaning given by  
15           section 360H.
- 16           ***qualifying carriage service*** means:  
17           (a) a qualifying fixed-line carriage service; or  
18           (b) a qualifying fixed wireless carriage service; or  
19           (c) a qualifying satellite carriage service.
- 20           ***qualifying fixed-line carriage service*** means a carriage service,  
21           where:  
22           (a) the carriage service enables end-users to download  
23           communications; and  
24           (b) the download transmission speed of the carriage service is  
25           normally 25 megabits per second or more; and  
26           (c) the carriage service is supplied using a line to premises  
27           occupied or used by an end-user.
- 28           ***qualifying fixed-line telecommunications network*** means a  
29           telecommunications network that is used to supply a qualifying  
30           fixed-line carriage service to customers in Australia.
-

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

---

1                    ***qualifying fixed wireless carriage service*** means a carriage service  
2                    that is a fixed wireless broadband service.

3                    ***qualifying satellite carriage service*** means a carriage service,  
4                    where:

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

7                    (b) the carriage service is supplied using a satellite;  
8                    but does not include a public mobile telecommunications service.

9                    ***qualifying telecommunications network*** means a  
10                    telecommunications network that is used, or proposed to be used,  
11                    to supply a qualifying carriage service to customers, or prospective  
12                    customers, in Australia.

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

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

18                    ***service area*** has the meaning given by section 360C.

19                    ***statutory infrastructure provider***:

20                    (a) for an interim NBN service area—has the meaning given by  
21                    section 360E; or

22                    (b) for the general service area—has the meaning given by  
23                    section 360G; or

24                    (c) for a nominated service area—has the meaning given by  
25                    section 360K; or

26                    (d) for a designated service area—has the meaning given by  
27                    section 360M.

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

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1 **Division 2—Service areas and statutory infrastructure**  
2 **providers**

3 **Subdivision AA—Introduction**

4 **360B Simplified outline of this Division**

- 5
- 6 • There are 4 types of service area, as follows:
    - 7 (a) an interim NBN service area;
    - 8 (b) the general service area;
    - 9 (c) a nominated service area;
    - 10 (d) a designated service area.
  - 11 • Interim NBN service areas exist only before the designated day.
  - 12 • The general service area exists only after the start of the
  - 13 designated day.
  - 14 • An NBN corporation will be the statutory infrastructure
  - 15 provider for an interim NBN service area.
  - 16 • NBN Co will be the statutory infrastructure provider for the
  - 17 general service area.
  - 18 • A nominated service area is an area that is attributable to:
    - 19 (a) a declaration made by a carrier; or
    - 20 (b) certain carrier licence conditions declarations made by
    - 21 the Minister.
  - 22 • The statutory infrastructure provider for a nominated service
  - 23 area that is attributable to a declaration made by a carrier will
  - 24 be:
    - 25 (a) the carrier; or
    - 26 (b) another carrier declared by the Minister.

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

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

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## **360C Definition of *service area***

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

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

# EXPOSURE DRAFT

Schedule 3 Statutory infrastructure providers

Part 1 Amendments

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1       **Subdivision A—Rules applicable before the designated day**

2       **360D Interim NBN service area**

3               (1) For the purposes of the application of this Part before the  
4               designated day, an *interim NBN service area* is so much of a  
5               provisional interim NBN service area as is not:

- 6                       (a) the whole or a part of a nominated service area; or  
7                       (b) the whole or a part of a designated service area; or  
8                       (c) the whole or a part of an exempt area.

9                       *Provisional interim NBN service area*

10               (2) If, during the period:

- 11                       (a) beginning at the commencement of this section; and  
12                       (b) ending immediately before the designated day;

13               an NBN corporation begins to supply listed carriage services to  
14               premises in a particular area in Australia, NBN Co must:

- 15                       (c) by written instrument, declare that the area is a *provisional*  
16                       *interim NBN service area* for the purposes of the application  
17                       of this Part before the designated day; and  
18                       (d) do so within 10 business days after the NBN corporation  
19                       begins to supply those services.

20               (3) If, before the commencement of this section, an NBN corporation  
21               had begun to supply listed carriage services to premises in a  
22               particular area in Australia, NBN Co must:

- 23                       (a) by written instrument, declare that the area is a *provisional*  
24                       *interim NBN service area* for the purposes of the application  
25                       of this Part before the designated day; and  
26                       (b) do so within 10 business days after the commencement of  
27                       this section.

28                       *Publication etc.*

29               (4) NBN Co must publish a copy of a declaration made by it under  
30               subsection (2) or (3) on its website.

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

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- 1 (5) NBN Co must give a copy of a declaration made by it under  
2 subsection (2) or (3) to:  
3 (a) the Secretary of the Department; and  
4 (b) the ACMA.
- 5 (6) The Secretary of the Department must publish on the Department's  
6 website a copy of a declaration given to the Secretary under  
7 subsection (5).

8 *Variation and revocation*

- 9 (7) A declaration made under subsection (2) or (3) cannot be varied or  
10 revoked.

11 *Principles*

- 12 (8) In making a declaration under subsection (2) or (3), NBN Co must  
13 comply with any principles determined under subsection (9).
- 14 (9) The Minister may, by legislative instrument, determine principles  
15 for the purposes of subsection (8).

16 *Declaration is not a legislative instrument*

- 17 (10) A declaration made under subsection (2) or (3) is not a legislative  
18 instrument.

19 **360E Statutory infrastructure provider for an interim NBN service**  
20 **area**

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

- 23 (a) an area is a provisional interim NBN service area because of  
24 a section 360D declaration made by NBN Co on the basis  
25 that an NBN corporation has begun to supply listed carriage  
26 services to premises in the area; and  
27 (b) the whole or a part of the provisional interim NBN service  
28 area is an interim NBN service area;  
29 the NBN corporation is the *statutory infrastructure provider* for  
30 the interim NBN service area.

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

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1       **Subdivision B—Rules applicable after the start of the**  
2                               **designated day**

3       **360F General service area**

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

- 7                               (a) a nominated service area; or  
8                               (b) a designated service area; or  
9                               (c) an exempt area.

10       **360G Statutory infrastructure provider for the general service area**

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

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

16       **360H Nominated service area—declaration made by a carrier**

17                              (1) For the purposes of this Part, if a provisional nominated service  
18                              area is attributable to a declaration under this section, so much of  
19                              the provisional nominated service area as is not:

- 20                              (a) the whole or a part of a provisional nominated service area  
21                              that is attributable to a subsequent declaration under this  
22                              section; or  
23                              (b) the whole or a part of a designated service area; or  
24                              (c) the whole or a part of an exempt area;

25                              is a *nominated service area*.

26                              *Provisional nominated service area—real estate development*  
27                              *project*

28                              (2) If:



# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

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- 1 (a) after the commencement of this section, a carrier (other than  
2 an NBN corporation) installs telecommunications network  
3 infrastructure that will enable the supply of eligible services  
4 to premises in the project area of a real estate development  
5 project; and  
6 (b) the installation was carried out under a contract; and  
7 (c) the conditions (if any) specified in an instrument under  
8 subsection (3) are satisfied;  
9 the carrier must:  
10 (d) by written instrument, declare that the project area is a  
11 ***provisional nominated service area*** for the purposes of this  
12 Part; and  
13 (e) do so within 10 business days after completing the  
14 installation of that infrastructure.
- 15 (3) The Minister may, by legislative instrument, specify conditions for  
16 the purposes of paragraph (2)(c).
- 17 *Provisional nominated service area—building redevelopment*  
18 *project*
- 19 (4) If:  
20 (a) after the commencement of this section, a carrier (other than  
21 an NBN corporation) installs telecommunications network  
22 infrastructure that will enable the supply of eligible services  
23 to premises in the project area of a building redevelopment  
24 project; and  
25 (b) the installation was carried out under a contract; and  
26 (c) the conditions (if any) specified in an instrument under  
27 subsection (5) are satisfied;  
28 the carrier must:  
29 (d) by written instrument, declare that the project area is a  
30 ***provisional nominated service area*** for the purposes of this  
31 Part; and  
32 (e) do so within 10 business days after completing the  
33 installation of that infrastructure.
- 34 (5) The Minister may, by legislative instrument, specify conditions for  
35 the purposes of paragraph (4)(c).
-

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

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1

#### *Infrastructure installed under a contract*

2

(6) If:

3

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

4

5

6

7

(b) the area does not consist of, and is not included in:

8

(i) the project area of a real estate development project; or

9

(ii) the project area of a building redevelopment project;

10

and

11

(c) the installation was carried out under a contract; and

12

(d) under the contract, the carrier is or was required, on

13

reasonable request by a carriage service provider on behalf of

14

an end-user at premises in the area, to connect the premises

15

to a qualifying telecommunications network in order that the

16

carriage service provider can provide qualifying carriage

17

services to the end-user at the premises; and

18

(e) the conditions (if any) specified in an instrument under

19

subsection (7) are satisfied;

20

the carrier may, by written instrument, declare that the area is a

21

***provisional nominated service area*** for the purposes of this Part.

22

(7) The Minister may, by legislative instrument, specify conditions for

23

the purposes of paragraph (6)(e).

24

#### *Publication etc.*

25

(8) A carrier must publish on its website a copy of a declaration made

26

by it under this section.

27

(9) A carrier must give a copy of a declaration made by it under this

28

section to:

29

(a) the Secretary of the Department; and

30

(b) the ACMA.

31

(10) The Secretary of the Department must publish on the Department's

32

website a copy of a declaration given to the Secretary under

33

subsection (9).

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# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

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1

## *Principles*

2

(11) In making a declaration under this section, a carrier must comply with any principles determined under subsection (12).

3

4

(12) The Minister may, by legislative instrument, determine principles for the purposes of subsection (11).

5

6

## *Revocation*

7

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

8

## *Variation*

9

(14) A declaration made under this section cannot be varied except under subsection (15).

10

11

(15) The Minister may, by writing, vary a declaration made under this section.

12

13

(16) The Minister must cause a copy of a variation under subsection (15) to be published on the Department's website.

14

15

(17) Before making a decision under subsection (15) to vary a declaration, the Minister must:

16

17

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

18

(i) setting out the draft variation; and

19

(ii) inviting persons to make submissions to the Minister about the draft variation within the time limit specified in the notice; and

20

21

22

(b) consider any submissions received within the time limit specified in the notice.

23

24

(18) The time limit must not be shorter than 10 business days after the notice is published.

25

26

## *Declaration and variation are not legislative instruments*

27

(19) A declaration made under this section is not a legislative instrument.

28

29

(20) A variation under subsection (15) is not a legislative instrument.

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# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

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

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

#### 4 **360J Nominated service area—carrier licence conditions** 5 **declarations**

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

- 11 (a) the *Carrier Licence Conditions (OptiComm Pty Ltd)*  
12 *Declaration 2013*;
- 13 (b) the *Carrier Licence Conditions (Pivit Pty Ltd)*  
14 *Declaration 2013*;
- 15 (c) the *Carrier Licence Conditions (NT Technology Services Pty*  
16 *Ltd) Declaration 2014*;
- 17 (d) the *Carrier Licence Conditions (Urban Renewal Authority*  
18 *Victoria t/a Places Victoria Pty Ltd) Declaration 2014*;
- 19 the development area is a ***nominated service area*** for the purposes  
20 of this Part.

#### 21 **360K Statutory infrastructure provider for a nominated service area**

22 *Nominated service area covered by a declaration under*  
23 *section 360H*

- 24 (1) For the purposes of this Part, if:
- 25 (a) an area is a provisional nominated service area because of a  
26 declaration made by a carrier under section 360H; and
- 27 (b) the whole or a part of the provisional nominated service area  
28 is a nominated service area;
- 29 the carrier is the ***statutory infrastructure provider*** for the  
30 nominated service area.
- 31 (2) The Minister may, by legislative instrument, declare that:
-

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

---

- 1 (a) subsection (1) does not apply to a specified nominated  
2 service area; and  
3 (b) a specified carrier is the *statutory infrastructure provider* for  
4 the nominated service area for the purposes of this Part.

5 *Nominated service area resulting from the application of*  
6 *section 360J*

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

## 20 **360L Designated service areas**

- 21 (1) For the purposes of this Part, a *designated service area* is so much  
22 of a provisional designated service area as is not the whole or a  
23 part of an exempt area.
- 24 (2) The Minister may, by legislative instrument, declare that a  
25 specified area is a *provisional designated service area* for the  
26 purposes of this Part.

## 27 **360M Statutory infrastructure provider for a designated service** 28 **area**

29 The Minister may, by legislative instrument, declare that a  
30 specified carrier is the *statutory infrastructure provider* for a  
31 specified designated service area for the purposes of this Part.

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

---

1 **360N Exempt areas**

- 2 (1) The Minister may, by legislative instrument, declare that a  
3 specified area is an *exempt area* for the purposes of this Part.
- 4 (2) The Minister must not make a declaration under subsection (1) in  
5 relation to an area unless the Minister is satisfied that there is a  
6 sufficient degree of competition in the telecommunications market  
7 (at both the retail level and the wholesale level) in the area to  
8 warrant the making of the declaration.

9 **Division 3—Obligations of statutory infrastructure**  
10 **provider**

11 **Subdivision A—Obligations relating to premises**

12 **360P Obligation of statutory infrastructure provider to connect**  
13 **premises**

- 14 (1) The statutory infrastructure provider for a service area must, on  
15 reasonable request by a carriage service provider on behalf of an  
16 end-user at premises in the service area:
- 17 (a) connect the premises to a qualifying fixed-line  
18 telecommunications network in order that the carriage service  
19 provider can provide qualifying fixed-line carriage services  
20 to the end-user at the premises; or
- 21 (b) if it is not reasonably practicable for the statutory  
22 infrastructure provider to connect the premises to a  
23 qualifying fixed-line telecommunications network—connect  
24 the premises to a qualifying telecommunications network in  
25 order that the carriage service provider can provide:
- 26 (i) qualifying fixed wireless carriage services to the  
27 end-user at the premises; or
- 28 (ii) qualifying satellite carriage services to the end-user at  
29 the premises.

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

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1

## *Exceptions*

2

(2) An obligation does not arise under subsection (1) in relation to the connection of premises in the circumstances (if any) specified in a determination under subsection (3).

3

4

5

(3) The Minister may, by legislative instrument, determine circumstances for the purposes of subsection (2).

6

7

(4) An obligation is not imposed on NBN Co under subsection (1) in relation to particular premises if:

8

9

(a) a qualifying telecommunications network is operated by a person other than NBN Co; and

10

11

(b) any of the following subparagraphs applies:

12

(i) the qualifying telecommunications network is used to supply a qualifying carriage service to an end-user at the premises;

13

14

15

(ii) the premises are connected to the qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises;

16

17

18

19

(iii) the premises are readily capable of being connected to the qualifying telecommunications network in order that a carriage service provider can provide qualifying carriage services to an end-user at the premises; and

20

21

22

23

(c) the other conditions (if any) determined under subsection (5) are satisfied.

24

25

(5) The Minister may, by legislative instrument, determine one or more conditions for the purposes of paragraph (4)(c).

26

27

## *Requirements*

28

(6) In fulfilling its obligations under subsection (1), the statutory infrastructure provider for a service area must comply with such requirements (if any) as are determined under subsection (7).

29

30

31

(7) The Minister may, by legislative instrument, determine one or more requirements for the purposes of subsection (6).

32

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

---

1 (8) A requirement may be of general application or may be limited to  
2 one or more service areas.

3 (9) Subsection (8) does not, by implication, limit the application of  
4 subsection 33(3A) of the *Acts Interpretation Act 1901*.

#### 5 *Terms and conditions*

6 (10) If:

7 (a) a carriage service provider makes a request as mentioned in  
8 subsection (1) in relation to the connection of premises; and

9 (b) as a result, the statutory infrastructure provider has an  
10 obligation under subsection (1) to connect the premises; and

11 (c) the connection is covered by an agreement between the  
12 statutory infrastructure provider and the carriage service  
13 provider;

14 the statutory infrastructure provider must comply with the  
15 obligation on the terms and conditions that were published on the  
16 statutory infrastructure provider's website at the time when the  
17 agreement was entered into.

18 Note: For publication, see section 360W.

19 (11) If:

20 (a) a carriage service provider makes a request as mentioned in  
21 subsection (1) in relation to the connection of premises; and

22 (b) as a result, the statutory infrastructure provider has an  
23 obligation under subsection (1) to connect the premises; and

24 (c) the connection is not covered by an agreement between the  
25 statutory infrastructure provider and the carriage service  
26 provider;

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

31 Note: For publication, see section 360W.

#### 32 *Ministerial determination—reasonably practicable*

33 (12) The Minister may, by legislative instrument:

---



# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
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---

- 1 (a) determine that, if the condition specified in the determination  
2 is satisfied in relation to premises, then, for the purposes of  
3 subsection (1), it is taken not to be reasonably practicable for  
4 a statutory infrastructure provider to connect the premises to  
5 a qualifying fixed-line telecommunications network; or  
6 (b) determine that, if the conditions specified in the  
7 determination are satisfied in relation to premises, then, for  
8 the purposes of subsection (1), it is taken not to be reasonably  
9 practicable for a statutory infrastructure provider to connect  
10 the premises to a qualifying fixed-line telecommunications  
11 network.
- 12 (13) A determination under subsection (12) must be an instrument of a  
13 legislative character.

## 14 **360Q Obligation of statutory infrastructure provider to supply** 15 **eligible services—premises**

- 16 (1) The statutory infrastructure provider for a service area must, on  
17 reasonable request by a carriage service provider:  
18 (a) supply an eligible service to the carriage service provider in  
19 order that the carriage service provider can provide  
20 qualifying carriage services to end-users at premises in the  
21 service area; and  
22 (b) do so on the terms and conditions that were published on the  
23 statutory infrastructure provider's website at the time when  
24 the request was made.

25 Note: For publication, see section 360X.

### 26 *Exceptions*

- 27 (2) An obligation does not arise under subsection (1) in relation to  
28 supply of an eligible service in the circumstances (if any) specified  
29 in a determination under subsection (3).
- 30 (3) The Minister may, by legislative instrument, determine  
31 circumstances for the purposes of subsection (2).
- 32 (4) An obligation is not imposed on NBN Co under subsection (1) in  
33 relation to particular premises if:

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## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

---

- 1 (a) a qualifying telecommunications network is operated by a  
2 person other than NBN Co; and  
3 (b) any of the following subparagraphs applies:  
4 (i) the qualifying telecommunications network is used to  
5 supply a qualifying carriage service to an end-user at the  
6 premises;  
7 (ii) the premises are connected to the qualifying  
8 telecommunications network in order that a carriage  
9 service provider can provide qualifying carriage  
10 services to an end-user at the premises;  
11 (iii) the premises are readily capable of being connected to  
12 the qualifying telecommunications network in order that  
13 a carriage service provider can provide qualifying  
14 carriage services to an end-user at the premises; and  
15 (c) the other conditions (if any) determined under subsection (5)  
16 are satisfied.

- 17 (5) The Minister may, by legislative instrument, determine one or  
18 more conditions for the purposes of paragraph (4)(c).

#### 19 *Requirements*

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

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

---

1     **360R Notification obligations of statutory infrastructure provider**

2                     *Scope*

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

7                     *Obligations*

- 8             (2) If the first carrier becomes aware that it is likely that it will no  
9             longer be able to fulfil its obligations under section 360P or 360Q,  
10            so far as they relate to the area, the first carrier must:  
11               (a) give written notice of the matter to:  
12                   (i) the Secretary of the Department; and  
13                   (ii) the ACMA; and  
14               (b) do so as soon as practicable after becoming so aware.
- 15             (3) If:  
16               (a) subsection (2) applies; and  
17               (b) the first carrier becomes aware that another carrier is willing  
18               to become the statutory infrastructure provider for the area;  
19            the first carrier must:  
20               (c) give written notice of the matter to:  
21                   (i) the Secretary of the Department; and  
22                   (ii) the ACMA; and  
23               (d) do so as soon as practicable after becoming so aware.

24     **Subdivision B—Obligations relating to designated equipment**

25     **360S Obligation of statutory infrastructure provider to connect**  
26     **designated equipment**

- 27             (1) The statutory infrastructure provider for a service area must, on  
28             reasonable request by a carriage service provider on behalf of the  
29             owner or operator of particular designated equipment in the service  
30             area, connect the designated equipment to a telecommunications

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

---

1 network in order that the carriage service provider can provide a  
2 carriage service that enables the effective operation of the  
3 designated equipment.

#### 4 *Exceptions*

5 (2) An obligation does not arise under subsection (1) in relation to  
6 connection of designated equipment in the circumstances (if any)  
7 specified in a determination under subsection (3).

8 (3) The Minister may, by legislative instrument, determine  
9 circumstances for the purposes of subsection (2).

10 (4) An obligation is not imposed on NBN Co under subsection (1) in  
11 relation to particular designated equipment if:

12 (a) a telecommunications network is operated by a person other  
13 than NBN Co; and

14 (b) any of the following subparagraphs applies:

15 (i) the telecommunications network is used to supply a  
16 carriage service that enables the effective operation of  
17 the designated equipment;

18 (ii) the designated equipment is connected to the  
19 telecommunications network in order that a carriage  
20 service provider can provide a carriage service that  
21 enables the effective operation of the designated  
22 equipment;

23 (iii) the designated equipment is readily capable of being  
24 connected to the telecommunications network in order  
25 that a carriage service provider can provide a carriage  
26 service that enables the effective operation of the  
27 designated equipment; and

28 (c) the other conditions (if any) determined under subsection (5)  
29 are satisfied.

30 (5) The Minister may, by legislative instrument, determine one or  
31 more conditions for the purposes of paragraph (4)(c).

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Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

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## *Requirements*

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

## **360T Obligation of statutory infrastructure provider to supply eligible services—designated equipment**

- 11
- 12
- 13 (1) The statutory infrastructure provider for a service area must, on  
14 reasonable request by a carriage service provider:
- 15 (a) supply an eligible service to the carriage service provider in  
16 order that the carriage service provider can provide carriage  
17 services that enable the effective operation of designated  
18 equipment that is:
- 19 (i) in the service area; and  
20 (ii) specified in the request; and
- 21 (b) do so on such terms and conditions as are agreed between the  
22 following parties:
- 23 (i) the statutory infrastructure provider;  
24 (ii) the carriage service provider.

25 Note: For specification by class, see subsection (8).

## *Exceptions*

- 26
- 27 (2) An obligation does not arise under subsection (1) in relation to  
28 supply of an eligible service in the circumstances (if any) specified  
29 in a determination under subsection (3).
- 30 (3) The Minister may, by legislative instrument, determine  
31 circumstances for the purposes of subsection (2).

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## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

---

- 1 (4) An obligation is not imposed on NBN Co under subsection (1) in  
2 relation to particular designated equipment if:  
3 (a) a telecommunications network is operated by a person other  
4 than NBN Co; and  
5 (b) any of the following subparagraphs applies:  
6 (i) the telecommunications network is used to supply a  
7 carriage service that enables the effective operation of  
8 the designated equipment;  
9 (ii) the designated equipment is connected to the  
10 telecommunications network in order that a carriage  
11 service provider can provide a carriage service that  
12 enables the effective operation of the designated  
13 equipment;  
14 (iii) the designated equipment is readily capable of being  
15 connected to the telecommunications network in order  
16 that a carriage service provider can provide a carriage  
17 service that enables the effective operation of the  
18 designated equipment; and  
19 (c) the other conditions (if any) determined under subsection (5)  
20 are satisfied.
- 21 (5) The Minister may, by legislative instrument, determine one or  
22 more conditions for the purposes of paragraph (4)(c).

#### 23 *Requirements*

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

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

---

1 *Specified designated equipment*

- 2 (10) For the purposes of this section, designated equipment is taken to  
3 be specified in a request if the designated equipment is included in  
4 a class of designated equipment specified in the request.

5 **Division 4—Standards, benchmarks and rules**

6 **360U Standards and benchmarks**

7 *Standards*

- 8 (1) The Minister may, by legislative instrument, determine standards  
9 to be complied with by statutory infrastructure providers in relation  
10 to any or all of the following matters:
- 11 (a) the terms and conditions of the supply of an eligible service  
12 to a carriage service provider in order that the carriage  
13 service provider can provide qualifying carriage services to  
14 an end-user at premises in a relevant service area;
  - 15 (b) the reliability of such an eligible service supplied to a  
16 carriage service provider;
  - 17 (c) the maximum period within which a statutory infrastructure  
18 provider must begin to supply such an eligible service  
19 following the making of a request by a carriage service  
20 provider;
  - 21 (d) the maximum period within which a statutory infrastructure  
22 provider must rectify a fault or service difficulty relating to  
23 such an eligible service following the making of a report by a  
24 carriage service provider about the fault or service difficulty;
  - 25 (e) any other matter concerning the supply, or proposed supply,  
26 of such an eligible service to a carriage service provider;
  - 27 (f) the maximum period within which the statutory infrastructure  
28 provider must connect premises in a relevant service area to a  
29 qualifying telecommunications network in order that a  
30 carriage service provider can provide qualifying carriage  
31 services to an end-user at the premises, following the making  
32 of a request by the carriage service provider on behalf of the  
33 end-user;

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

---

1 (g) any other matter concerning the connection of premises in a  
2 relevant service area to a qualifying telecommunications  
3 network in order that a carriage service provider can provide  
4 qualifying carriage services to an end-user at the premises.

5 (2) A determination under subsection (1) may be of general  
6 application or may be limited as provided in the determination.

7 (3) Subsection (2) does not, by implication, limit subsection 33(3A) of  
8 the *Acts Interpretation Act 1901*.

#### 9 *Compliance with standards*

10 (4) A statutory infrastructure provider must comply with a standard  
11 determined under subsection (1).

12 (5) However, a statutory infrastructure provider is not required to  
13 comply with a standard determined under subsection (1) to the  
14 extent that the standard is inconsistent with an access agreement to  
15 which the statutory infrastructure provider is a party, so long as:

16 (a) the agreement was entered into before the commencement of  
17 the standard; and

18 (b) the agreement has not been varied after the commencement  
19 of the standard.

#### 20 *Performance benchmarks*

21 (6) The Minister may, by legislative instrument, set minimum  
22 benchmarks in relation to compliance by a statutory infrastructure  
23 provider with a standard determined under subsection (1).

24 (7) An instrument under subsection (6) may be of general application  
25 or may be limited as provided in the instrument.

26 (8) Subsection (7) does not, by implication, limit subsection 33(3A) of  
27 the *Acts Interpretation Act 1901*.

#### 28 *Provider must meet or exceed minimum benchmarks*

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



# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

---

1 **360V Rules**

- 2 (1) The Minister may, by legislative instrument, make rules to be  
3 complied with by statutory infrastructure providers in relation to  
4 any or all of the following matters:
- 5 (a) the process for resolution of complaints about the supply of  
6 an eligible service to a carriage service provider in order that  
7 the carriage service provider can provide qualifying carriage  
8 services to an end-user at premises in a relevant service area;
  - 9 (b) any other matter concerning the supply, or proposed supply,  
10 of such an eligible service to a carriage service provider;
  - 11 (c) the process for resolution of complaints about the connection  
12 of premises in the service area to a qualifying  
13 telecommunications network in order that a carriage service  
14 provider can provide qualifying carriage services to an  
15 end-user at the premises;
  - 16 (d) any other matter concerning the connection of premises in the  
17 service area to a qualifying telecommunications network in  
18 order that a carriage service provider can provide qualifying  
19 carriage services to an end-user at the premises.

20 *Compliance*

- 21 (2) A statutory infrastructure provider must comply with rules under  
22 subsection (1).
- 23 (3) However, a statutory infrastructure provider is not required to  
24 comply with a rule under subsection (1) to the extent that the rule  
25 is inconsistent with an access agreement to which the statutory  
26 infrastructure provider is a party, so long as:
- 27 (a) the agreement was entered into before the commencement of  
28 the rule; and
  - 29 (b) the agreement has not been varied after the commencement  
30 of the rule.

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

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1 **Division 5—Publication of offers**

2 **360W Publication of offer etc.—connection of premises**

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

22 **360X Publication of offer—supply of eligible services**

- 23 (1) A statutory infrastructure provider for a service area must publish  
24 on its website:
- 25 (a) the terms and conditions relating to price or a method of  
26 ascertaining price; and  
27 (b) other terms and conditions;  
28 on which it offers to supply eligible services to carriage service  
29 providers in order that the carriage service providers can provide  
30 qualifying carriage services to end-users at premises in the service  
31 area.

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

---

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

## 16 **Division 6—Miscellaneous**

### 17 **360Y Building redevelopment projects etc.**

- 18 (1) For the purposes of this Part, a project is a **building redevelopment**  
19 **project** if:
- 20 (a) the project involves:
- 21 (i) the significant refurbishment or repurposing of one or  
22 more buildings so as to bring into existence one or more  
23 building units; and
- 24 (ii) the making available of any or all of those building units  
25 for sale or lease; and
- 26 (b) the conditions (if any) specified in an instrument under  
27 subsection (3) are satisfied.
- 28 (2) For the purposes of this Part, the area or areas occupied by the  
29 building or buildings are the **project area** for the building  
30 redevelopment project.
- 31 (3) The Minister may, by legislative instrument, specify conditions for  
32 the purposes of paragraph (1)(b).

# EXPOSURE DRAFT

## Schedule 3 Statutory infrastructure providers

### Part 1 Amendments

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- 1 (4) For the purposes of subsection (1), it is immaterial whether:  
2 (a) the project has been, is being, or will be, implemented in  
3 stages; or  
4 (b) different elements of the project have been, are being, or will  
5 be, carried out by different persons; or  
6 (c) one or more approvals are given, are required, or will be  
7 required, under a law of the Commonwealth, a State or a  
8 Territory, for the project, or any element of the project.

### 9 **360Z Register of statutory infrastructure providers**

- 10 (1) The ACMA is to maintain a Register in which the ACMA  
11 includes:  
12 (a) the name of each statutory infrastructure provider; and  
13 (b) for each of those providers—the relevant service area or  
14 areas.  
15 (2) The Register may be maintained by electronic means.  
16 (3) The Register is to be made available for inspection on the ACMA's  
17 website.

### 18 **360ZA Delegation**

- 19 (1) The Minister may, by writing, delegate to the ACMA any or all of  
20 the Minister's powers under the following provisions:  
21 (a) subsection 360D(9);  
22 (b) subsection 360H(3);  
23 (c) subsection 360H(5);  
24 (d) subsection 360H(7);  
25 (e) subsection 360H(12);  
26 (f) subsection 360P(3);  
27 (g) subsection 360P(5);  
28 (h) subsection 360P(7);  
29 (i) subsection 360P(12);  
30 (j) subsection 360Q(3);  
31 (k) subsection 360Q(5);  
32 (l) subsection 360Q(7);
-

# EXPOSURE DRAFT

Statutory infrastructure providers **Schedule 3**  
Amendments **Part 1**

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- 1 (m) subsection 360S(3);  
2 (n) subsection 360S(5);  
3 (o) subsection 360S(7);  
4 (p) subsection 360T(3);  
5 (q) subsection 360T(5);  
6 (r) subsection 360T(7);  
7 (s) subsection 360U(1);  
8 (t) subsection 360U(6);  
9 (u) subsection 360Y(3).
- 10 (2) The Minister may, by writing, delegate to:  
11 (a) a member of the ACMA; or  
12 (b) a person who is:  
13 (i) a member of the staff of the ACMA; and  
14 (ii) an SES employee or acting SES employee;  
15 any or all of the Minister's powers under subsection 360H(15)  
16 (variation of nominated service area declaration).

# EXPOSURE DRAFT

Schedule 3 Statutory infrastructure providers

Part 2 Repeals

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1 **Part 2—Repeals**

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

4 **8 The whole of the Declaration**

5 Repeal the Declaration.

6 *Carrier Licence Conditions (OptiComm Pty Ltd)*  
7 *Declaration 2013*

8 **9 The whole of the Declaration**

9 Repeal the Declaration.

10 *Carrier Licence Conditions (Pivot Pty Ltd) Declaration 2013*

11 **10 The whole of the Declaration**

12 Repeal the Declaration.

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

16 **11 The whole of the Declaration**

17 Repeal the Declaration.

# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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1 **Schedule 4—Funding of fixed wireless**  
2 **broadband and satellite broadband**  
3

4 *Telecommunications Act 1997*

5 **1 Section 7**

6 Insert:

7 *Federal Circuit Court* means the Federal Circuit Court of  
8 Australia.

9 **2 Paragraphs 58(2)(a) and (b)**

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

11 **3 After subsection 58(4A)**

12 Insert:

13 *When individual is disqualified—failure to pay funding charge*

14 (4B) For the purposes of subsection (2), an individual is *disqualified* at a  
15 particular time (the *test time*) if:

- 16 (a) at any time before the test time, a carrier licence held by a  
17 body corporate or partnership was cancelled under  
18 subsection 72(2B) because of a failure by the body corporate  
19 or partnership to pay in full the charge referred to in that  
20 subsection; and  
21 (b) in the case of a body corporate—at the time when the charge  
22 referred to in subsection 72(2B) was due and payable, the  
23 individual was:  
24 (i) a director of the body corporate; or  
25 (ii) the secretary of the body corporate; or  
26 (iii) a person (by whatever name called and whether or not a  
27 director of the body corporate) who was concerned in,  
28 or took part in, the management of the body corporate;  
29 and

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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

### 13 4 Paragraph 58(5)(a)

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

### 15 5 After subsection 72(2A)

16 Insert:

17 *Failure to pay funding charge*

- 18 (2B) The ACMA may cancel a carrier licence held by a carrier if the  
19 carrier fails to pay in full any funding charge on or before the date  
20 on which the funding charge becomes due and payable. For this  
21 purpose, *funding charge* means charge imposed by the  
22 *Telecommunications (Regional Broadband Scheme) Charge Act*  
23 *2017*.

### 24 6 Subsection 570(4)

25 Repeal the subsection, substitute:

- 26 (4) The pecuniary penalty payable under subsection (1) by a person  
27 other than a body corporate is not to exceed:  
28 (a) in the case of a contravention of subsection 68(1) or (2) that  
29 relates to the carrier licence condition set out in Part 1 of  
30 Schedule 1 in so far as that condition relates to  
31 subsection 97(1) of the *Telecommunications (Consumer*



# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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- 1                                    *Protection and Service Standards) Act 1999*—10,000 penalty  
2                                    units for each contravention; or  
3                                    (b) in any other case—\$50,000 for each contravention.

## 7 After paragraph 1(ja) of Schedule 4

5                    Insert:

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

## 12                    *Telecommunications (Consumer Protection and Service* 13                    *Standards) Act 1999*

## 14                    8 Section 4

15                    Before:

- 16                    

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

17                    insert:

- 18                    

• The Secretary is responsible for entering into contracts, and 19                    making grants, relating to: 20                    (a) fixed wireless broadband; and 21                    (b) satellite broadband.
• The ACMA will assess and collect the charge imposed on 22                    carriers by the <i>Telecommunications (Regional Broadband</i> 23 <i>Scheme) Charge Act 2017</i> .
• The proceeds of the charge will be used to: 24                    (a) pay contractors and grant recipients; and 25                    (b) pay designated administrative costs.

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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1 **9 Subsection 5(2) (definition of *contractor*)**

2 Repeal the definition.

3 **10 Subsection 5(2) (definition of *grant recipient*)**

4 Repeal the definition.

5 **11 After section 8**

6 Insert:

7 **8A Definitions**

8 In this Part:

9 *contractor* has the meaning given by section 14.

10 *grant recipient* has the meaning given by section 14.

11 **12 Subsections 14(2) and (3)**

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

13 **13 After Part 2**

14 Insert:

15 **Part 3—Funding of fixed wireless broadband and**  
16 **satellite broadband**

17 **Division 1—Introduction**

18 **75 Simplified outline of this Part**

- 19
- 20
- 21
- 22
- |   |
|---|
| <ul style="list-style-type: none"><li>• The Secretary is responsible for entering into contracts, and making grants, relating to:<ul style="list-style-type: none"><li>(a) fixed wireless broadband; and</li><li>(b) satellite broadband.</li></ul></li></ul> |
|---|

# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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- The ACMA will assess and collect the charge imposed on carriers by the *Telecommunications (Regional Broadband Scheme) Charge Act 2017*.
- The proceeds of the charge will be used to:
  - (a) pay contractors and grant recipients; and
  - (b) pay designated administrative costs.

## 76 Definitions

In this Part:

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

**amount** includes a nil amount.

**annual administrative cost amount**, for a financial year, has the same meaning as in the *Telecommunications (Regional Broadband Scheme) Charge Act 2017*.

**annual base amount**, for a financial year, has the same meaning as in the *Telecommunications (Regional Broadband Scheme) Charge Act 2017*.

**annual chargeable services amount**, for a financial year, has the same meaning as in the *Telecommunications (Regional Broadband Scheme) Charge Act 2017*.

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

**charge** means charge imposed by the *Telecommunications (Regional Broadband Scheme) Charge Act 2017*.

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

**charge offset certificate** means a certificate issued under section 98.

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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1                    **contractor** has the meaning given by section 80.

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

4                    **designated administrative costs** means:

5                    (a) remuneration, and other employment-related costs and  
6                    expenses, in respect of APS employees whose duties relate to  
7                    the performance of the ACMA's functions, or the exercise of  
8                    the ACMA's powers, under this Part; or

9                    (b) any other costs, expenses and other obligations incurred by  
10                    the ACMA in connection with the performance of the  
11                    ACMA's functions, or the exercise of the ACMA's powers,  
12                    under this Part; or

13                    (c) remuneration, and other employment-related costs and  
14                    expenses, in respect of APS employees whose duties relate to  
15                    the performance of the ACCC's functions, or the exercise of  
16                    the ACCC's powers, under this Part or the  
17                    *Telecommunications (Regional Broadband Scheme) Charge*  
18                    *Act 2017*; or

19                    (d) any other costs, expenses and other obligations incurred by  
20                    the ACCC in connection with the performance of the  
21                    ACCC's functions, or the exercise of the ACCC's powers,  
22                    under this Part or the *Telecommunications (Regional*  
23                    *Broadband Scheme) Charge Act 2017*;

24                    but does not include:

25                    (e) amounts incurred under contracts made under section 80; and

26                    (f) amounts incurred by way of grants made under section 80.

27                    **designated broadband service** means a carriage service that is  
28                    supplied using a local access line, where:

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

31                    (b) the local access line is part of the infrastructure of a  
32                    telecommunications network in Australia; and

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

35                    Note:            See also section 102ZH.

# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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- 1            **eligible financial year** has the meaning given by section 79.
- 2            **eligible funding recipient** has the meaning given by section 78.
- 3            **eligible service** has the same meaning as in section 152AL of the  
4            *Competition and Consumer Act 2010*.
- 5            **exempt service** has the meaning given by section 95 or 96.
- 6            **grant recipient** has the meaning given by section 80.
- 7            **instalment** of charge: see subsection 102D(5).
- 8            **local access line** has the same meaning as in Part 8 of the  
9            *Telecommunications Act 1997*. For this purpose:
- 10           (a) subsection 158(2B) of that Act applies to this definition in a  
11           corresponding way to the way in which it applies to  
12           section 142C of that Act; and
- 13           (b) disregard section 158A of that Act.
- 14           **month** means calendar month.
- 15           **NBN Co** has the same meaning as in the *National Broadband*  
16           *Network Companies Act 2011*.
- 17           **nominal funding entitlement** of a person for a financial year  
18           means the amount specified in a nominal funding entitlement  
19           certificate that:
- 20           (a) is held by the person; and
- 21           (b) relates to the financial year.
- 22           **nominal funding entitlement certificate** means a certificate issued  
23           under section 86.
- 24           **potentially chargeable service** has the meaning given by  
25           section 94.
- 26           **Regional Broadband Scheme Special Account** means the  
27           Regional Broadband Scheme Special Account established by  
28           section 89.
- 29           **satellite broadband service** has the meaning given by section 77.

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1                    *superfast carriage service* means a carriage service, where:  
2                    (a) the carriage service enables end-users to download  
3                           communications; and  
4                    (b) the download transmission speed of the carriage service is  
5                           normally 25 megabits per second or more; and  
6                    (c) the carriage service is supplied using a line to premises  
7                           occupied or used by an end-user.

### 8                    **77 Satellite broadband service**

- 9                    (1) For the purposes of this Part, *satellite broadband service* means a  
10                    carriage service, where:  
11                    (a) the carriage service is supplied using a satellite; and  
12                    (b) the carriage service enables end-users to download  
13                           communications; and  
14                    (c) the carriage service is not a public mobile  
15                           telecommunications service; and  
16                    (d) the carriage service is a listed carriage service; and  
17                    (e) the conditions (if any) determined under subsection (2) are  
18                           satisfied.  
19                    (2) The Minister may, by legislative instrument, determine one or  
20                           more conditions for the purposes of paragraph (1)(e).

### 21                    **78 Eligible funding recipients**

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

### 28                    **79 Eligible financial year**

- 29                    (1) For the purposes of this Part, *eligible financial year* means:  
30                    (a) the financial year beginning on:
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# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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- 1 (i) 1 July 2017; or  
2 (ii) if a later 1 July is determined under subsection (2)—that  
3 later 1 July; or  
4 (b) a later financial year.
- 5 (2) The Minister may, by legislative instrument, determine a 1 July for  
6 the purposes of subparagraph (1)(a)(ii).

## 7 **Division 2—Contracts and grants relating to fixed wireless** 8 **broadband and satellite broadband**

### 9 **80 Contracts and grants**

- 10 (1) The Secretary may, on behalf of the Commonwealth:  
11 (a) enter into a contract with; or  
12 (b) make a grant of financial assistance to;  
13 an eligible funding recipient in relation to:  
14 (c) the connection of premises to a telecommunications network  
15 in order that a carriage service provider can provide:  
16 (i) fixed wireless broadband services to an end-user at the  
17 premises; or  
18 (ii) satellite broadband services to an end-user at the  
19 premises; or  
20 (d) the supply of eligible services to a carriage service provider  
21 in order that the carriage service provider can provide:  
22 (i) fixed wireless broadband services to an end-user at  
23 premises; or  
24 (ii) satellite broadband services to an end-user at premises;  
25 or  
26 (e) facilities that are used, or proposed to be used, to supply:  
27 (i) fixed wireless broadband services; or  
28 (ii) satellite broadband services; or  
29 (f) a matter that is incidental or ancillary to a matter mentioned  
30 in paragraph (c), (d) or (e).
- 31 (2) For the purposes of this Part, if the Secretary enters into a contract  
32 with a person under subsection (1), the person is a **contractor**.

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1 (3) For the purposes of this Part, if the Secretary makes a grant of  
2 financial assistance to a person under subsection (1), the person is a  
3 **grant recipient**.
- 4 (4) A contract under subsection (1) may provide for the  
5 Commonwealth to reimburse, or partly reimburse, costs or  
6 expenses.
- 7 (5) A grant under subsection (1) may be made by way of the  
8 reimbursement, or partial reimbursement, of costs or expenses.
- 9 (6) Subsections (4) and (5) do not limit subsection (1).
- 10 (7) To avoid doubt, the use of the word “Regional” in:  
11 (a) the short title of the *Telecommunications (Regional*  
12 *Broadband Scheme) Charge Act 2017*; or  
13 (b) the name of the Regional Broadband Scheme Special  
14 Account;  
15 does not limit subsection (1) of this section.

### 81 Terms and conditions of grants

#### 17 *Scope*

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

#### 20 *Terms and conditions*

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



# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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1 **82 Condition about compliance with Ministerial determination**

2 *Condition*

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

9 *Determination*

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

18 *Application of determinations*

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

23 *Other terms and conditions*

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

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1                                    *Determination prevails over inconsistent contract or agreement*
- 2                    (6) A term or condition:
- 3                                    (a) of a contract entered into under section 80; or
- 4                                    (b) set out in an agreement under section 81;
- 5                    has no effect to the extent to which it is inconsistent with a
- 6                    determination under subsection (2) that applies to the contract or to
- 7                    the grant to which the agreement relates, as the case may be.
- 8                    (7) Despite subsection (6), a determination under subsection (2) has no
- 9                    effect to the extent to which it overrides a term or condition:
- 10                                    (a) of a contract entered into under section 80; and
- 11                                    (b) that gives the contractor a right to adjustment of payment for
- 12                                    a change in the services, facilities or customer equipment to
- 13                                    be supplied by the contractor in accordance with the contract.
- 14                    (8) Despite subsection (6), a determination under subsection (2) has no
- 15                    effect to the extent to which it specifies the price, or a method of
- 16                    ascertaining the price, for any of the services, facilities or customer
- 17                    equipment to be supplied by a contractor in accordance with a
- 18                    section 80 contract.
- 19                    (9) Despite subsection (6), a determination under subsection (2) has no
- 20                    effect to the extent to which it overrides a term or condition:
- 21                                    (a) set out in an agreement under section 81; and
- 22                                    (b) that gives the grant recipient a right to adjustment of payment
- 23                                    for a change in the services, facilities or customer equipment
- 24                                    to be supplied by the grant recipient in accordance with the
- 25                                    terms and conditions of the grant.
- 26                    (10) Despite subsection (6), a determination under subsection (2) has no
- 27                    effect to the extent to which it specifies the price, or a method of
- 28                    ascertaining the price, for any of the services, facilities or customer
- 29                    equipment to be supplied by the grant recipient of a section 80
- 30                    grant in accordance with the terms and conditions of the grant.

# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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1 **83 Secretary has powers etc. of the Commonwealth**

- 2 (1) The Secretary, on behalf of the Commonwealth, has all the rights,  
3 responsibilities, duties and powers of the Commonwealth in  
4 relation to the Commonwealth's capacity as:  
5 (a) a party to a contract entered into under section 80; or  
6 (b) the grantor of a grant made under section 80.
- 7 (2) Without limiting subsection (1):  
8 (a) an amount payable by the Commonwealth under a section 80  
9 contract is to be paid by the Secretary on behalf of the  
10 Commonwealth; and  
11 (b) an amount payable to the Commonwealth under a section 80  
12 contract is to be paid to the Secretary on behalf of the  
13 Commonwealth; and  
14 (c) a section 80 grant is to be paid by the Secretary on behalf of  
15 the Commonwealth; and  
16 (d) an amount payable to the Commonwealth by way of the  
17 repayment of the whole or a part of a section 80 grant is to be  
18 paid to the Secretary on behalf of the Commonwealth; and  
19 (e) the Secretary may institute an action or proceeding on behalf  
20 of the Commonwealth in relation to a matter that concerns:  
21 (i) a section 80 contract; or  
22 (ii) a section 80 grant.

23 **84 Conferral of powers on the Secretary**

- 24 The Secretary may exercise a power conferred on the Secretary by:  
25 (a) a contract entered into under section 80; or  
26 (b) an agreement under section 80.

27 **85 Monitoring of performance**

- 28 (1) The Secretary must monitor, and report each financial year to the  
29 Minister on, all significant matters relating to:  
30 (a) the performance of contractors; and  
31 (b) the performance of grant recipients.

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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

### 86 Nominal funding entitlement certificate

#### *Funding financial year*

- 24
- 25 (1) For the purposes of this section, ***funding financial year*** means:
- 26 (a) the second eligible financial year; or
- 27 (b) a later eligible financial year.

#### *Issue of certificate*

- 28
- 29 (2) If a carrier is an eligible funding recipient at the start of 1 February  
30 in a funding financial year, the Secretary must:

# EXPOSURE DRAFT

- 1 (a) issue to the carrier a certificate stating that a specified  
2 amount is the nominal funding entitlement of the carrier for  
3 the funding financial year; and  
4 (b) do so:  
5 (i) by the end of 31 March in the funding financial year;  
6 and  
7 (ii) if the carrier has applied under subsection 98(1) for a  
8 charge offset certificate in relation to the previous  
9 financial year—before making a decision in response to  
10 the application.

- 11 (3) A certificate issued under subsection (1) is to be known as a  
12 ***nominal funding entitlement certificate***.

13 *Estimated balance of Regional Broadband Scheme Special*  
14 *Account*

- 15 (4) The following provisions have effect in relation to the issue of  
16 nominal funding entitlement certificates in relation to a funding  
17 financial year:  
18 (a) before issuing those certificates, the Secretary must make an  
19 estimate of the balance of the Regional Broadband Scheme  
20 Special Account as at 7 May in the funding financial year;  
21 (b) in issuing those certificates, the Secretary must have regard  
22 to that estimate.

23 *Payments to holder of certificate*

- 24 (5) If:  
25 (a) a carrier is an eligible funding recipient; and  
26 (b) the carrier is the holder of a nominal funding entitlement  
27 certificate in relation to a funding financial year;  
28 the Secretary must take all reasonable steps to ensure that the total  
29 of:  
30 (c) the amounts that have, or will, become due and payable by  
31 the Commonwealth to the carrier under section 80 contracts  
32 during the funding financial year; and  
33 (d) the section 80 grants that were, or will be, made to the carrier  
34 during the funding financial year;
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# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1 equals whichever of the following amounts is applicable:  
2 (e) if the carrier holds a charge offset certificate for the previous  
3 financial year—the nominal funding entitlement of the carrier  
4 for the funding financial year, reduced by the amount  
5 specified in the charge offset certificate;  
6 (f) if the carrier does not hold a charge offset certificate for the  
7 previous financial year—the nominal funding entitlement of  
8 the carrier for the funding financial year.

9 *Copy of certificate*

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

12 *Certificate cannot be transferred*

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

### 14 **87 Secretary to comply with rules**

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

### 21 **88 Executive power of the Commonwealth**

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

## 24 **Division 3—Regional Broadband Scheme Special Account**

### 25 **89 Regional Broadband Scheme Special Account**

- 26 (1) The Regional Broadband Scheme Special Account is established  
27 by this section.

# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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1 (2) The Account is a Special Account for the purposes of the *Public*  
2 *Governance, Performance and Accountability Act 2013*.

3 (3) The Account is to be administered by the Secretary.

## 4 **90 Credits to the Account**

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

7 (a) an amount equal to an amount paid to the Commonwealth by  
8 way of:

9 (i) charge; or

10 (ii) an instalment of charge; and

11 (b) an amount equal to an amount paid to the Commonwealth  
12 under a section 80 contract; and

13 (c) an amount equal to an amount paid to the Commonwealth by  
14 way of damages or compensation for a breach of a section 80  
15 contract; and

16 (d) an amount equal to an amount paid to the Commonwealth by  
17 way of the repayment of the whole or a part of a section 80  
18 grant.

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

## 24 **91 Distribution of whole or part of balance of the Account**

25 (1) If:

26 (a) the whole or a part of the balance standing to the credit of the  
27 Regional Broadband Scheme Special Account at a particular  
28 time is attributable to charge paid by particular carriers; and

29 (b) a determination is in force under subsection (2);

30 the Secretary may, on behalf of the Commonwealth, distribute to  
31 those carriers the whole or a part of the balance.

32 (2) The Minister may, by legislative instrument, determine:

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1 (a) rules to be complied with by the Secretary in relation to the  
2 timing of distributions under subsection (1); and  
3 (b) a method to be applied by the Secretary in making  
4 distributions under subsection (1).
- 5 (3) The Secretary must comply with a determination in force under  
6 subsection (2).

### 7 **92 Purposes of the Account**

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

- 10 (a) to pay amounts payable by the Commonwealth under a  
11 contract entered into under section 80;  
12 (b) to make grants under section 80;  
13 (c) to pay designated administrative costs;  
14 (d) to make distributions in accordance with section 91;  
15 (e) to pay refunds under section 99 or 102J.

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

### 18 **Division 4—Chargeable service associated with a local** 19 **access line**

#### 20 **93 Chargeable service associated with a local access line**

21 For the purposes of this Part, if:

- 22 (a) a person is a carrier; and  
23 (b) a designated broadband service is a potentially chargeable  
24 service in relation to the person for a month; and  
25 (c) the service is not an exempt service in relation to the person  
26 for the month;

27 the service is a *chargeable service associated with a local access*  
28 *line* of the person for the month.

#### 29 **94 Potentially chargeable services**

- 30 (1) If:
-



# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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- 1 (a) a person is a carrier; and  
2 (b) during a period comprising the whole or a part of a month in  
3 an eligible financial year, either:  
4 (i) the person owns a local access line; or  
5 (ii) under a nominated carrier declaration, the person is the  
6 nominated carrier in relation to a local access line; and  
7 (c) during the whole or a part of the period, a carriage service  
8 provider (who may be the person) supplies a designated  
9 broadband service to a customer in Australia using the line;  
10 the designated broadband service is a ***potentially chargeable***  
11 ***service*** in relation to the person for the month.

12 *Two or more services supplied to the same customer using the*  
13 *same local access line*

- 14 (2) If:  
15 (a) a person is a carrier; and  
16 (b) during a period comprising the whole or a part of a month in  
17 an eligible financial year, either:  
18 (i) the person owns a local access line; or  
19 (ii) under a nominated carrier declaration, the person is the  
20 nominated carrier in relation to a local access line; and  
21 (c) 2 or more designated broadband services are supplied by  
22 different carriage service providers (any of whom may be the  
23 person) to the same customer using the line during different  
24 parts of the period; and  
25 (d) each of those services would (apart from this subsection) be a  
26 potentially chargeable service in relation to the person for the  
27 month;  
28 then, for the purposes of subsection (1), disregard all of those  
29 services except the service that was supplied in the last of those  
30 parts of the period.

31 *Two or more services supplied to the same customer using different*  
32 *local access lines*

- 33 (3) If:

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1 (a) 2 or more designated broadband services are supplied to the  
2 same customer by different carriage service providers using  
3 different local access lines during different parts of a month;  
4 and  
5 (b) each of those services would (apart from this subsection) be a  
6 potentially chargeable service in relation to different persons  
7 for the month;  
8 then, for the purposes of subsection (1), disregard all of those  
9 services except the service that was supplied in the last of those  
10 parts of the month.
- 11 (4) For the purposes of subsection (3), it is immaterial whether  
12 different parts of the month overlap.

### 95 Exempt services—small networks

- 13 (1) If:  
14 (a) a person is a member of an associated group during the whole  
15 or a part of a month; and  
16 (b) the total number of potentially chargeable services in relation  
17 to the members of the group for that month is less than 2,000;  
18 and  
19 (c) one or more of those potentially chargeable services are  
20 potentially chargeable services in relation to the person for  
21 that month;  
22 each of the potentially chargeable services mentioned in  
23 paragraph (c) is an *exempt service* in relation to the person for that  
24 month.  
25
- 26 (2) If:  
27 (a) a person is not a member of an associated group during the  
28 whole or a part of a month; and  
29 (b) the total number of potentially chargeable services in relation  
30 to the person for that month is less than 2,000;  
31 each of those potentially chargeable services is an *exempt service*  
32 in relation to the person for that month.

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Funding of fixed wireless broadband and satellite broadband **Schedule 4**

---

1 *Associated group*

- 2 (3) For the purposes of this section, if:  
3 (a) a person is in a position to exercise control of:  
4 (i) a local access line; or  
5 (ii) a telecommunications network; and  
6 (b) the person has one or more associates;  
7 then:  
8 (c) the person is taken to belong to an associated group; and  
9 (d) the associated group consists of the person and those  
10 associates.
- 11 (4) For the purposes of subsection (3), the question of whether a  
12 person is in a position to exercise control of:  
13 (a) a local access line; or  
14 (b) a telecommunications network;  
15 is to be determined in the same manner in which that question is  
16 determined for the purposes of Part 8 of the *Telecommunications*  
17 *Act 1997*.
- 18 (5) For the purposes of subsection (3), the question of whether a  
19 person has one or more associates is to be determined in the same  
20 manner in which that question is determined for the purposes of  
21 Part 8 of the *Telecommunications Act 1997*.

22 **96 Exempt services—local access lines transitioning to the NBN**

23 *Telstra*

- 24 (1) If the following conditions are satisfied in connection with a  
25 potentially chargeable service in relation to a person for a month:  
26 (a) the service is supplied using a local access line;  
27 (b) the line is not owned by an NBN corporation at any time  
28 during that month;  
29 (c) the line is not used by an NBN corporation to supply a  
30 declared service at any time during that month;  
31 (d) during the whole of that month, there was in force a legally  
32 enforceable agreement that satisfies the following conditions:

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

---

- 1 (i) the agreement provides for the transfer of ownership or  
2 control of the line to an NBN corporation;  
3 (ii) the agreement is covered by a determination made under  
4 subsection 577BA(9) of the *Telecommunications Act*  
5 *1997*;  
6 (iii) the agreement is not specified in an instrument under  
7 subsection (2);  
8 the potentially chargeable service is an *exempt service* in relation  
9 to the person for that month.

- 10 (2) The Minister may, by legislative instrument, specify one or more  
11 agreements for the purposes of subparagraph (1)(d)(iii).

12 *Optus*

- 13 (3) If the following conditions are satisfied in connection with a  
14 potentially chargeable service in relation to a person for a month:  
15 (a) the service is supplied using a local access line;  
16 (b) the line is not owned by an NBN corporation at any time  
17 during that month;  
18 (c) the line is not used by an NBN corporation to supply a  
19 declared service at any time during that month;  
20 (d) during the whole of that month, there was in force a contract  
21 that satisfies the following conditions:  
22 (i) the contract provides for the deactivation or  
23 decommissioning of lines that form part of the  
24 infrastructure of a hybrid fibre-coaxial network;  
25 (ii) the contract was entered into between NBN Co and the  
26 listed Optus companies (see subsection (10));  
27 (iii) the agreement is not specified in an instrument under  
28 subsection (4);  
29 the potentially chargeable service is an *exempt service* in relation  
30 to the person for that month.

- 31 (4) The Minister may, by legislative instrument, specify one or more  
32 agreements for the purposes of subparagraph (3)(d)(iii).

# EXPOSURE DRAFT

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---

1

## *Other networks*

2

(5) If the following conditions are satisfied in connection with a potentially chargeable service in relation to a person for a month:

3

4

(a) that month is one of the first 6 months of the first eligible financial year;

5

6

(b) the service is supplied using a local access line;

7

8

(c) the line is not owned by an NBN corporation at any time during that month;

9

10

(d) the line is not used by an NBN corporation to supply a declared service at any time during that month;

11

12

(e) during the whole of that month, there was in force a legally enforceable agreement that satisfies the following conditions:

13

14

(i) the agreement provides for the transfer of ownership or control of the line to an NBN corporation;

15

16

(ii) the agreement was in force immediately before the commencement of this section;

17

18

(iii) the agreement is not covered by subparagraph (1)(d)(ii) or (2)(d)(ii);

19

20

(iv) the agreement is not specified in an instrument under subsection (6);

21

22

(v) such other conditions (if any) as are determined under subsection (7);

23

24

the potentially chargeable service is an *exempt service* in relation to the person for that month.

25

26

(6) The Minister may, by legislative instrument, specify one or more agreements for the purposes of subparagraph (5)(e)(iv).

27

28

(7) The Minister may, by legislative instrument, determine one or more conditions for the purposes of subparagraph (5)(e)(v).

29

## *When agreement comes into force*

30

31

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

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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1

*No specification by class*

2

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

3

4

*Listed Optus company*

5

- (10) For the purposes of this section, ***listed Optus company*** means:

6

(a) Optus Networks Pty Limited (ABN 92 008 570 330); or

7

(b) Optus Internet Pty Limited (ACN 083 164 532); or

8

(c) Optus Vision Pty Limited (ACN 50 066 518 821); or

9

(d) Optus Vision Media Pty Limited (ACN 070 870 647); or

10

(e) Optus Systems Pty Limited (ACN 056 541 167); or

11

(f) SingTel Optus Pty Ltd (ACN 052 833 208).

12

## **Division 5—Anti-avoidance**

13

### **97 Anti-avoidance**

14

- (1) A carrier must not, either alone or together with one or more other persons, enter into, begin to carry out or carry out a scheme if it would be concluded that the carrier did so for the sole or dominant purpose of avoiding the application of section 93 of this Act, or any provision of the *Telecommunications (Regional Broadband Scheme) Charge Act 2017*, in relation to:

15

(a) the carrier; or

16

(b) any other carrier.

17

(a) the carrier; or

18

(b) any other carrier.

19

(a) the carrier; or

20

(b) any other carrier.

21

22

- (2) A carrier commits an offence if:

23

(a) the carrier, either alone or together with one or more other

24

persons, enters into, begins to carry out or carries out a

25

scheme; and

26

(b) the carrier did so for the sole or dominant purpose of

27

avoiding the application of section 93 of this Act, or any

28

provision of the *Telecommunications (Regional Broadband*

29

*Scheme) Charge Act 2017*, in relation to:

30

(i) the carrier; or

31

(ii) any other carrier.

# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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1 Penalty: 10,000 penalty units.

2 *Validity of transactions*

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

5 *Scheme*

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

7 (a) any agreement, arrangement, understanding, promise or  
8 undertaking, whether express or implied; and

9 (b) any scheme, plan, proposal, action, course of action or course  
10 of conduct, whether unilateral or otherwise.

## 11 **Division 6—Charge offset certificate**

### 12 **98 Charge offset certificate**

13 *Application*

14 (1) If:

15 (a) a person is an eligible funding recipient; and

16 (b) the ACMA has made an assessment under section 102 setting  
17 out the charge payable by the person for a financial year (the  
18 *charge financial year*);

19 the person may, at any time during the period:

20 (c) beginning when the assessment was made; and

21 (d) ending at the end of the standard due date (within the  
22 meaning of section 102D) for the charge financial year;

23 apply to the Secretary for the issue to the person of a charge offset  
24 certificate for the charge financial year.

25 (2) An application under subsection (1) must:

26 (a) be in writing; and

27 (b) be in a form approved, in writing, by the Secretary; and

28 (c) be accompanied by such information as is specified in rules  
29 made under subsection (9).

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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1

### *Issue of certificate*

2

(3) If:

3

(a) an application under subsection (1) has been made for the issue to a person of a charge offset certificate for the charge financial year; and

4

5

6

(b) the person is the holder of a nominal funding entitlement certificate in relation to the next financial year; and

7

8

(c) rules made under subsection (9) for the purposes of this paragraph are in force; and

9

10

(d) the conditions set out in those rules are satisfied;

11

the Secretary must:

12

(e) issue a certificate stating that the person is entitled to a charge offset for the charge financial year equal to the amount specified in the certificate; and

13

14

15

(f) do so by the end of 31 March next following the charge financial year.

16

17

(4) The amount specified in the certificate:

18

(a) must be the amount ascertained in accordance with rules made under subsection (9); and

19

20

(b) must not exceed the nominal funding entitlement of the person for the next financial year; and

21

22

(c) must not exceed the annual base amount of the person for the charge financial year.

23

24

(5) A certificate issued under subsection (3) is to be known as a ***charge offset certificate***.

25

26

### *Refusal*

27

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

28

29

30

### *Copy of certificate*

31

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

32



# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

---

1 *Charge offset certificate cannot be transferred*

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

3 *Rules*

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

## 6 **99 Remission or refund of charge**

7 *Remission*

8 (1) If:

9 (a) a person becomes the holder of a charge offset certificate for  
10 a financial year; and

11 (b) a base instalment of charge is payable by the person in  
12 relation to the financial year; and

13 (c) the base instalment of charge has not been paid;  
14 the Secretary must, on behalf of the Commonwealth, remit so  
15 much of the base instalment of charge as equals the amount  
16 specified in the certificate.

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

18 (2) The Secretary must inform the ACMA of a remission of charge  
19 under subsection (1).

20 (3) If:

21 (a) the ACMA has made an assessment under section 102 setting  
22 out the charge payable by a person for a financial year; and

23 (b) the base instalment of charge is remitted, to any extent, under  
24 subsection (1) of this section; and

25 (c) the ACMA is informed of the remission;  
26 the ACMA must, under subsection 102B(1), vary the assessment to  
27 reflect the remission.

28 *Refund*

29 (4) If:

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# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1 (a) a person becomes the holder of a charge offset certificate for  
2 a financial year; and  
3 (b) a base instalment of charge was payable by the person in  
4 relation to the financial year; and  
5 (c) the base instalment of charge has been paid;  
6 the Secretary must, on behalf of the Commonwealth, refund so  
7 much of the base instalment of charge as equals the amount  
8 specified in the certificate.  
9 Note: For *base instalment* of charge, see section 102D.

## 10 **Division 7—Assessment, collection and recovery of charge**

### 11 **Subdivision A—Reporting obligations**

#### 12 **100 Reporting obligations**

- 13 (1) If there are one or more chargeable services associated with a local  
14 access line of a person for a month in an eligible financial year, the  
15 person must:  
16 (a) give the ACMA a written report about:  
17 (i) those chargeable services; and  
18 (ii) the chargeable services (if any) associated with a local  
19 access line of the person for each of the other months in  
20 the financial year; and  
21 (b) do so before the end of 31 October next following the  
22 financial year.  
23 (2) The report must be in a form approved, in writing, by the ACMA.  
24 (3) The approved form may require verification, by a statutory  
25 declaration, of statements made in the report.

#### 26 **101 Offence of failing to lodge report**

- 27 (1) A person commits a strict liability offence if:  
28 (a) the person is subject to a requirement under section 100; and  
29 (b) the person omits to do an act; and  
30 (c) the omission breaches the requirement.

# EXPOSURE DRAFT

Funding of fixed wireless broadband and satellite broadband **Schedule 4**

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1 Penalty: 50 penalty units.

2 (2) A person who contravenes subsection (1) commits a separate  
3 offence in respect of each day (including a day of a conviction for  
4 the offence or any later day) during which the contravention  
5 continues.

## 6 **Subdivision B—Assessments**

### 7 **102 Assessments**

8 (1) If a person has given the ACMA a section 100 report in relation to  
9 a financial year before the end of 31 October next following the  
10 financial year, the ACMA must:

- 11 (a) make a written assessment setting out:
- 12 (i) the number of chargeable services (if any) associated  
13 with a local access line of the person for each of the  
14 months in the financial year; and
  - 15 (ii) the person's annual chargeable services amount (if any)  
16 for the financial year; and
  - 17 (iii) the person's annual base amount (if any) for the  
18 financial year; and
  - 19 (iv) the person's annual administrative cost amount (if any)  
20 for the financial year; and
  - 21 (v) the charge (if any) payable by the person in relation to  
22 the financial year; and
- 23 (b) do so by the assessment deadline for the financial year.

24 Note: Section 102D sets out when the charge is payable.

25 (2) If a person has not given the ACMA a section 100 report in  
26 relation to a financial year before the end of 31 October next  
27 following the financial year, the ACMA may, before the  
28 assessment deadline for the financial year, make a written  
29 assessment setting out:

- 30 (a) the number of chargeable services (if any) associated with a  
31 local access line of the person for each of the months in the  
32 financial year; and

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1 (b) the person's annual chargeable services amount (if any) for  
2 the financial year; and  
3 (c) the person's annual base amount (if any) for the financial  
4 year; and  
5 (d) the person's annual administrative cost amount (if any) for  
6 the financial year; and  
7 (e) the charge (if any) payable by the person in relation to the  
8 financial year.

9 Note: Section 102D sets out when the charge is payable.

- 10 (3) An assessment under this section is not a legislative instrument.

### 11 *Assessment deadline*

- 12 (4) For the purposes of this section, the *assessment deadline* for a  
13 financial year is the end of:  
14 (a) 30 November next following the financial year; or  
15 (b) if:  
16 (i) a later day is ascertained in accordance with a  
17 determination made under subsection (5); and  
18 (ii) the day ascertained in accordance with the  
19 determination is not later than 2 months before the  
20 standard due date (within the meaning of section 102D)  
21 for the financial year;  
22 the day ascertained in accordance with the determination.
- 23 (5) The ACMA may, by legislative instrument, make a determination  
24 for the purposes of subparagraph (4)(b)(i).

### 25 **102A Notification of assessment**

- 26 As soon as practicable after making an assessment under  
27 section 102, the ACMA must give a copy of the assessment to:  
28 (a) the person to whom the assessment relates; and  
29 (b) the Secretary.

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1 **102B Variation of assessments**

- 2 (1) The ACMA may vary an assessment made under this Division by  
3 making such alterations and additions as it thinks necessary, even  
4 if charge has been paid in respect of an assessment.
- 5 (2) Unless the contrary intention appears, an amended assessment is  
6 taken, for the purposes of this Division, to be an assessment under  
7 section 102.

8 **102C ACMA may accept statements**

9 Despite anything in this Division, the ACMA may, for the  
10 purposes of making an assessment under this Division, partly or  
11 completely accept a statement in a report under section 100.

12 **Subdivision C—Collection and recovery of charge**

13 **102D When charge payable**

14 *Person other than an eligible funding recipient*

- 15 (1) Charge payable by a person (other than an eligible funding  
16 recipient) in relation to a financial year becomes due and payable  
17 on:  
18 (a) the standard due date for the financial year; or  
19 (b) if the ACMA, by written notice given to the person, allows a  
20 later day—that later day.
- 21 (2) A day allowed under paragraph (1)(b) must not be later than  
22 28 February next following the financial year.
- 23 (3) A copy of a notice under paragraph (1)(b) must be published on the  
24 ACMA's website.
- 25 (4) A notice under paragraph (1)(b) is not a legislative instrument.

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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1

### *Eligible funding recipient*

2

(5) If a person is an eligible funding recipient, charge payable by the person in relation to a financial year is payable in 2 instalments, as follows:

3

4

5

(a) an instalment (the *base instalment*) of so much of the amount of the charge as equals the annual base amount of the person for the financial year;

6

7

8

(b) an instalment (the *administrative cost instalment*) of so much of the amount of the charge as equals the annual administrative cost amount of the person for the financial year.

9

10

11

12

(6) If a person is an eligible funding recipient, the base instalment of charge payable by the person in relation to a financial year becomes due and payable on:

13

14

15

(a) if the person has made an application under subsection 98(1) for a charge offset certificate for the financial year—30 April next following the financial year; or

16

17

18

(b) otherwise:

19

(i) the standard due date for the financial year; or

20

(ii) if the ACMA, by written notice given to the person, allows a later day—that later day.

21

22

(7) A day allowed under subparagraph (6)(b)(ii) must not be later than 28 February next following the financial year.

23

24

(8) A copy of a notice under subparagraph (6)(b)(ii) must be published on the ACMA's website.

25

26

(9) A notice under subparagraph (6)(b)(ii) is not a legislative instrument.

27

28

(10) If a person is an eligible funding recipient, the administrative cost instalment of charge payable by the person in relation to a financial year becomes due and payable on:

29

30

31

(a) the standard due date for the financial year; or

32

(b) if the ACMA, by written notice given to the person, allows a later day—that later day.

33

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- 1 (11) A day allowed under paragraph (10)(b) must not be later than  
2 28 February next following the financial year.
- 3 (12) A copy of a notice under paragraph (10)(b) must be published on  
4 the ACMA's website.
- 5 (13) A notice under paragraph (10)(b) is not a legislative instrument.
- 6 *Standard due date*
- 7 (14) For the purposes of this section, the *standard due date* for a  
8 financial year is:  
9 (a) 31 December next following the financial year; or  
10 (b) if:  
11 (i) a later day is ascertained in accordance with a  
12 determination made under subsection (15); and  
13 (ii) the day ascertained in accordance with the  
14 determination is not later than 28 February next  
15 following the financial year;  
16 the day ascertained in accordance with the determination.
- 17 (15) The ACMA may, by legislative instrument, make a determination  
18 for the purposes of subparagraph (14)(b)(i).

## 19 **102E Recovery of charge**

- 20 Charge, or an instalment of charge:  
21 (a) is a debt due to the ACMA on behalf of the Commonwealth;  
22 and  
23 (b) may be recovered by the ACMA, on behalf of the  
24 Commonwealth, in:  
25 (i) the Federal Court; or  
26 (ii) the Federal Circuit Court; or  
27 (iii) a court of a State or Territory that has jurisdiction in  
28 relation to the matter.

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## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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1 **102F Validity of assessment**

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

4 **102G Evidence of assessment**

5 *Scope*

6 (1) This section applies if a document that purports to be a copy of an  
7 assessment under section 102 is produced in a proceeding.

8 *Evidence*

9 (2) Except so far as the contrary is established, it must be presumed:  
10 (a) that the document is a copy of the assessment; and  
11 (b) that the ACMA has duly made the assessment; and  
12 (c) that the amounts and other particulars set out in the  
13 assessment are correct.

14 **102H Onus of establishing incorrectness of assessment**

15 In any proceeding, the onus of establishing that an assessment  
16 under section 102 is incorrect is on the party making that assertion.

17 **102J Refund of overpayment of charge**

18 If there is an overpayment of:

19 (a) charge; or

20 (b) an instalment of charge;

21 the overpayment is to be refunded by the Secretary on behalf of the  
22 Commonwealth.

23 **102K Cancellation of certain exemptions from charge**

24 (1) This section cancels the effect of a provision of another Act that  
25 would have the effect of exempting a person from liability to pay  
26 charge.



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- 1 (2) The cancellation does not apply if the provision of the other Act is  
2 enacted after the commencement of this section and refers  
3 specifically to charge imposed by the *Telecommunications*  
4 (*Regional Broadband Scheme*) *Charge Act 2017*.

## 5 **102L Commonwealth not liable to charge**

- 6 (1) The Commonwealth is not liable to pay charge.  
7 (2) A reference in this section to the *Commonwealth* includes a  
8 reference to an authority of the Commonwealth that cannot, by law  
9 of the Commonwealth, be made liable to taxation by the  
10 Commonwealth.

## 11 **102M Performance bonds and guarantees**

- 12 (1) The Minister may, by written determination, require a person who  
13 has a liability to pay charge, or an anticipated liability to pay  
14 charge, to obtain, in accordance with the determination,  
15 performance bonds or guarantees in respect of the person's liability  
16 or anticipated liability.  
17 (2) The person must comply with the determination.  
18 (3) A determination under this section is a legislative instrument.  
19 (4) In this section:  
20 *performance bond* has the meaning given by the determination.

## 21 **Subdivision D—Other matters**

### 22 **102N Late payment penalty**

- 23 (1) If an amount of:  
24 (a) charge; or  
25 (b) an instalment of charge;  
26 that is payable by a person remains unpaid after the day on which it  
27 becomes due and payable, the person is liable to pay a penalty (*late*  
28 *payment penalty*) on the unpaid amount for each day until all of:

# EXPOSURE DRAFT

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- 1 (c) the charge; or  
2 (d) the instalment of charge;  
3 as the case may be, has been paid.
- 4 (2) The late payment penalty rate is 20% per year, or such lower rate  
5 as the ACMA determines in writing for the purposes of this  
6 subsection.
- 7 (3) The ACMA may remit the whole or part of a late payment penalty  
8 that a person is liable to pay under subsection (2).
- 9 (4) The late payment penalty for a day is due and payable at the end of  
10 that day.
- 11 (5) Late payment penalty:  
12 (a) is a debt due to the ACMA on behalf of the Commonwealth;  
13 and  
14 (b) may be recovered by the ACMA, on behalf of the  
15 Commonwealth, in:  
16 (i) the Federal Court; or  
17 (ii) the Federal Circuit Court; or  
18 (iii) a court of a State or Territory that has jurisdiction in  
19 relation to the matter.
- 20 (6) If the amount of the late payment penalty for a day is not an  
21 amount of whole dollars, the late payment penalty is rounded to the  
22 nearest dollar (rounding 50 cents upwards).
- 23 (7) A determination under subsection (2) is a legislative instrument.

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1 **Division 8—Disclosure of information**

2 **Subdivision A—Access to information or documents held by a**  
3 **carrier or carriage service provider**

4 **102P Access to information or documents held by a carrier or**  
5 **carriage service provider**

6 *Scope*

- 7 (1) This section applies to a carrier or carriage service provider if the  
8 ACMA believes on reasonable grounds that the carrier or carriage  
9 service provider has information or a document that is relevant to  
10 the operation of:  
11 (a) Division 4, 5, 6 or 7 of this Part; or  
12 (b) the *Telecommunications (Regional Broadband Scheme)*  
13 *Charge Act 2017*.

14 *Requirement*

- 15 (2) The ACMA may, by written notice given to the carrier or carriage  
16 service provider, require the carrier or carriage service provider:  
17 (a) to give to the ACMA, within the period and in the manner  
18 and form specified in the notice, any such information; or  
19 (b) to produce to the ACMA, within the period and in the  
20 manner specified in the notice, any such documents; or  
21 (c) to make copies of any such documents and to produce to the  
22 ACMA, within the period and in the manner specified in the  
23 notice, those copies.
- 24 (3) A period specified under subsection (2) must not be shorter than 14  
25 days after the notice is given.

26 *Compliance*

- 27 (4) A carrier or carriage service provider must comply with a  
28 requirement under subsection (2) to the extent that the carrier or  
29 carriage service provider is capable of doing so.

# EXPOSURE DRAFT

## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1 (5) A carrier or carriage service provider commits an offence if:  
2 (a) the ACMA has given a notice to the carrier or carriage  
3 service provider under subsection (2); and  
4 (b) the carrier or carriage service provider engages in conduct;  
5 and  
6 (c) the carrier's conduct, or the carriage service provider's  
7 conduct, contravenes a requirement in the notice.

8 Penalty for contravention of this subsection: 50 penalty units.

### 9 **102Q Copying documents—compensation**

10 A carrier or carriage service provider is entitled to be paid by the  
11 Commonwealth reasonable compensation for complying with a  
12 requirement covered by paragraph 102P(2)(c).

### 13 **102R Copies of documents**

- 14 (1) The ACMA may:  
15 (a) inspect a document or copy produced under  
16 subsection 102P(2); and  
17 (b) make and retain copies of, or take and retain extracts from,  
18 such a document.
- 19 (2) The ACMA may retain possession of a copy of a document  
20 produced in accordance with a requirement covered by  
21 paragraph 102P(2)(c).

### 22 **102S ACMA may retain documents**

- 23 (1) The ACMA may take, and retain for as long as is necessary,  
24 possession of a document produced under subsection 102P(2).
- 25 (2) The carrier or carriage service provider otherwise entitled to  
26 possession of the document is entitled to be supplied, as soon as  
27 practicable, with a copy certified by the ACMA to be a true copy.
- 28 (3) The certified copy must be received in all courts and tribunals as  
29 evidence as if it were the original.

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- 1 (4) Until a certified copy is supplied, the ACMA must, at such times  
2 and places as the ACMA thinks appropriate, permit the carrier or  
3 carriage service provider otherwise entitled to possession of the  
4 document, or a person authorised by that carrier or carriage service  
5 provider, to inspect and make copies of, or take extracts from, the  
6 document.

7 **102T Law relating to legal professional privilege not affected**

8 This Subdivision does not affect the law relating to legal  
9 professional privilege.

10 **Subdivision B—Access to information or documents held by an**  
11 **eligible funding recipient**

12 **102U Access to information or documents held by an eligible**  
13 **funding recipient**

14 *Scope*

- 15 (1) This section applies to an eligible funding recipient if the ACCC  
16 believes on reasonable grounds that the eligible funding recipient  
17 has information or a document that is relevant to the performance  
18 of any of the ACCC's functions, or the exercise of any of the  
19 ACCC's powers, under the *Telecommunications (Regional*  
20 *Broadband Scheme) Charge Act 2017*.

21 *Requirement*

- 22 (2) The ACCC may, by written notice given to the eligible funding  
23 recipient, require the eligible funding recipient:  
24 (a) to give to the ACCC, within the period and in the manner and  
25 form specified in the notice, any such information; or  
26 (b) to produce to the ACCC, within the period and in the manner  
27 specified in the notice, any such documents; or  
28 (c) to make copies of any such documents and to produce to the  
29 ACCC, within the period and in the manner specified in the  
30 notice, those copies.

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- 1 (3) A period specified under subsection (2) must not be shorter than 14  
2 days after the notice is given.

3 *Compliance*

- 4 (4) An eligible funding recipient must comply with a requirement  
5 under subsection (2) to the extent that the eligible funding recipient  
6 is capable of doing so.

- 7 (5) An eligible funding recipient commits an offence if:  
8 (a) the ACCC has given a notice to the eligible funding recipient  
9 under subsection (2); and  
10 (b) the eligible funding recipient engages in conduct; and  
11 (c) the eligible funding recipient's conduct contravenes a  
12 requirement in the notice.

13 Penalty for contravention of this subsection: 50 penalty units.

14 **102V Copying documents—compensation**

15 An eligible funding recipient is entitled to be paid by the  
16 Commonwealth reasonable compensation for complying with a  
17 requirement covered by paragraph 102U(2)(c).

18 **102W Copies of documents**

- 19 (1) The ACCC may:  
20 (a) inspect a document or copy produced under  
21 subsection 102U(2); and  
22 (b) make and retain copies of, or take and retain extracts from,  
23 such a document.
- 24 (2) The ACCC may retain possession of a copy of a document  
25 produced in accordance with a requirement covered by  
26 paragraph 102U(2)(c).

27 **102X ACCC may retain documents**

- 28 (1) The ACCC may take, and retain for as long as is necessary,  
29 possession of a document produced under subsection 102U(2).
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- 1 (2) The eligible funding recipient otherwise entitled to possession of  
2 the document is entitled to be supplied, as soon as practicable, with  
3 a copy certified by the ACCC to be a true copy.
- 4 (3) The certified copy must be received in all courts and tribunals as  
5 evidence as if it were the original.
- 6 (4) Until a certified copy is supplied, the ACCC must, at such times  
7 and places as the ACCC thinks appropriate, permit the eligible  
8 funding recipient otherwise entitled to possession of the document,  
9 or a person authorised by that eligible funding recipient, to inspect  
10 and make copies of, or take extracts from, the document.

## 11 **102Y Law relating to legal professional privilege not affected**

12 This Subdivision does not affect the law relating to legal  
13 professional privilege.

## 14 **Subdivision C—Disclosure of information to certain bodies**

### 15 **102Z Disclosure of information by the ACMA to certain bodies**

- 16 (1) The ACMA may disclose information to any of the following  
17 bodies:
- 18 (a) the Department;  
19 (b) the ACCC;  
20 (c) the Regional Telecommunications Independent Review  
21 Committee;  
22 (d) the Department administered by the Minister administering  
23 the *Public Governance, Performance and Accountability Act*  
24 *2013*;  
25 (e) the Department administered by the Treasurer;  
26 (f) an authorised government agency (see subsection (2));  
27 if:
- 28 (g) the information was:  
29 (i) obtained under, or for the purposes of, this Division; or  
30 (ii) set out in a report under section 100; and

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- 1 (h) the ACMA is satisfied that the information will enable or  
2 assist the body to perform or exercise any of the functions or  
3 powers of the body.
- 4 (2) The ACMA may, by notifiable instrument, declare that a specified  
5 department or authority of the Commonwealth, a State or a  
6 Territory is an **authorised government agency** for the purposes of  
7 paragraph (1)(f).
- 8 (3) The ACMA may, by writing, impose conditions to be complied  
9 with in relation to information disclosed under subsection (1).
- 10 (4) An instrument made under subsection (3) that imposes conditions  
11 relating to one particular disclosure identified in the instrument is a  
12 notifiable instrument.
- 13 (5) Otherwise, an instrument made under subsection (3) is a legislative  
14 instrument.

### 15 **102ZA Disclosure of information by the ACCC to certain bodies**

- 16 (1) The ACCC may disclose information to any of the following  
17 bodies:
- 18 (a) the Department;
- 19 (b) the ACMA;
- 20 (c) the Regional Telecommunications Independent Review  
21 Committee;
- 22 (d) the Department administered by the Minister administering  
23 the *Public Governance, Performance and Accountability Act*  
24 *2013*;
- 25 (e) the Department administered by the Treasurer;
- 26 (f) an authorised government agency (see subsection (2));
- 27 if:
- 28 (g) the information was obtained under, or for the purposes of,  
29 this Division; and
- 30 (h) the ACCC is satisfied that the information will enable or  
31 assist the body to perform or exercise any of the functions or  
32 powers of the body.



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- 1 (2) The ACCC may, by notifiable instrument, declare that a specified  
2 department or authority of the Commonwealth, a State or a  
3 Territory is an *authorised government agency* for the purposes of  
4 paragraph (1)(f).
- 5 (3) The ACCC may, by writing, impose conditions to be complied  
6 with in relation to information disclosed under subsection (1).
- 7 (4) An instrument made under subsection (3) that imposes conditions  
8 relating to one particular disclosure identified in the instrument is a  
9 notifiable instrument.
- 10 (5) Otherwise, an instrument made under subsection (3) is a legislative  
11 instrument.

## 12 **Division 9—Other matters**

### 13 **102ZB Register of Contracts for the Funding of Fixed Wireless** 14 **Broadband and Satellite Broadband**

- 15 (1) The Secretary is to maintain a register, to be known as the Register  
16 of Contracts for the Funding of Fixed Wireless Broadband and  
17 Satellite Broadband, in which the Secretary includes the following  
18 for each section 80 contract that is in force:
- 19 (a) the name of the contractor;  
20 (b) the duration of the contract;  
21 (c) if the contract requires actions to be undertaken by the  
22 contractor—a summary of those actions;  
23 (d) if the contract requires services, facilities or customer  
24 equipment to be supplied by the contractor—a description of  
25 those services, facilities or customer equipment;  
26 (e) if the contract provides for the Commonwealth to reimburse,  
27 or partly reimburse, costs or expenses—a description of those  
28 costs or expenses;  
29 (f) one of the following:  
30 (i) the total amount paid or to be paid by the  
31 Commonwealth under the contract;  
32 (ii) an estimate of the total amount paid or to be paid by the  
33 Commonwealth under the contract;

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## Schedule 4 Funding of fixed wireless broadband and satellite broadband

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- 1 (iii) the method of working out the total amount paid or to  
2 be paid by the Commonwealth under the contract.
- 3 (2) The Register of Contracts for the Funding of Fixed Wireless  
4 Broadband and Satellite Broadband is to be maintained by  
5 electronic means.
- 6 (3) The Register of Contracts for the Funding of Fixed Wireless  
7 Broadband and Satellite Broadband is to be made available for  
8 inspection on the Department's website.
- 9 (4) The Register of Contracts for the Funding of Fixed Wireless  
10 Broadband and Satellite Broadband is not a legislative instrument.

### 11 **102ZC Register of Grants for the Funding of Fixed Wireless** 12 **Broadband and Satellite Broadband**

- 13 (1) The Secretary is to maintain a register, to be known as the Register  
14 of Grants for the Funding of Fixed Wireless Broadband and  
15 Satellite Broadband, in which the Secretary includes the following  
16 for each section 80 grant that has been made:
- 17 (a) the name of the grant recipient;
- 18 (b) if the terms and conditions of the grant require action to be  
19 undertaken by the grant recipient—a summary of those  
20 actions;
- 21 (c) if services, facilities or customer equipment are to be  
22 supplied by the grant recipient in accordance with the terms  
23 and conditions of the grant—a description of those services,  
24 facilities or customer equipment;
- 25 (d) if the grant is by way of the reimbursement, or partial  
26 reimbursement, of costs or expenses—a description of those  
27 costs or expenses;
- 28 (e) either:
- 29 (i) the amount of the grant; or  
30 (ii) the method for working out the amount of the grant.
- 31 (2) The Register of Grants for the Funding of Fixed Wireless  
32 Broadband and Satellite Broadband is to be maintained by  
33 electronic means.

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1 (3) The Register of Grants for the Funding of Fixed Wireless  
2 Broadband and Satellite Broadband is to be made available for  
3 inspection on the Department's website.

4 (4) The Register of Grants for the Funding of Fixed Wireless  
5 Broadband and Satellite Broadband is not a legislative instrument.

## 6 **102ZD Publication of charge payments and charge offsets**

7 The ACMA must publish on its website a statement, for each  
8 eligible financial year, that sets out:

- 9 (a) the total amount of charge paid by carriers in relation to the  
10 eligible financial year; and  
11 (b) the total of the amounts specified in charge offset certificates  
12 issued to carriers in relation to the eligible financial year.

## 13 **102ZE ACMA may give certain information to the ACCC**

14 The ACMA may give the ACCC information that is relevant to the  
15 performance of any of the ACCC's functions, or the exercise of  
16 any of the ACCC's powers, under the *Telecommunications*  
17 *(Regional Broadband Scheme) Charge Act 2017*.

## 18 **102ZF Report about the number of designated broadband services** 19 **supplied during July 2017**

20 *Reportable designated broadband service*

- 21 (1) For the purposes of this section, if:  
22 (a) a person is a carrier; and  
23 (b) during a period comprising the whole or a part of July 2017,  
24 either:  
25 (i) the person owns a local access line; or  
26 (ii) under a nominated carrier declaration, the person is the  
27 nominated carrier in relation to a local access line; and  
28 (c) during the whole or a part of the period, a carriage service  
29 provider (who may be the person) supplies a designated  
30 broadband service to a customer in Australia using the line;

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1 the service is a *reportable designated broadband service* in  
2 relation to the person.

### 3 *Report*

- 4 (2) If:
- 5 (a) a person is a carrier; and
  - 6 (b) there are one or more reportable designated broadband  
7 services in relation to the person;
- 8 the person must:
- 9 (c) give the ACCC a written report setting out the number of  
10 those services; and
  - 11 (d) do so before the end of 30 August 2017.
- 12 (3) The report must be in a form approved, in writing, by the ACCC.
- 13 (4) The approved form may require verification, by a statutory  
14 declaration, of statements made in the report.

### 15 *Offence of failing to lodge report*

- 16 (5) A person commits a strict liability offence if:
- 17 (a) the person is subject to a requirement under subsection (2);  
18 and
  - 19 (b) the person omits to do an act; and
  - 20 (c) the omission breaches the requirement.

21 Penalty: 50 penalty units.

- 22 (6) A person who contravenes subsection (5) commits a separate  
23 offence in respect of each day (including a day of a conviction for  
24 the offence or any later day) during which the contravention  
25 continues.

## 26 **102ZG Delegation by the Secretary**

- 27 (1) The Secretary may, by writing, delegate any or all of his or her  
28 functions or powers under this Part to an SES employee, or acting  
29 SES employee, in the Department.

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1 Note: The expressions *SES employee* and *acting SES employee* are defined  
2 in the *Acts Interpretation Act 1901*.

3 (2) A delegate must comply with any written directions of the  
4 Secretary.

## 5 **102ZH Meaning of *capable***

6 In determining the meaning of the expression *capable* when used  
7 in:

8 (a) a provision of this Act (other than this Part); or

9 (b) the *Telecommunications Act 1997*;

10 disregard the expression *technically capable* when used in the  
11 definition of *designated broadband service* in section 76 of this  
12 Act.